



11th Festival of Pacific Arts
Solomon Islands 2012



Intellectual Property and the 11th Festival of Pacific Arts, Solomon Islands, 2012

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Council of Pacific Arts and Culture



SPC
Secretariat
of the Pacific
Community

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This guide was prepared as part of a programme of assistance provided by WIPO to Solomon Islands, the Council of Pacific Arts and Culture and the Secretariat of the Pacific Community. This guide does not necessarily represent the views of WIPO or any of its Member States. This guide is not a substitute for legal advice.



Solomon Islands is pleased to host the 11th Festival of Pacific Arts in 2012. The unique indigenous cultures of the Pacific on display include art forms and cultural expressions such as dances, songs, plays, carving, weaving, canoeing, food preparation, handicraft demonstrations, traditional ceremonies, films, visual arts and photographs.

The Festival artists, dancers, singers and creators come together to celebrate the artistic and cultural life of Pacific Island countries and territories. Their songs, dances, stories and traditional knowledge are vital to their cultural identity, and provide economic opportunities for the artists, their families and communities.

1. What is this Guide about?

This Guide provides advice about intellectual property (IP) and cultural guidelines for people attending the Festival, as well as participants, performers and exhibitors. It provides general information about IP and suggestions on how to comply with IP laws and how best to respect cultural rights during the Festival. This Guide is produced by the World Intellectual Property

The protection of IP is ensured by enforceable laws. Laws differ from country to country, however, and this Guide is not intended to provide precise legal advice.

In so far as traditional cultural expressions (TCEs) and traditional knowledge (TK) are concerned, the advice provided in this Guide is based on international processes, regional instruments, national laws where they exist, customary law, cultural protocols and emerging forms of protection in the Pacific region and elsewhere.

Not all of the rights and interests in TCEs and TK mentioned in the Guide are necessarily enforceable. They represent, in the views of the author, best practice and are in line with the requests of the Festival organisers.

Organization (WIPO), a United Nations specialised agency dedicated to the promotion of the use of IP as a means of stimulating and rewarding innovation and creativity.

People who come to the Festival must respect the rights of the performers, artists and creators by recognising their IP and they must also respect the cultural rights of indigenous peoples. It is wrong to photograph, record, film, copy or use the performances and exhibitions in an offensive way. By respecting creators' rights you respect their creative endeavours and livelihoods, and can support cultural industries in the Pacific.

2. What is intellectual property?

Intellectual property (IP) refers to creations of the mind, such as stories, music, art, inventions, words and signs, designs and performances. These creations are protected by laws on copyright, patents, trademarks, designs, unfair competition and so on. IP rights allow the creators to benefit from their own creations. IP rights reward creativity and human endeavour, which fuel technological and cultural innovation and creativity for the benefit and enjoyment of all humankind. IP rights are always subject to exceptions and almost all IP rights expire after a certain period.

IP rights are provided in the national legislation of individual countries. International treaties link various national laws by ensuring that at least a minimum level of protection will be available for creators under each national law. The treaties do not themselves grant rights, but rather require the countries that join the treaties to provide for certain rights.

At the Festival, visitors are required to respect these rights.

Copyright and related rights

Copyright refers to rights given to creators in their ‘works’. Works covered by copyright include novels, poems, plays, films, songs, dances, paintings, drawings, photographs, and sculptures, among many more.

When a work is protected by copyright, no one can reproduce, distribute, publish or perform it in public, broadcast it on radio or TV, or upload it onto the Internet without the creator’s permission. Violation of these rights is called copyright infringement and has legal consequences. Sometimes even a slight change to a work without permission can be an infringement. Copyright can be infringed even if the © sign is not displayed. Copyright arises automatically and is not dependent on registration or use of the © sign. Copyright expires after some time has passed, usually 50 years after the creator has died, although some countries extend this period.

Moral rights involve the right to claim authorship of a work, and the right to oppose changes to it that could harm the creator's reputation. For example, a work should not be modified in a demeaning or offensive way.

