

General Introduction: Intellectual Property, Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs)

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Agenda


What is Intellectual Property?

- Copyright
- Related Rights
- Trademark

What is the relationship between Intellectual Property (IP), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs)?

What are Traditional Cultural Expressions (TCEs)?

What is Traditional Knowledge?



What is
Intellectual
Property?

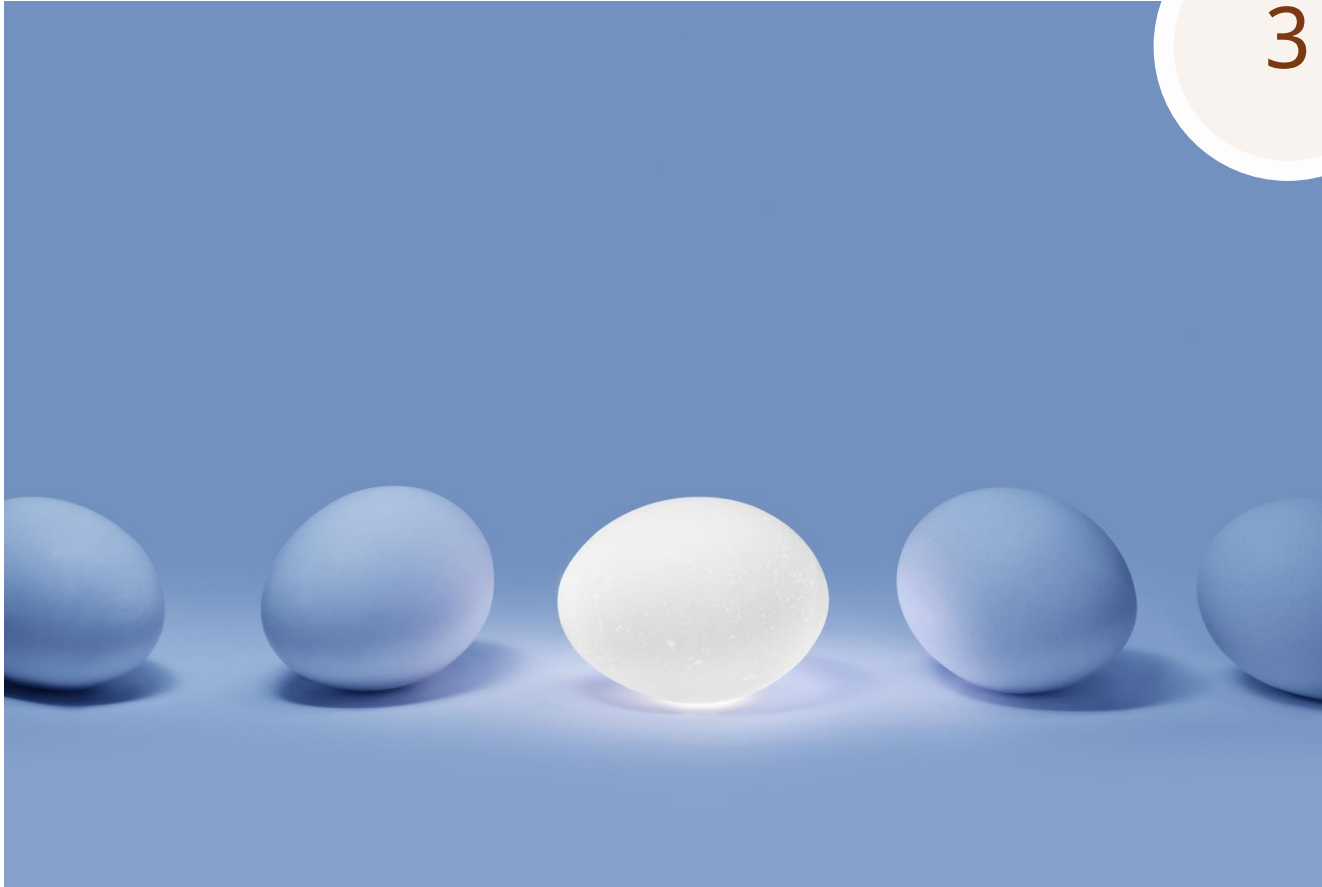
Intellectual Property

creations of the mind

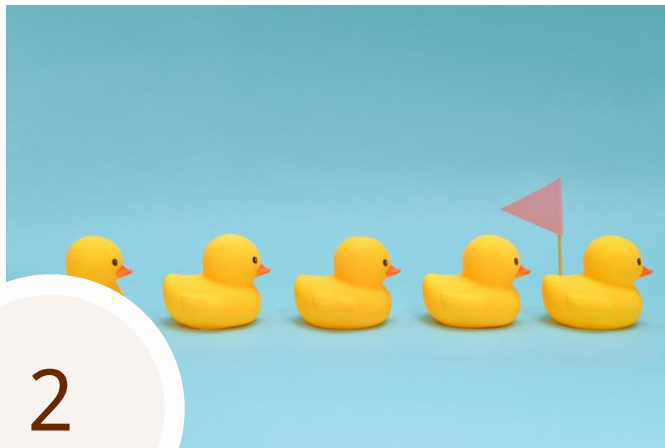
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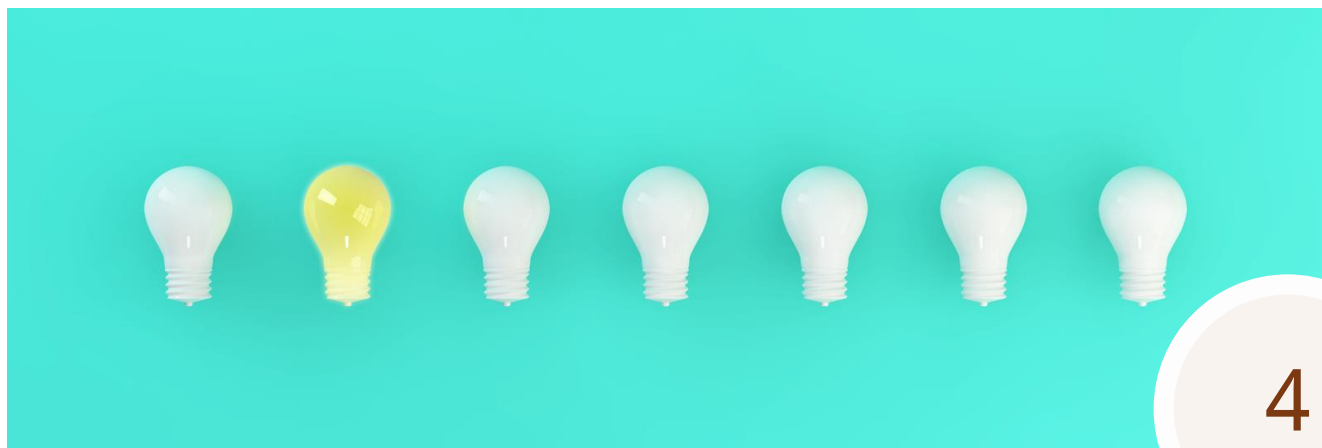
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Intellectual Product

Subject to protection under Intellectual Property

Rights

Grant exclusive rights

Criteria for protection

Comply with legal requirements

Limitations and Exceptions

Terms and Conditions
Time and Place (territory)

Types

Trade Secrets

Commercially valuable information known to a limited number of persons subject to reasonable measures to keep it secret

Patents

Product or a process that usually offers a new way of doing something or a new technical solution to a problem



Trademarks

Sign that allows differentiating the products or services of one business from those of another

Geographical Indications

Sign used on products that have a specific geographical origin and possess qualities that are due to that origin

