

WIPO on the Types of TCE Protection

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization provides two kinds of protection for TCEs:

(1) Positive Protection:

This refers to vesting and granting of rights in order to promote a communities traditional knowledge and to empower them by allowing them to control its usage and commercial benefits.

(2) Defensive Protection:

It is a “set of strategies to ensure that third parties do not gain illegitimate or unfounded intellectual property rights ” over such expressions.



Folklore and It's Protection

WIPO defines Traditional Cultural Expressions (TCEs) as “artistic or cultural expressions... that form a part of the identity and heritage of a traditional or indigenous community and are passed down from generation to generation.” TCEs and folklores refer to both tangible and intangible manifestations and expressions of a culture. They form an integral part of their heritage and identity which is why their protection has become a cause of debate.

The growth of pop-culture, and the lack of protection regimes has led to such TCE works being misappropriated. Not only do the communities to whom these expressions originally belong to lose out on the advantages and the profits made through the use of their TCE works but they also cannot be considered owners of such work because of the limitations of the IP regimes in their application to such works.

Limitations of Copyright Protection of TCE

Important Decisions

The Australian case of *Payunka, Maria and Ors v. Indofurn Pty Ltd* (1994) 30 IPR 209 the court has held the following points were held:

- “Although the artworks (traditional)...are based on similar dreaming themes, each artwork is one of intricate detail and complexity reflecting great skill and originality.” Stating that every artwork under TCE are original and unique.
- “As an artist, while I may own the copyright in a particular artwork under western law, under Aboriginal law I must not use an image or story in such a way as to undermine the rights of all the other Yolngu (the clan) who have an interest whether direct or indirect in it.” Recognizing the importance of customary law and community benefit sharing.

Thank You

India is going through an unprecedented medical emergency. We should do our best by following the norms and try not to burden the system.

TCE works are considered a part of public domain and as stated previously providing for copyright protection such works becomes difficult for a number of reasons.

A. There is no identifiable author for TCE works. TCEs have a long history and are usually passed on from generation to generation by word of mouth, thus, making identifying one author difficult.

B. It is difficult to identify the originality of the work. While it has been said that contemporary creations can be protected under the existing regime, it would also allow people who are not members of such community to benefit from such monopoly rights.

C. Ownership of copyrights. Generally, the author is vested with monopoly rights over their work, this goes against the customary laws of such communities where the whole community is supposed to benefit.

Various International organizations such as the WIPO have been looking at the best way to protect TCE works and proposals for the creation of a sui-generis system for the protection of such works have been made.

Community Benefit Sharing

One of the major points of discussion raised during such proposals was regarding the setting up of a community benefit sharing system. Which means that the community from which TCEs have been created should be declared as the owners and rights to be vested in the community as a whole. There are still many questions regarding such system that need to be clarified. For example, TCE expressions can sometimes be centuries old and determining which community a particular work or expression originated from can be difficult and deciding how a community would hold rights over a TCE is not yet very clear.

WIPO has been working towards digitizing TCE and folklore expressions of the Masai Tribe in Africa as a means of protection for such dying culture. The videos and pictures recorded will be uploaded in an online library and the tribe will receive the royalties from such library. This maybe the future of Folklore protection.