Performers have the right to prevent the recording, broadcasting and communication to the public of their live performances without their consent, and the right to prevent reproduction of recordings of their performances under certain circumstances. Some national laws also grant performers moral rights, which may be exercised to prevent unauthorised uses of their name and image, or modifications to their performances which present them in an unfavourable



light. The rights of performers are sometimes not protected as ‘copyright’ but rather as ‘related rights’, which also include the protection of broadcasts and sound recordings.

It is not always necessary to seek permission to use copyrighted works; there are exceptions to copyright. For example, people may use copyrighted works for research or private study, criticism, review, or the reporting of current events. Authorship must, however, be acknowledged. In the context of the Festival of Pacific Arts, it is still best to get permission from the creators and performers before using their works or performances.

Trademarks

Trademarks are distinctive signs, like words or symbols, which identify certain goods or services as those produced or provided by a specific person or enterprise. A trademark can help consumers identify and purchase a product or service because its nature and quality, indicated by its distinctive trademark, meets their needs.





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The owner of a trademark can use the trademark and can also let other

people use it with permission. This is known as giving a trademark license. Provided they remain distinctive and continue to be used in trade, trademarks can be renewed indefinitely.

The Solomon Islands Festival of Pacific Arts Logo

The Festival logo portrays a sail canoe, the sea, a human figure, five frangipani flowers, custom patterns and the Solomon Islands national flag colours. The designer of the logo is Solomon Islands artist Kiskey Mae. The Festival logo is a trademark used to identify FOPA products and services and distinguish authentic items from fake ones. Look out for the FOPA logo and the words 'FESTIVAL OF PACIFIC ARTS' branded on merchandise. This will tell you which products are genuine.

Patents

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. In order to be patentable, the invention must fulfil certain conditions: it must be of practical use; it must show an element of novelty; and it must show an inventive step. Patent protection is granted for a limited period, generally 20 years.

3. Protecting traditional indigenous culture at the Festival

Expressions of culture and traditional knowledge are on display at the Festival and are vital to the preservation of the cultural identity of the artists' and performers' communities and tribes. The recognition of the rights of indigenous peoples is contained in the *United Nations Declaration on the Rights of Indigenous Peoples*. Under this Declaration, as well as under some national laws in the Pacific region, indigenous people have the right to maintain, control, protect and develop their IP over cultural heritage, traditional knowledge and traditional cultural expressions. While these may be displayed and shared at the Festival and in associated cultural tours, permission to copy, imitate or commercialise is not necessarily given. The relevant traditional holders should be contacted to negotiate any commercial use.

Expressions of traditional culture:

- may be considered as the forms in which traditional culture is expressed;
- form part of the identity and heritage of a traditional or indigenous community;
- are passed down from generation to generation.

They can be dances, songs, handicrafts, designs, ceremonies, tales, and many other artistic and cultural expressions that are considered traditional.

Traditional knowledge (TK) includes innovations, practices, skills and know-how passed down the generations in a traditional context. They form part of the traditional lifestyle of indigenous communities who act as their guardian or

custodian. TK may be, for example, knowledge about plant breeding, irrigation systems, health, animal hunting and fishing grounds.

4. Why is it important to protect IP at the Festival?

Protecting IP is important for arts festivals. It gives artists and performers legal protection against the illegal copying of their creations or performances by others. Unauthorised uses may interfere with the cultural integrity of cultural material.

Artists and creators make a living from their expressions of culture. By permitting others to make recordings, artists and creators can receive money. IP rights can help develop economic opportunities, create employment and promote trade.

Ask first — Respect IP rights

Do not assume that you may copy, record, film or adapt any of the songs, dances, stories and craft displays.

TK and expressions of culture are an integral part of cultural identity. IP protection drives and sustains diverse cultural and customary traditions, and enhances social values.

Contracts, such as licenses, can be an option to deal with TK and expressions of culture in a sensitive way. These can state the terms and conditions for using the material according to the values and needs of its holders and right owners.