Industrial Designs

Ornamental or aesthetic aspect of an article

Copyright

Literary and artistic works

Related Rights

Separate set of rights related to copyright

Copyright

Copyright

Literary and artistic works



Books, pamphlets
and other writings



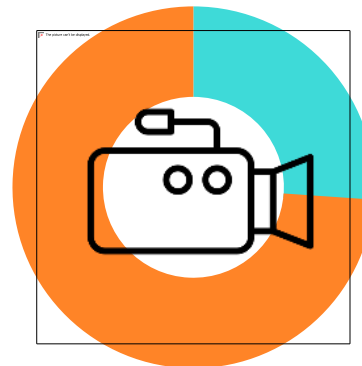
Lectures,
speeches,
sermons

Dramatic or dramatic
musical works



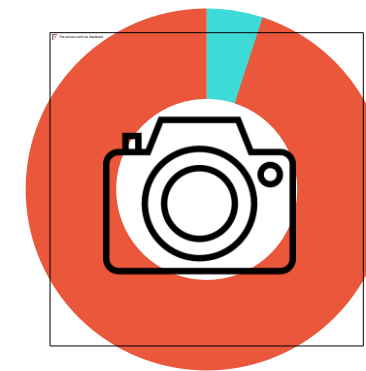
Choreographic
works and
pantomimes

Musical
compositions
with or without
lyrics



Cinematographic
works

Works of drawing,
painting,
architecture,
sculpture, engraving,
lithograph



Photographic
works

Works of applied
arts, illustrations,
maps, plans,
sketches

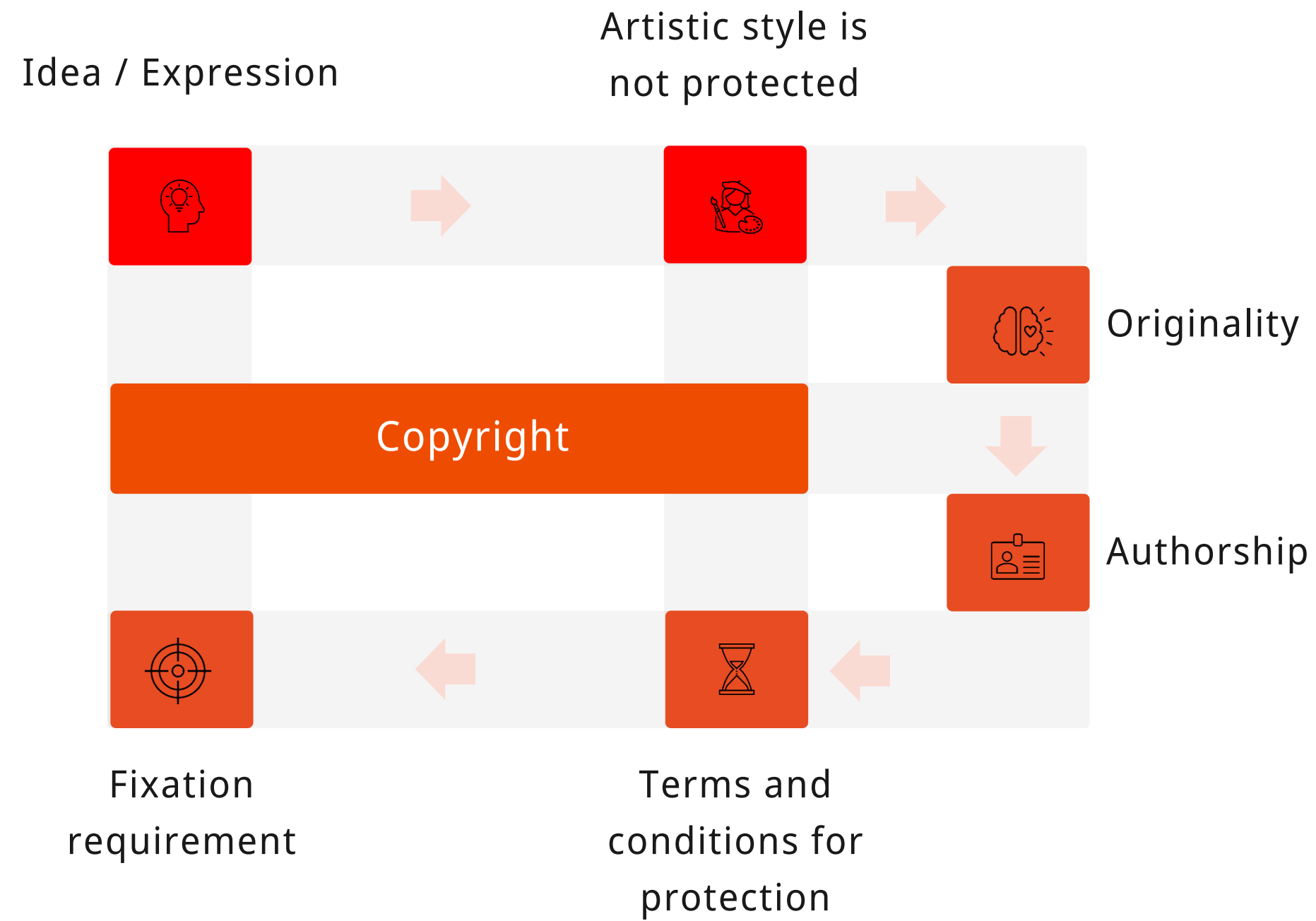


Three-dimensional works
related to geography,
topography, architecture or
science

Copyright

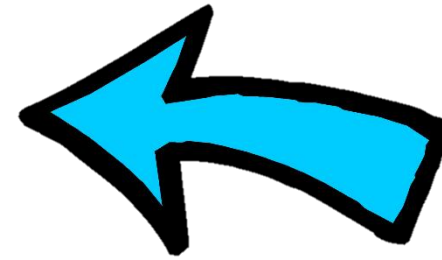
Copyright

Literary and artistic works

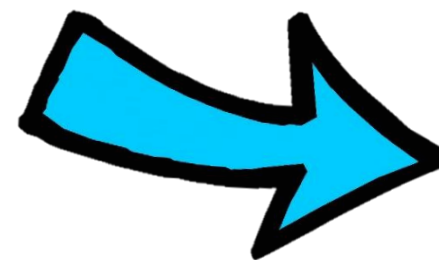




Artistic style:
Woodlands



Norval Morrisseau
Canadian Indigenous Artist
Bingwi Neyaashi Anishinaabek First Nation
Founder of the Woodlands style



Amanda PL
Canadian artist
Toronto Canada



