

**WIPO SEMINAR ON INTELLECTUAL PROPERTY & GENETIC
RESOURCES, TRADITIONAL KNOWLEDGE & TRADITIONAL
CULTURAL EXPRESSION: REGIONAL, NATIONAL AND LOCAL
EXPERIENCES.
(MARCH 30TH- APRIL 1ST 2015)**

**PACIFIC ISLAND FORUM COUNTRIES
REGIONAL FRAMEWORK....**

BACKGROUND

A.

- **THE PACIFIC ISLAND FORUM COUNTRIES**
- **BRIEF HISTORY OF DEVELOPMENT OF THE PACIFIC MODEL LAWS 2002**

B.

- **PACIFIC MODEL LAW FOR THE PROTECTION OF TK & EXPRESSION OF CULTURE**
- **EU-ACP ENHANCING THE PACIFIC CULTURAL INDUSTRIES: FIJI, SAMOA AND SOLOMON ISLANDS**
- **TK IMPLEMENTATION ACTION PLAN [PHASE1]**
- **Update on Phase 1**

C.

- **DRAFT PHASE 2 TK ACTION PLAN**
- **PRIORITISED ACTIVITIES FOR PHASE 2**
- **PROPOSED WAY FORWARD**

THE PACIFIC ISLAND FORUM

- A political grouping of 16 independent and self-governing states

[Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.]

- The secretariat to the Forum is the Pacific Islands Forum Secretariat [PIFS].

- Primary goals to provide policy advice to Members to:
 - stimulate economic growth,
 - enhance political governance and security for the region; and
 - strengthen regional cooperation and integration through coordinating, monitoring and evaluating implementation of Leaders' decisions.

BRIEF HISTORY OF DEVELOPMENT OF THE PACIFIC MODEL LAW 2002

YEAR	DEVELOPMENTS
15 to 19/2/1999 (Symposium on the Protection of TK and EC in the Pacific)	<ul style="list-style-type: none">- Adoption of the Declaration on the Protection of TK and Expression of Indigenous Cultures in the Pacific Islands;- Recommendation on a Policy of Regional Harmonisation of the Protection of TK and Expression of Indigenous Cultures
1999 (Forum Trade Ministers meeting)	<ul style="list-style-type: none">- Acknowledge IPR, a policy instrument, and a facilitator of appropriate economic and social development
2000 (Forum Economic Ministers meeting)	<ul style="list-style-type: none">- Growing concerns from cultural industry across the FICs. PIFS was tasked to put more emphasis on its work on IPR
2002/2003	Endorsement of the Regional Model law by the Pacific Ministers of Culture and Forum Trade Ministers
2002/2008	<ul style="list-style-type: none">- Endorsement of the Regional Model law by SPREP and Forum Trade Ministers

THE PACIFIC MODEL LAWS ON THE PROTECTION OF TK & EXPRESSION OF CULTURE & GENETIC RESOURCES

- ✓ Model laws were in response to calls from members to:
 - ✓ Protect Culture, TK and Genetic resources, in the face of increasing exploitation and inappropriate commercialization of the Pacific TK, EC and genetic resources – in the absence of international law.

- ✓ Two model laws were developed in 2002:
 - ✓ Model Law on TK& EC – in consultation with SPC, UNESCO, Council of Pacific Arts and Pacific Islands Forum Countries,
 - ✓ Model law on TK, Biological Resources, Innovations and Practices (TKBIP) in consultation with SPREPBoth taking account developments at the international level (WIPO IGC, WTO).

- ✓ The policy objective of the laws is to protect the rights of traditional owners in their TK and EC, and TEK and permit tradition-based creativity and innovation, including commercialisation, subject to prior informed consent and benefit sharing.

Cont.

- ✓ The rights created by the TK&EC law falls into 2 categories (with no formalities or registration):-
 - **traditional cultural rights** – grants TK owners exclusive rights in range of non-customary use of TK, regardless of whether use is for commercial or non-commercial purposes ('derivative' works).
 - **moral rights** – grants TK owners rights in attribution of their TK & EC, rights against false attribution and right against derogatory treatment of their TK & EC works in harmony with IPRs, new rights are in addition to and do not affect IPRs (eg. for derivative works, rights vested in the creator under IPRs establishes procedures for obtaining consent & benefit-sharing)
- ✓ The law also provide procedures for obtaining consent for non-customary use of TK & EC

Pacific Model laws:

- ✓ Model law on TKBIP – grants:
 - ✓ an economic right
 - ✓ moral right
- ✓ both Model laws grant two sets of rights to TK owners:
 - ✓ Economic rights
 - ✓ Moral rights
- ✓ both Model laws require prior informed consent and benefit sharing
- ✓ individual countries are free to adopt and/or adapt the provisions as they see fit in accordance with national need.

TK IMPLEMENTATION ACTION PLAN

Phase 1 [2009- 2011] [2012-2013 follow up actions]

- Assist members to develop policy and draft legislation on the Model law on TKEC and the Traditional Biological Resources framework;
- Capacity-Building and Outreach Activities Related to TK and IP;
- Database development;
- Regional Workshop for the Framework for traditional Biological Resources, Innovation & Practices.
- Technical assistance was rendered through partnership arrangements between the African, Caribbean, Pacific – European Union TradeCom Facility, WIPO, Forum Secretariat, Secretariat of the Pacific Community (SPC) and South Pacific Regional Environmental Programme (SPREP).

