

No. 4

Intellectual Property and Arts Festivals

Introduction

Arts festivals celebrate the world's rich and diverse cultures, bringing together time-honored traditions and modern creativity in the form of dance, music, theater, film, photography, visual arts, crafts, and much else.

Culturally, arts festivals offer a unique snapshot of a community's identity, providing an opportunity to revitalize and preserve cultural practices, and serving as a creative laboratory for contemporary performers. Socially, they are a means of strengthening intercultural dialogue, promoting deeper understanding through shared experience. Economically, they can generate sizeable long-term financial benefits and significant business and employment opportunities.

Effective intellectual property management is an important consideration for arts festival organizers, to safeguard and promote their own interests and those of festival participants. WIPO is working with those involved in the organization of cultural events to develop and apply appropriate management strategies to deal with the various intellectual property issues that can arise before, during and after such events.

WIPO's Traditional Knowledge Division is particularly concerned with the protection of traditional knowledge and traditional cultural expressions, which are frequently represented and shared at festivals around the globe. This brief identifies the main intellectual property challenges faced by organizers of arts festivals and outlines some practical elements of an effective intellectual property management strategy.

Intellectual property risks

Artists, performers and artisans are the lifeblood of any arts festival. Their cultural expressions draw public interest and build the festival's reputation. Yet without appropriate intellectual property (IP) measures, the festival's various artistic manifestations—which may contain culturally sensitive material—can become vulnerable to unauthorized or inappropriate exploitation by others. Examples of unauthorized acts may include:

- the sale of postcards **reproducing images** of a sacred dance;
- use of a **video clip** of a traditional performance in a tourism promotion campaign;
- a **CD** of illegally recorded original songs inspired by traditional music;
- **replicas** of traditional **dance costumes** made using ancestral weaving methods;
- **ritual face painting** used out of context and in an offensive way.

Moreover, in the absence of a carefully considered IP strategy, festival audiences risk being duped into buying fake arts and crafts and other merchandise, and the interests of the event itself are undermined by opportunistic businesses that free-ride on the festival's reputation and popularity.

Hands-on intellectual property management

A positive, forward-looking IP strategy enables organizers to exercise greater control over a festival's IP and cultural interests. A mix of IP tools, particularly copyright and trademark rights —used in association with contracts, protocols, guidelines, notices, accreditation and access conditions (see below)— can provide a comprehensive framework to protect IP and guard against the misuse of traditional knowledge (TK) and traditional cultural expressions (TCEs).

Furthermore, used strategically, IP can help generate significant revenues, for example, from the sale of broadcasting rights and the conclusion of sponsorship and merchandizing deals.

Key intellectual property areas

Copyright and related rights

Copyright law offers a number of exclusive rights to creators of *original* works. These include the rights of reproduction, distribution, public performance, communication to the public, broadcasting on radio and television, and making the work available on the internet, among others. Rights owners alone can authorize or prevent such acts. However, while copyright confers the exclusive right of adaptation of a protected work, it does not stop others from being inspired by it. Drawing a line between copying and inspiration is often difficult.

In many jurisdictions, creators of original works also enjoy the “moral rights” of attribution and integrity. For example, if a work is manipulated in a way that is deemed prejudicial to the creator's reputation, he or she can obtain legal relief.

Likewise, performers have so-called “related” rights in their performances of works or expressions of folklore. They can control the recording and dissemination of their performances, as well as their commercial exploitation, among other rights.

A balanced copyright law also includes certain exceptions and limitations in the public interest (for example, “fair use” in some jurisdictions). These would usually allow, for instance, a member of the audience to take pictures of a festival performance for personal, private use.

Brands and trademarks

Abusive use of a festival's logo and the sale of fake arts and crafts are serious threats that can be tackled in large part by registering a trademark and/or certification mark. Trademark registration generally confers the exclusive right to prevent others from producing or marketing identical or similar products under the same or a confusingly similar mark.

Trademark registration opens the way for arts festival organizers to develop an effective marketing strategy and to conclude potentially profitable deals to secure the long-term financial viability of their event. As owners of registered trademarks, organizers are better placed to promote the sale of authentic products generating revenues for artists and the festival alike, both onsite and online. They are also better equipped to defend themselves against cybersquatting (the abusive registration of their mark as a domain name), thereby safeguarding their web presence, a powerful means of marketing the festival.