Source: Norval Morrisseau's family speaks out about controversial Toronto artist: <https://www.aptnnews.ca/national-news/norval-morriseaus-family-speaks-out-about-controversial-toronto-artist/>

Types of Rights

Moral rights

To preserve and protect the links that unite authors with their works

Paternity

The right to claim the paternity of a work

Integrity

The right to oppose any deformation or other modification of a work or any attack on it that causes damage to your honor or reputation

Economic Rights

To grant rights holders financial compensation when third parties use their works

Duration:
The life of the author plus not less than 50 years after the author's death

Reproduction

Right to make copies of the work

Distribution

Right to distribute the copies of the work

Public Interpretation

Right to perform the work publicly

Adaptation

Right to adapt the work in another

Translation

Right to translate the work in other languages

Public communication

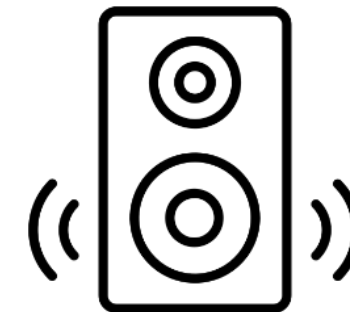
Right of distribution by wired or wireless means

Source: Understanding Copyright and Related Rights
<https://www.wipo.int/publications/en/details.jsp?id=4081>