Update on [Phase 1] PIFS Traditional Knowledge and Intellectual Property Work Program

Status of TK Frameworks in the FICs, Phase 1 of the TK Action Plan

FIC	Policy Status	Legislative Framework Status	Peer Review Status
Cooks	Policy Document is completed and approved by Cabinet.	TK Bill adopted at same time as Copyright Bill .	Policy document went through a peer review process, and the consultant incorporated comments in the final draft.
Fiji	TK Policy completed and is before Cabinet for consideration.	Drafted TK Law currently being vetted by AG office since April 2014	TKEC draft adapts the Model Law but extends the draft law to protect genetic and biological resources .
Kiribati	Policy document completed and with the Cultural Ministry. There has been no indication if it has progressed to cabinet.	NA	Peer reviewing completed and consultant has incorporated the comments in the final draft.
Palau	NA	NA	Peer reviewing completed and consultant has provided the comments
PNG	Policy completed and is before Cabinet for consideration	TK Bill drafted and is available for Cabinet's consideration	Peer reviewing completed on both documents and consultants have incorporated the comments in the final draft
Vanuatu	NA	A TK bill was drafted following consultations with the Malvatumauri Council of Chiefs, and submitted to the Government of Vanuatu.	The draft TK Bill was submitted for the Peer review

DRAFT PHASE 2 TK ACTION PLAN

- Derived from individual request from FICs upon completion of Phase 1.
- A significant part of TKAPII therefore includes coordination between PIFS and SPC, taking into account regional studies including *Development and Marketing Strategies for Pacific Cultural Industries which addresses amongst other things, the important balance between the commercialization of and the protection of Traditional Knowledge.*
- The TKAPII's expected outputs could be:
 - For each beneficiary country, preparation and drafting of a **national policy** addressing all the IP issues relevant to the protection of TK and TCEs, including aspects regarding their documentation.
 - Practical implementation of the policy, either through **legislative enactment**, administrative measures or infrastructural means.
 - Participation in a workshop on IP and **commercialization of TK and TCEs**.
 - Participation in the **IGC meetings**, if and where possible.

PRIORITIZED ACTIVITIES FOR PHASE 2

FIC	Policy Status		Legislative Framework Status	Peer Review Status
Cook Islands			A TK law and copyright law has been enacted	
Palau	Lack of legislation to address dual chieftaincies Lack of assistance to design & implement traditional court system Weak legislative frameworks Weak IP & TCE knowledge and understanding of laws and lack of enforcement (capacity building)			
PNG	Address Cultural diversity (which is huge) adequately in the current policy Need for a Design concept and plan that will Incorporate culture into livelihoods			
Solomon Islands	Review model laws to address collective ownership of TK or TCE and protection for Custodians – whether absolute as in copyright or recognition to rights Training/up skilling to heighten understanding of TK and IP that will assist in the design of appropriate strategies for implementation of Policy Framework			
RMI				
Tuvalu	Require technical expertise to assist in the crafting, promotion and to conduct awareness campaign of the draft policy			

EU Project – to enhance Pacific cultural industries

- Model law on TK & EC - important complement and catalyst to the **2010-2020 Pacific Regional Cultural Strategy** aimed at promoting cultural industries to improve livelihoods and reduce poverty
- In 2014 – EU Pilot Project 365,000 euro for cultural industries. The project recognizes the real and potential contribution of Arts/Crafts, Visual Arts, Performing Arts and Fashion Industries to Pacific economies and works towards strengthening their position in the economy;
- It aims to improve the structure of the cultural industries in **Fiji, Samoa and Solomon Islands**, improve the **regulatory environment** for sector and increase the **business and marketing capacity** of producers;
- As a key activity, SPC and PIFS will bring relevant stakeholders together to address pertinent issues and create better understanding of Intellectual Property Protection (IPP) issues in the culture industries. The dialogue will address the relevance of IPP to the owners of creative works; protection of traditional knowledge (TK); copyright laws and more;
- **Commercialising** creative inventions to generate revenues from arts forms including performing art, visual art, music, fashion, handicraft, etc. and an improved understanding of the economic value of traditional knowledge requires specific interventions of IPP, TK and TCE policies and laws that enables artists and producers to benefit from their trade through proper intellectual property management;
- Products from these industries is **marketed** through Pacific Island Trade & Invest, (NZ, Aust, Japan, China, Geneva) an arm of PIFS, tasked to develop, grow and promote industry and business in all 14 Pacific Island Countries in export, investment, tourism and creative arts promotion across international markets.

PROPOSED WAY FORWARD

Re-engaging
with members on
their feedback to
the needs
assessment

- Seek feedback on the TK and IP related technical assistance required based on the following questions:
- What are the interests and needs of your country in relation to IP and TK/TCEs?
- Which activities on IP and TK/TCEs have already been undertaken or initiated in your country?
- Which type(s) of assistance as mentioned above would your country need?
- Who is/are the focal point(s) of your Government regarding the implementation of the Action Plan?
- Any other information related to your country's IP and TK/TCEs initiatives in support of your request for technical assistance.

Development of
a Phase 2 TK
Action Plan

- The TKAPII would set a reasonable timeframe with clear aims and objectives all the while remaining flexible. Assistance could be coordinated with relevant donors for the following types of assistance:
- Policy and legislative advice and assistance
- Legal advice on IP management related to TK/TCE documentation;
- Legal advice on IP management related to the commercialization of TK-based products;
- Participating in the IGC.
- MOU between PIFS and Donors for the Mobilisation of support under TKAP2.