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Practical Workshop on Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions for Countries from the Arctic Region

organized by
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and
the Government of Canada

in cooperation with
Nunavut Tunngavik Inc.

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ABBREVIATIONS, GLOSSARY AND SUGGESTED READING LIST

prepared by the International Bureau of WIPO

1. ABBREVIATIONS

GI	geographical indication
ICH	intangible cultural heritage
IGC	WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
IP	intellectual property
IPRs	intellectual property rights
IPLCs	Indigenous peoples and local communities
TCEs	traditional cultural expressions/expressions of folklore
TK	traditional knowledge
TM	trademark
WIPO	World Intellectual Property Organization

2. GLOSSARY

Beneficiaries

There is no universally accepted definition of the term. However, it has been argued by many stakeholders that traditional knowledge and traditional cultural expressions are generally regarded as collectively originated and held, so that any rights and interests in this material should vest in communities rather than individuals. In some cases, however, individuals, such as traditional healers, might be regarded as the holders of traditional knowledge or traditional cultural expressions and as beneficiaries of protection. Some national and regional laws for the protection of traditional knowledge and traditional cultural expressions provide rights directly to concerned peoples and communities. Many rather vest rights in a governmental authority, often providing that proceeds from the granting of rights to use the traditional knowledge or cultural expressions shall be applied towards educational, sustainable development, national heritage, social welfare or culture related programs. Discussions on the issue have noted that the term could include indigenous peoples, indigenous communities, local communities, traditional communities, cultural communities, nations, individuals, groups, families, and minorities.

Copyright

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

Continuing customary use

Refers to the persistence and living nature in the use of traditional knowledge and/or traditional cultural expressions by indigenous communities in accordance with their own customary laws and practices.

Cultural expressions

Article 4(3) of the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005) defines cultural expressions as “those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.”

Customary law and practices

Black’s Law Dictionary defines “customary law” as law “consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws.” Customary law has also been defined as “locally recognized principles, and more specific norms or rules, which are orally held and transmitted, and applied by community institutions to internally govern or guide all aspects of life.” (Protection Rights over Traditional Knowledge: Implications of Customary Laws and Practices, Research Planning Workshop, Cusco, Peru, 20-25 May, 2005.)

Customary practices

May be described as the acts and uses governing and guiding aspects of a community’s life. Customary practices are engrained within the community and embedded in the way it lives and works.

Customary context

"Customary context" refers to the utilization of traditional knowledge or cultural expressions in accordance with the practices of everyday life of the community, such as, for instance, usual ways of selling copies of tangible expressions of folklore by local craftsmen. (Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions, 1982, Part III, para. 42.) (See also Traditional Context).

Geographical indication (GI)

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.

Industrial design

In a legal sense, an industrial design constitutes the ornamental or aesthetic aspect of an article. An industrial design may consist of three dimensional features, such as the shape of an article, or two dimensional features, such as patterns, lines or color.

Intellectual property (IP)

IP refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

Intellectual property rights (IPRs)

IPRs are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation.

Patent

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

Prior art

Prior art is, in general, all the knowledge that existed prior to the relevant filing or priority date of a patent application, whether it existed by way of written and oral disclosure.

Protection

“Protection” in the work of the IGC has tended to refer to protection of traditional knowledge and traditional cultural expressions against some form of unauthorized use by third parties. Two forms of protection have been developed and applied.

Sui Generis

Black’s Law Dictionary defines “sui generis” as “[Latin “of its own kind”] of its own kind or class; unique or peculiar. The term is used in intellectual property law to describe a regime designed to protect rights that fall outside the traditional patent, trademark, copyright, and trade-secret doctrines. For instance, a database may not be protected by copyright law if its content is not original, but it could be protected by a sui generis statute designed for that purpose. Examples include plant breeders’ rights – as reflected in the International Convention on the Protection of New Varieties of Plants, 1991 (“the UPOV Convention) – and the intellectual property protection of integrated circuits – as reflected in the Treaty on Intellectual Property in respect of Integrated Circuits, 1989

Trademark (TM)

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.

Traditional cultural expressions (TCEs) (as known as expressions of folklore)

TCEs refer to forms in which traditional culture is expressed; passed down from generation to generation, they form part of the identity and heritage of a traditional or indigenous community.

Traditional knowledge (TK)

TK refers to a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

2. SUGGESTED READING LIST

A Guide to Intellectual Property Issues in Access and Benefit-sharing Agreements
<https://www.wipo.int/publications/en/details.jsp?id=4329>

Brief 1 Traditional Knowledge and Intellectual Property
https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_1.pdf

Brief 2 The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_2.pdf

Brief 5 Intellectual Property and Traditional Handicrafts

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_5.pdf

Documenting Traditional Knowledge – A Toolkit

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1049.pdf

Intellectual Property and Arts Festivals

<https://www.wipo.int/publications/en/details.jsp?id=4371>

Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions – An Overview https://www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf

Protect and Promote Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities

https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1048.pdf