Related Rights

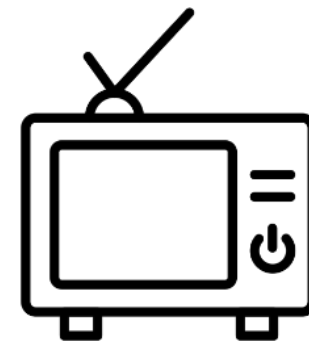
Performers

Rights to authorize the fixation (recording), broadcasting and communication to the public and the reproduction of fixations of their performances



Producers of sound recordings (phonograms)

Right to authorize the reproduction, import and distribution of their sound recordings and derivative copies thereof and to equitable remuneration for the broadcasting and communication to the public of their sound recordings



Broadcasting organizations

Right to authorize or prohibit the retransmission, fixation and reproduction of your broadcasts

Trademark

Trademarks

Sign that allows differentiating the products or services of one business from those of another



Registration

No registration no protection (in general)



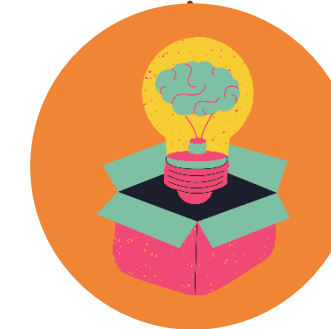
Commercial use

Offer for sale, import or export, store, promote, etc.



Exclusive

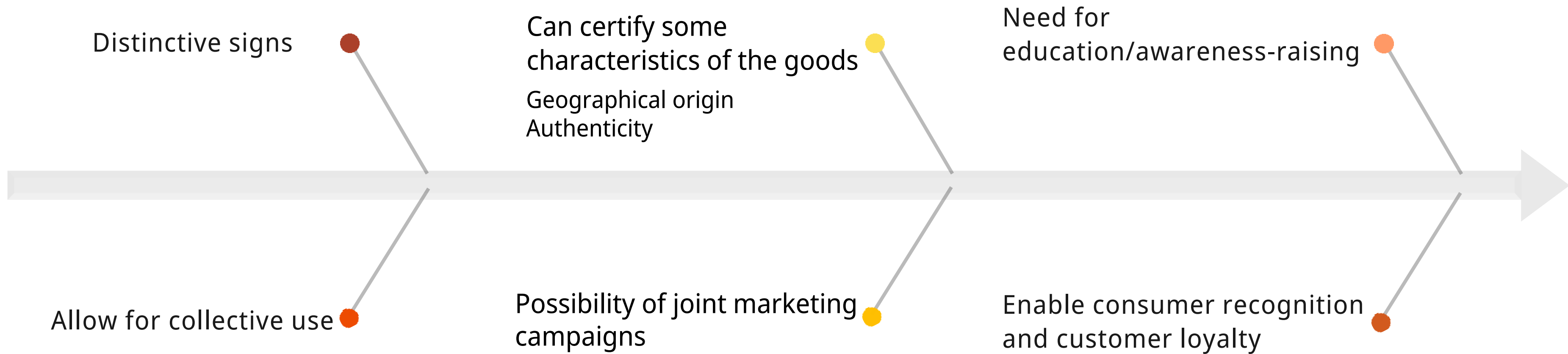
Only the owner (or authorized person) can commercially use the trademark in the country(ies) or region(s) where it has been registered.



Signs

- Word or a combination of words, letters and numbers.
- Drawings, symbols, three-dimensional features, such as the shape and packaging of products,
- Non-visible signs, such as sounds, fragrances, or color tones

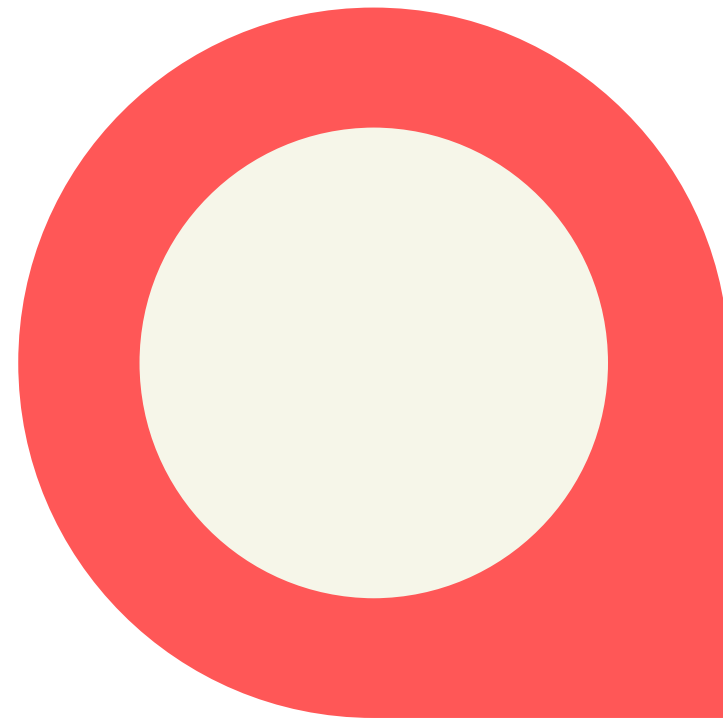
Collective and certification marks



Public Domain

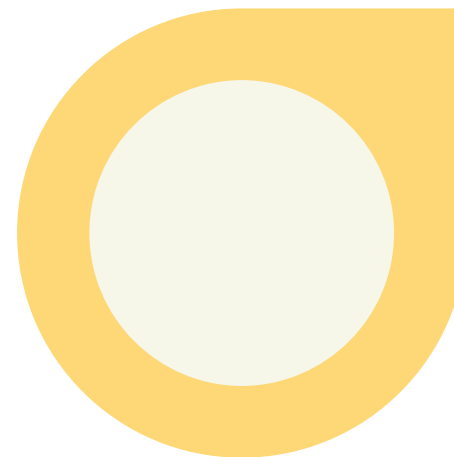
Definitions

Any intangible property that is not the subject of exclusive Intellectual Property rights