Trademarks allow the Festival to brand and market merchandise and to attract sponsorship. They also allow control over merchandise sold at the Festival, like t-shirts, umbrellas and hats, and they distinguish rip-offs and counterfeits from authentic crafts.

The FOPA trademark: A safeguard against rip-offs

Rip-offs of cultural expressions include cheap items that convey an impression of authenticity but in fact are not authentic; they are often mass-produced in other countries and made with inferior materials.

At the Festival, the integrity of cultural expressions is protected by displaying the FOPA trademark only on authentic items.

5. Guidelines for appropriate conduct at the Festival

In any situation, you should respect IP rights when taking photographs, recording and filming.

It is also advisable:

- to seek permission before filming people;
- not to use traditional knowledge or expressions of culture without free prior informed consent of the performer or traditional holder;
- to share any benefits from commercialisation of traditional knowledge and expressions of culture, after having obtained consent.

Signs, notices and warnings are posted at festival venues to inform visitors about what may or may not be done. For example:

- Photography is restricted to personal use.
- Permission to photograph, film or record must be obtained from Festival staff.
- Flash photography is not permitted.
- No filming, photography or recording of any kind is allowed – for sacred, secret content, nudity and/or art exhibitions.
- No publishing on the Internet is allowed, including on YouTube, Facebook, etc.

Look for the signs:

- at ticket sales points
- at the performance or exhibition site
- on visitors' guides
- on the Festival ticket
- on the Festival website
- at the end of this Guide.

Frequently asked questions

Can I take a photograph of a performance or art display at the Festival?



Generally, you may take photographs with your own camera for personal, private, non-commercial use, unless otherwise advised. But you cannot put them on the Internet or publicly display them without permission.

Photography of performers –

Taking photographs of performers without their consent and using the images commercially or in derogatory ways is not permitted. Please get permission from the performer or artist before taking photos.

WHY?

The audience must not use any photographs in ways that can harm indigenous people, their rights to culture and their traditional knowledge or expressions of culture.

The artists may have rights to control who can copy and photograph the art and crafts on display at the Festival and the right to be recognised as the authors of their artistic works.

Photography of art displays – Please do not make a copy of the paintings, art and craft or take photos, or put them on the Internet without permission.

Some countries have advised the Solomon Islands FOPA Organising Committee that they will allow audiences to photograph their performances, for personal, private and non-commercial uses.

Can I make a sound recording or film a performance at the Festival?

As a general rule, visitors cannot make a sound recording or film the performances at the Festival.

Some delegations may allow limited filming and recording for personal private and non-commercial use.

WHY?

Copyright protects songs and dances, and may protect costumes, stage sets and other material on display.

Performers' rights allow performers to control who can make a recording of their performance.

Filming of live performances – Please ask permission from the performer before filming live performances.



Making sound recordings and copying them on CDs for sale – Please ask permission from the artists before recording performances, copying them onto CDs or uploading them on the Internet.



Commercial filming, photography and sound recording require, in addition, special permission from the FOPA Media Centre (see further below).

I bought a painting. Can I make copies and sell them?

No. When you buy art, you get to own the physical property but the artist keeps the copyright.

You cannot copy the art or sell copies unless you have permission from the artist, and have negotiated to pay fees.



Can I copy the style of an art work?

Yes and no. Under conventional copyright law, the style of a work is usually not protected. However, styles of art and craft are sometimes culturally owned, and best practice would say that styles should not be copied by anyone other than people with cultural authority to do so.

Can I use other people's traditional knowledge?

Festival organisers ask that the visitors obtain permission from traditional holders before using traditional knowledge learnt at the Festival for their own commercial gain, and make sure that it will not cause offense or harm its custodians or traditional holders.

Can I upload some material on the Internet?

No. Online posting and file sharing of content is an infringement of artists' and performers' rights. Please do not upload copies of photos or film of the performances without the permission of the creators or performers.



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Can I reproduce the Festival logo?

No. The Festival logo is used to promote official, authentic merchandise. The FOPA logo is a trademark that belongs to the Organising Committee. You may not copy the logo and put it on any item — T-shirts, craftwork, CDs, DVDs — that you plan to sell, unless you have permission from the Organising Committee.

