

# Transboundary “Shared” Traditional Cultural Expressions

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# Transboundary “Shared” TCEs

- Identical or similar expressions of the traditional culture of indigenous peoples or a community located across the borders of two or more countries
- Identical or similar expressions of distinct traditional cultures from two or more countries
- Traditional cultural expressions and/or creative works incorporating or inspired by foreign cultural expressions
- Performance, access, preservation, citation, preservation or other uses of a TCE in a foreign country
- A mix of any of the above

# Relevant IP instruments

- Internationally registered industrial designs protected in contracting parties to the Hague Agreement (Article 25)
- Creative works protected in contracting parties to the Berne Convention, the WIPO Copyright Treaty and the World Trade Organization (Articles 5 Berne Convention; 3 WCT; 9 TRIPS Agreement)
- Performers of artistic and creative works, producers of phonograms and broadcasting organizations protected in contracting parties to the Rome Convention and the World Trade Organization (Articles 2 and 3 Rome Convention and 14 TRIPS Agreement)

# Relevant IP instruments (cont.)

- Performances of expressions of folklore of nationals of contracting parties to the WIPO Performances and Phonograms Treaty and nationals and residents of contracting parties to the Beijing Treaty on Audiovisual Performances protected in other contracting parties (Articles 2.a and 3 WPPT and Articles 2.a and 3 BTAP)
- An internationally registered trademark is protected in contracting parties to the Madrid Agreement (Article 4)
- Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications applicable to trans-border geographical area of origin (Article 2.2 Geneva Act)

# Relevant IP instruments (cont.)

- Expressions of folklore developed and maintained in a foreign country protected under the UNESCO-WIPO Model Provisions for National Laws on the Protection of Expressions of Folklore against the Illicit Exploitation and Other Forms of Prejudicial Action, subject to reciprocity, or on the basis of international treaties or other agreements (Section 15 Model Provisions)
- Contracting parties to the UN Declaration on the Rights of Indigenous Peoples to take effective measures to recognize and protect the exercise of Indigenous Peoples rights to maintain, control, protect and develop their cultural heritage and traditional knowledge and traditional cultural expressions and associated IP rights (Article 31 UN Declaration)

## Relevant IP instruments (cont.)

- National copyright or sui generis laws
- Bilateral or regional sui generis or ad hoc agreements
- Traditional systems of values and customary rules governing rights and obligations between indigenous communities and their people
- All forms of IP protection are complementary and subject to a strategic utilization by their beneficiaries

Identical or similar expressions of the traditional culture of indigenous peoples or a community located across the borders of two or more countries

- Indigenous peoples located across the borders of two or more neighbouring countries: traditional rules, IP rules, bilateral or regional solutions, international mediation if required
- Indigenous peoples and diaspora communities: TCEs should be uniquely attributable
- Distinguish TCEs according to the originality and unique characteristics of their form of expression?

# Identical or similar expressions of distinct traditional cultures from two or more countries

- Each people or community should be entitled to express its culture without interference
- Apply criteria for existing IP protections
- Avoid protecting TCEs that are not uniquely attributable to a people or community
- Focus on building respect for TCEs that are essential to peoples and communities core identities
- Practical solutions based on mutual respect and conciliation
- WIPO Arbitration and Mediation Centre



# Traditional cultural expressions and/or creative works incorporating or inspired by foreign cultural expressions

- Academic debates around cultural, social, structural anthropology
- Migrations, trade, discovery and other cultural interactions
- Traditional cultures that are alive evolve over time
- Foreign cultures are sources of inspiration and evolution of traditional as well as modern cultures
- Creative works can help preserve and keep traditional cultures alive
- Tolerance for freedom of expression and respect for traditional cultures

# Traditional cultural expressions and/or creative works incorporating or inspired by foreign cultural expressions (cont.)

- WIPO IP Management Guides for Arts Festival Organizers, Traditional Handicrafts and Museums, Libraries and Archives
- Existing IP tools offer solutions in many cases
- Practical solutions for authorizing the incorporation of a TCE in another TCE or a work to be determined according to applicable rules, including IP, national and regional sui generis protection, heritage preservation and traditional rules and in light of the circumstances of the case
- Inspiration from other cultures to be encouraged and treated distinctly from TCEs uniquely attributable to indigenous peoples or a local community

# Performance, access, citation preservation or other uses of a TCE in a foreign country

- WIPO technical assistance and capacity building for indigenous peoples and local communities to use available IP tools and solutions
- UNESCO World Heritage Convention and capacity building
- Facilitate the identification of the TCE and its origin to encourage authorized licensing, performance, access, citation, preservation or other uses
- Secret TCEs protected against unauthorized disclosure under traditional, local, trade secret and unfair competition rules