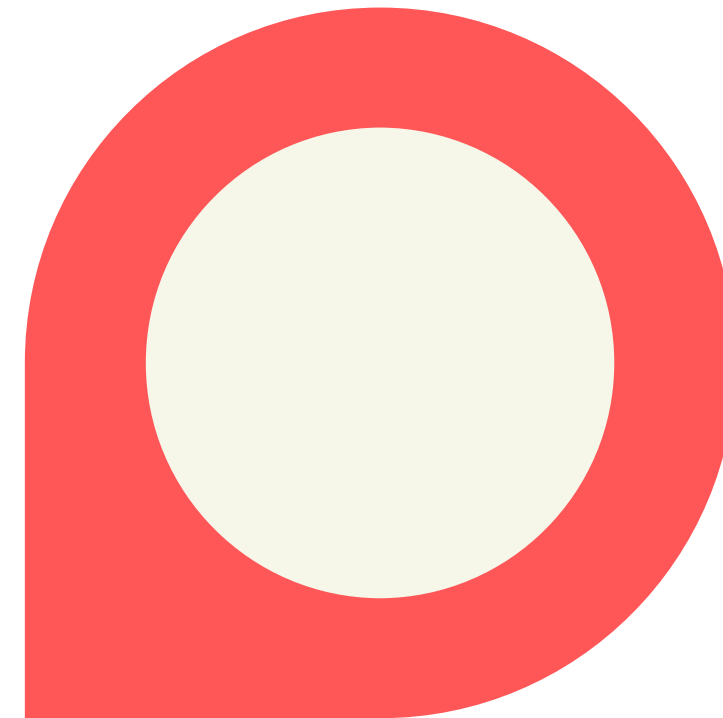
Normative Framework

Usually lacks a specialized regulatory framework



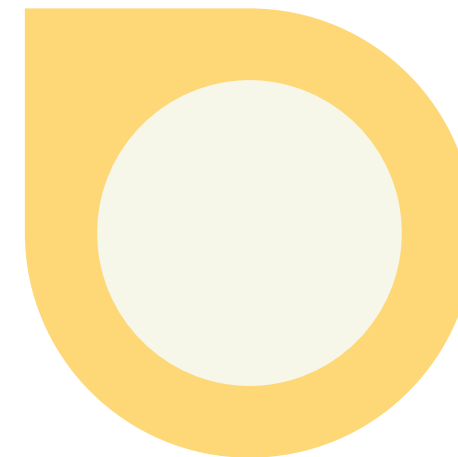
Key Features

Free to use and to exploit by any person



Relationship with TK and TCEs

Some consider TK and TCEs as part of the public domain

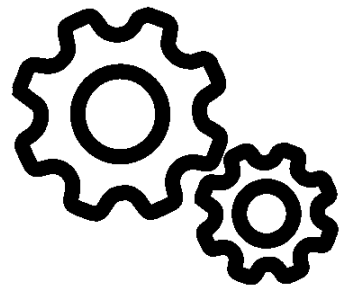


What is Traditional Knowledge?

What are Traditional Cultural Expressions (TCEs)?

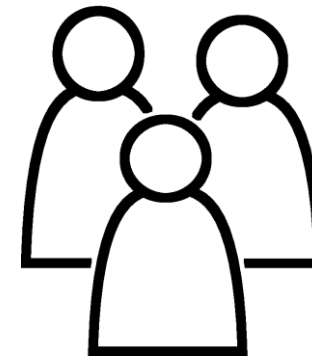


Knowledge Traditional



Wisdom, experience, aptitudes, practices, abilities, innovations and know-how

Development, maintenance and transmission from generation to generation



Within a community and often form part of its cultural and/or spiritual identity

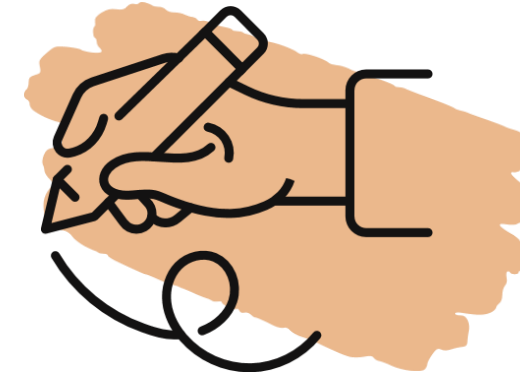
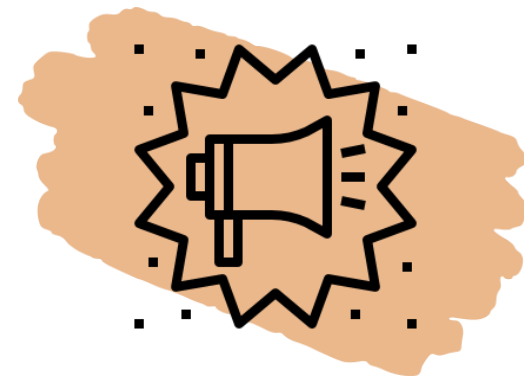


They are not subject to a specific technical field, they can include traditions in agriculture, environment, medicine, genetic resources and cultural expressions.