I am a professional photographer/filmmaker/journalist. What should I do?

All rights to make a commercial recording of official events and performances (including photography, film and sound recording) are controlled by the FOPA Organising Committee.

Commercial photographers, filmmakers, broadcasters and news and media representatives must **contact the FOPA Media Centre** to apply for prior accreditation (see contact details at the end of this Guide). The prior authorisation of



the FOPA Media Centre is required for use of a professional camera or video or sound recorder.

Professionals must make sure that they seek prior consent of all people filmed, photographed or recorded. Sacred information and sacred sites cannot be recorded.

Is there to be official filming, recording and photography at the Festival?

The Secretariat of Pacific Community (SPC) Regional Media Centre is responsible for official film production for the Festival. The performances will be broadcast around the Pacific and in other countries of the world.

As a condition of their attendance at the events, audiences consent to be filmed, photographed and recorded as part of the audience. By entering Solomon Islands and/or attending the Festival, audience members voluntarily and irrevocably consent to their images being recorded in photos, sound and videos. Other recordings may also be taken by the official film crew and photographers employed, engaged, or otherwise approved by the Festival.



More information

Solomon Islands Festival of Pacific Arts Organising Committee

<http://www.festival-pacific-arts.org.sb/>

For more information on the Festival logo see:

<http://www.festival-pacific-arts.org.sb/index.php/fesitival-overview/5.html>

World Intellectual Property Organization (WIPO)

For information about IP rights and traditional knowledge and traditional cultural expressions, see WIPO's TK website page: www.wipo.int/tk

– WIPO's work on IP and arts festivals:

<http://www.wipo.int/tk/en/culturalheritage/ip-arts-festivals.html>

– Contact WIPO's TK Division at grtkf@wipo.int

Secretariat of the Pacific Community

For more information about the Festival, see the Human Development Programme's website page:

http://www.spc.int/hdp/index.php?option=com_docman&task=cat_view&gid=104&Itemid=44

For more information about broadcasting in the region, see the Regional Media Centre's website page:

<http://www.spc.int/rmc/productionmenu/tvvideomenu>

The FOPA Media Centre

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Trademark notice

The Festival of Pacific Arts mark is a trademark of the Committee of the Festival of the Pacific Arts. The name and logo are used under license by Solomon Islands Government, for hosting the 2012 Festival.

The Solomon Islands Festival of Pacific Arts logo is the official logo and is owned and managed by the Solomon Islands Government's Department of Culture.

No unauthorised use is permitted.

Photography, sound recording and filming notice

The photography, recording and filming of performances and displays at the Festival is generally not permitted, unless:

- it is for limited, personal, non-commercial use;
- it is expressly permitted in a sign, notice, warning or announcement;
- in the case of commercial photography, filming or recording, a permit has been obtained from the Festival Media Centre;
- permission has been obtained from the performers, delegations and Festival organisers. Any permission must cover the full intended uses of the recording.



Festival organisers are not liable for any unauthorised use or reproduction of expressions of culture, including sacred material, or for any repercussions for failure to obtain clearances.

Traditional knowledge notice

The Festival displays a range of materials, including art, body painting, tattoos, dance, music, ceremonies, plays, films, sound recordings, traditional knowledge, lifestyles, food preparation, traditional healing and technical skills.

These materials may be protected by IP laws and customary laws of Pacific people. Some expressions of culture may be sacred and/or culturally sensitive.

Cultural protocols for respecting traditional knowledge and expressions of culture should be followed. Shared cultural expressions should be respectfully used.

Dealing with part or whole of the performances and displays, for any unauthorised purpose, may be a serious breach of customary laws.





(Figure 1: Traditional carpenter preparing the Arts village for the 11th Festival of Pacific Arts, Solomon Islands. Photo taken by Geoff Kuper)



(Figure 2: Carver at work. 11th Festival of Pacific Arts, Solomon Islands. Photo taken by Lucy Dryden)

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