The Role of I.P in promoting & Commercializing products based on Traditional Knowledge and Traditional Cultural Expressions

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What are TCE’s?

- A working definition as suggested by WIPO

Traditional cultural expressions (TCEs), that may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or many other artistic or cultural expressions.

http://www.wipo.int/tk/en/folklore/
The Nature of TCE’s

- Traditional expressions that are attributable to community

- These expressions are in many forms which are passed on from generation to generation

- It forms part of the identity and heritage of a traditional or indigenous society
- That folklore is not used in commerce, defeats I.P law regime

- The myth and misconception- that it must have been present from time in memorial
Do TCE’s deserve protection under I.P law?

- The literal definition of I.P- Creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- Yes it deserves I.P law protection; WHY SO?
  - Involves creativity based on observance of nature
  - Embodies know how and skill which can be replicated for mass production
Nature of Folklore-2011 & 2016 Ugandan presidential campaign- “You want another rap”
https://www.youtube.com/watch?v=QtQNe3_T_oM - 2011

https://www.youtube.com/watch?v=oN1DjNZIZVQ -2016
Use of TCE’s music in modern entertainment

The I.P questions raised in the circumstance.

- Whether the president would copyright the song and or rap?

- Whether other community members would be barred from enjoying the Traditional cultural expression that they have enjoyed for ages
Objection to the president’s copyright registration application

- In the Matter of Application No. 25 of 2010 for registration of Copyright by Yoweri Kaguta Museveni in the song “You want another rap”
  - Who is the author of the song
  - Attribution of the song
  - Originality
  - Economic & moral rights issues
  - Cultural appropriation of I.P
Navajo Nation suit against Urban Outfitters-U.S

- The Indian Arts and Crafts Act invoked
- Traditional nomenclature-protected by folklore
- It makes it illegal to sell arts & crafts in a way that suggests that they are produced by native Americans
Navajo Nations suit against Urban Outfitters

- Seize and desist from advertising “Navajo hipster party” and “Navajo print fabric wrapped flask”

- Question- how far can the tribe go to seek money from the company’s products

- Urban outfitter’s argument- that “Navajo” is a generic term!!
Why a delayed embracement of TCEs & Folklore by WIPO just like other I.P branches?

- The private nature of ownership of property Vs communal ownership
- Intellectual property is generally a capitalistic concept
- Developing nation syndrome
- The public domain existence of folklore question
The common legal trend in these self help statutes?

- Copyright type of Protection of TCE’s.

That authors may be unknown but the presumption is that they are nationals of the country.
The international awakening-WIPO

- Article 15(4) of the Stockholm (1967) and Paris(1971) Act- attempts to cover folklore under copyright- Diplomatic Conference of Stockholm

- No express provision for protection of folklore- in case of unpublished works where the author is unknown but where there is every ground to presume that he is national of a country...

- The provision makes no express provision for protection of folklore, it is only in the legislative history as copyright
International Attempts- Model Laws for National Law on the Protection of Folklore

- Principle of Protection against illicit exploitation- Section 1

- Expressions of Folklore- Verbal expressions, folk poetry, folk tales, art, metal works.......Sections 2

- Express protection of folklore-sections 3
  - Any publication, reproduction and any distribution of copies of folklore without authorization
  - Public recitation or performance, any transmission by wireless means by wire and other forms of communication to the public
Inherent challenges of protection of TCE’s by I.P

- TCE’s are as a result of slow impersonal, continuous and slow process of creative activity of a community
- Develops through community continuous imitation for improvement without limitation
- Ownership is time limitless
- The copyrighted work must be reduced in material form

- Individualistic and private in nature
- Copyrighted works need licences before imitation and eventual improvements by others
- Ownership is limited to the life time of an individual and 50 years after their death i.e in Copyright
- TCE’s mostly music is not reduced in material form
Other suggested forms of protection

- Patents
- Plant Variety Protection - the Standard Material Agreement
- Geographical Indications
- Trademarks
Proposals for a sue generis law for protection of folklore

- A law that will ensure shared benefits that trickle to the communities
- Modern adaptations of traditional folklore as derivative or improved works
- Questions of ownership and how to share the economic benefits
- Public domain questions
- Duration and renewals if any.
- The fluidity and modern development of folklore
Bibliography

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Your judgment

- THANK YOU