Traditional Cultural Expressions (TCEs)

Manifestation

The forms in which traditional culture manifests itself.

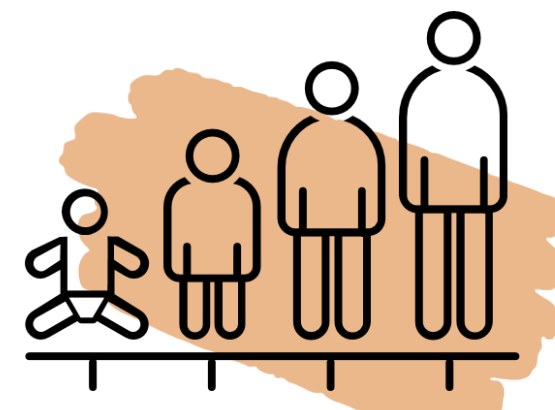
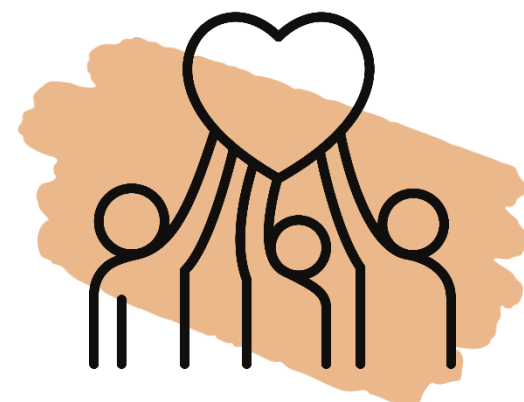


Format

Tangible or intangible or both.
In constant development.

Identity and Patrimony

Part of the identity and patrimony of a traditional community or Indigenous Peoples.