Trademarks associated with arts festivals can be registered in a variety of classes, in each country where a festival takes place. For example, a mark can be registered for festivals (class 41), recordings (class 9), and publications and merchandise such as visual arts, crafts, books and other products (classes 18, 20, 25, 43, etc.) —see the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification).

Measures to safeguard the festival's brand

- Register a trademark
- Secure a domain name
- Develop a merchandizing program that defines the festival's product portfolio
- Establish a sponsorship program and define levels of sponsorship and associated rights
- Establish official retail outlets onsite and online
- Monitor the online market for infringing products.

Traditional cultural expressions and traditional knowledge

Festival organizers may also need to take complementary steps, going beyond existing IP law, to protect the cultural interests of participants whose artistic expressions do not qualify for IP protection because of their *traditional* character. For example, traditional crafts and designs, as well as many rituals and ceremonies, are unlikely to qualify for IP protection in many jurisdictions.

There is, as yet, no international protection of TK and TCEs, save for the protection of performances of expressions of folklore under the WIPO Performances and Phonograms Treaty, 1996. However, festival organizers can take several measures to prevent the unauthorized uses of TCEs. Examples include:

- **Cautionary notices**, such as “no filming, photography or recording devices allowed.” Usually placed onsite, or published on festival tickets, websites and official programs, these notices can help protect the TK and TCE interests of performers and restrict unauthorized uses. Oral **warnings** may also be given prior to a performance.
- **Guidelines and protocols** advising visitors and members of the media about the need to respect the TK and TCEs of festival participants. Protocols can be used to ensure proper attribution to custodians of TK and TCEs or to promote respect for the sacred character of a performance. Such protocols might request the audience to “please exercise courtesy and sensitivity when taking photographs: seek the permission of the subjects” or may state “no use, adaptation or commercialization of TK/TCEs without the prior informed consent of traditional custodians.”
- A **media accreditation system** outlining the terms and conditions of festival recordings and ensuring that representatives of the media register their interest and provide details of the proposed use of festival recordings.
- Measures to monitor use of official **broadcasts** and to clamp down on infringement. Broadcasters pay large amounts for exclusive coverage of an event. If organizers are to fully leverage the sale of broadcast rights, they need to guarantee this exclusivity.

Making it all happen

To ensure that an event's IP policy is effectively applied, organizers are advised to establish a (written) contract with all concerned parties, including members of the public, media (photographers as well as print, TV and radio journalists) and festival performers and exhibitors. Licenses, accreditation agreements and performers' release forms are commonly used for this purpose. Release forms are used to advise performers of the use of the recording, seek written consent for its use, and outline its long-term use in terms of storage and use in other contexts. Such arrangements can cover matters relating to both IP rights (including trademarks, copyright and related rights), and TK and TCE-related rights and interests (recognition, protection and respect for the interests of their holders). Contracts are also a means to concretize financial deals. For example, they can provide for: sharing with their holders of benefits derived from the exploitation of TK/TCEs; use of a commercial photograph on a poster to promote the festival; donation of copies of recordings to the festival archive for cultural maintenance purposes, and so on.

In sum, organizing an arts festival is a complex undertaking encompassing many marketing and managerial elements. An effective strategy designed to uphold the IP and cultural interests of all parties is central to this endeavor. Where TK and TCEs are concerned, while conventional IP tools offer some degree of protection, complementary measures, such as cultural protocols, guidelines and notices, are required. An effective IP management strategy helps foster cultural respect and generates economic opportunities for these vibrant celebrations of the variety and diversity of cultures around the world.

WIPO is assisting the Secretariat of the Pacific Community, the Council of Pacific Arts and Culture, and Solomon Islands on the range of IP issues that arise when organizing the Festival of Pacific Arts. This event, held every four years in a different country, highlights the region's rich diversity of arts, culture and knowledge.

WIPO's support includes advice on the use and application of conventional IP law, as well as other measures to safeguard TK and TCE interests in line with the Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture (2002) and the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

The WIPO publication "Intellectual Property and the 11th Festival of Pacific Arts, Solomon Islands, 2012", prepared by Terri Janke, is available online www.wipo.int/edocs/pubdocs/en/tk/tk_fpa/tk_fpa_2012.pdf

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