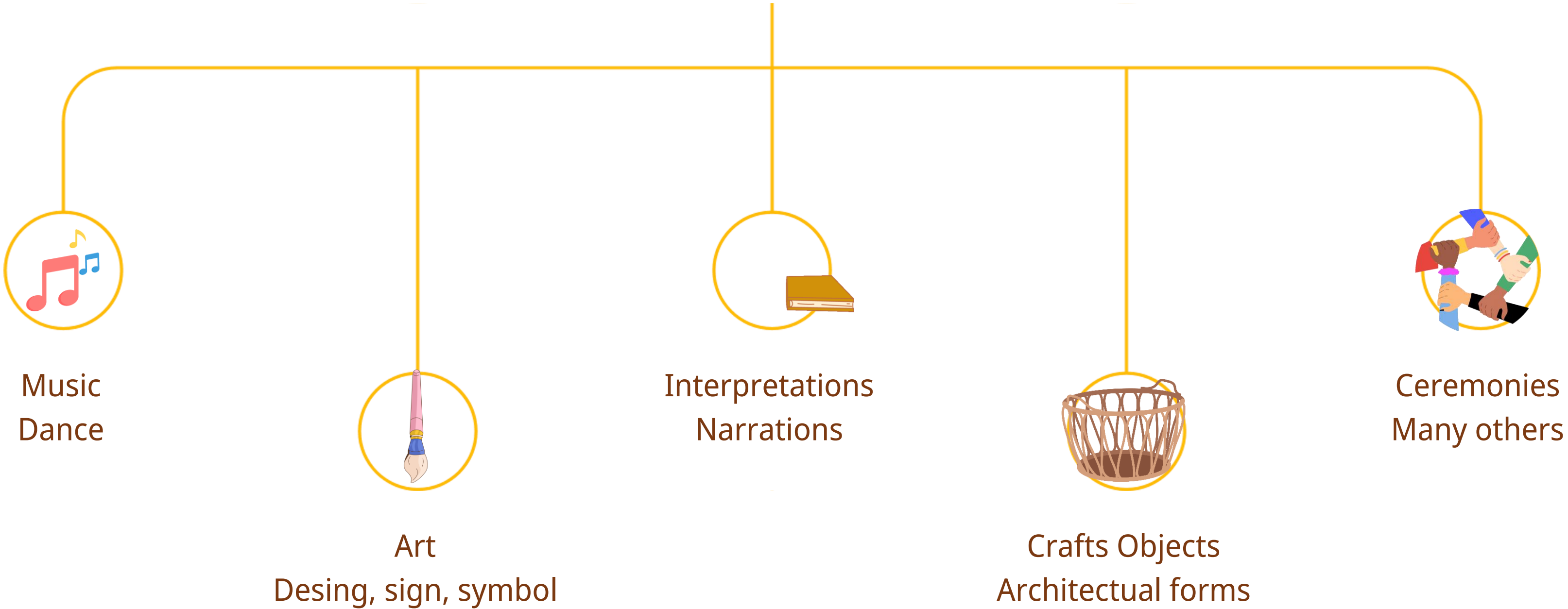


Origin

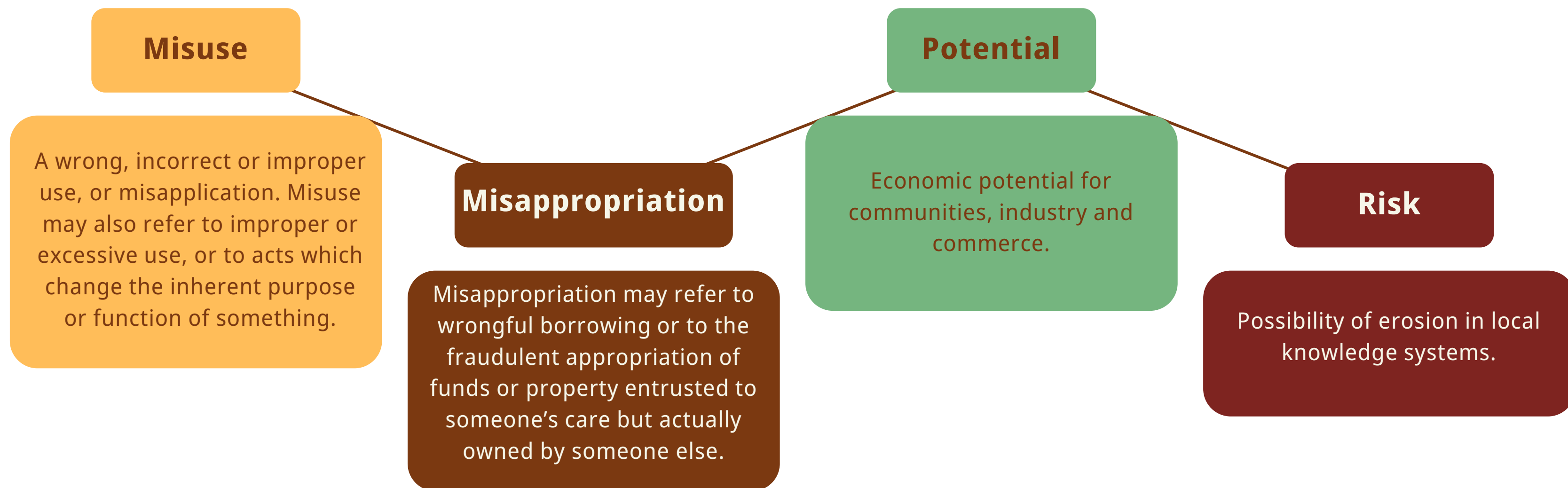
Passed down from generation to generation, usually from unknown authors.



Traditional Cultural Expressions (TCEs)



Key references to Traditional Cultural Expressions (TCEs)



Source:
Glossary

<https://www.wipo.int/tk/en/resources/glossary.html#33>

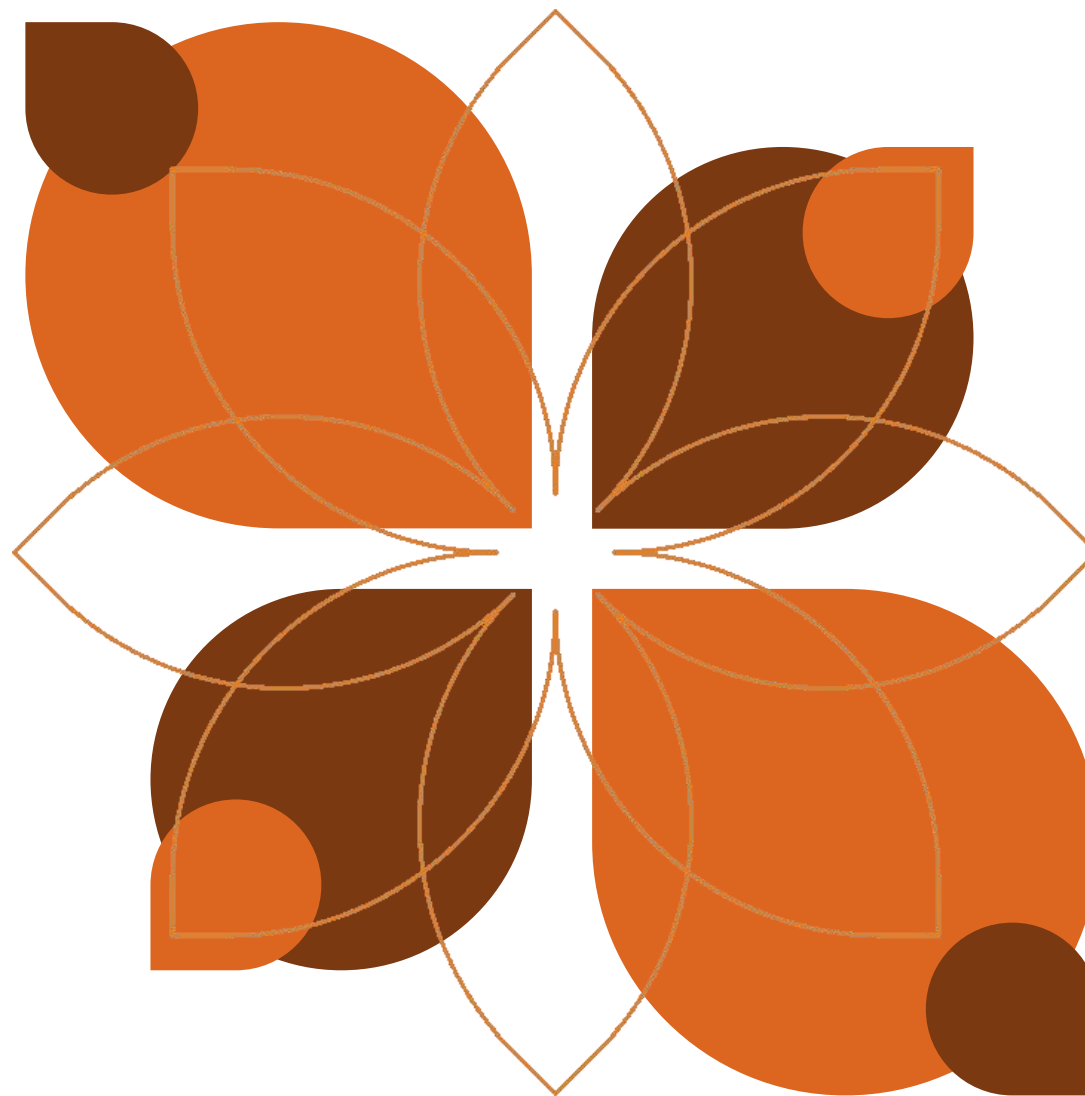
Usefulness of IP for TCEs

Protection under Intellectual Property

Defensive Protection

Prevent use of third parties

Prevents third parties from acquiring IP rights over TCEs



Positive Protection

Proactive use of IP rights

Commercialization

own

When you have the commercial capacity to open yourself in the market



Leads the business strategy, IP management and legal action in case of IP infringement

transferred

Transfers intellectual property to another, usually compensated



Precise identification of the transferred IP, valuation of the IP, record of the transfer, payment agreement (compensation) and its modality

shared

Authorize another to use the IP



Possibility to explore new markets, limited in time and place, maintains ownership of IP, shared business risks

Online

1. Protect your intellectual property

Before launching on the Internet make sure you have all the necessary intellectual property registrations and Internet address registrations as well.

2. Respect the intellectual property of others

Be careful to only use materials to which you are entitled.

3. Use of platforms

In some cases it is more convenient to use already established e-commerce platforms, make sure you understand and comply with the terms and conditions of selling through them.

4. Create a presence on social networks

Use social networks to tell the story of your brand, use it consciously and consistently.

5. Proceed with caution

In all uses include where applicable that you retain intellectual property over the shared material.

Do not disseminate information over the Internet that is of a culturally sensitive, secret, sacred, or commercially valuable nature

Examples





Welcome to the Laura Dance Festival

See video: <https://s3.amazonaws.com/resources.emedia.com/designer/video/laura2.mp4?20201014>

Laura Aboriginal Dance and Cultural Festival

Related Rights

Celebration of indigenous Australian song, dance and music. The interpretations represent the diversity of indigenous cultures.

In 1998, the Wik Apalech dancers were informed of the existence of products that reproduced his images without his knowledge.

A commercial photographer who had attended the festival in 1995 took a picture. The photograph was reproduced on CD, postcards and cassettes, website, without the consent of the performers.

For the Wik Apalech dancers, the unauthorized use of their images was culturally offensive. According to Wik customary law, their cultural material was suitable for dissemination only by those with the relevant status.

The dancers decided to take action to end the manufacture of the products and to remove the photographs from the website. Under copyright law, rights in photographs usually vest in the photographer, so the dancers could only rely on the good faith of the manufacturer to prevent the use of their image.

In 1999, organizers of the Laura Festival adopted a written agreement concerning all photography and filming at the festival. The agreement contains terms requiring that consent be obtained from the performers and that certain conditions for control of commercial photography be complied with, including obtaining prior consent from the performers.

The sisal baskets

Taita-Taveta County is a region in Kenya, located around 360km southeast of the capital Nairobi and about 200km northwest of Mombasa.

The sisal baskets produced in Kenya's Taita Taveta County are regarded by many as regional treasures. These unique baskets are produced according to the traditional art, most often by local women who have passed down the skill from generation to generation.

Taita Baskets Association was established in November 18, 2016.

Coming together as an association enabled not only the application for a collective mark, but also allowed the members to benefit as they began purchasing materials in bulk. The local authorities would also be able to more easily provide support to an official body than to separate individuals.

A collective mark would allow the basket producers to:

- distinguish their products from other, similar products;
- build brand recognition; and
- prevent the market being flooded with counterfeits.

On September 23, 2016 the application for the Taita Baskets Association's collective mark was filed with the Kenya Industrial Property Institute and on April 3, 2017 it was approved.



WOMAD: an example of a registered festival trademark



WOMAD Festival brings together and celebrates many forms of music, arts and dance drawn from countries and cultures all over the world.



First held in the United Kingdom in 1982, the festivals have involved performance events in over 20 different countries.



The conference organizers registered “Womad” as a trademark in many of the countries where the WOMAD is held, in relation to the organization of festivals, but also recordings, publications and merchandise.

See: <http://womad.org>



Thank You

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