

Traditional Knowledge & Intellectual Property – Practical Examples

■ Webinar - Protecting GRTKF: global and regional perspectives

Leticia Caminero
Traditional Knowledge Division

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Virtual

Traditional Knowledge (TK)



Knowledge, experience, skills, aptitudes, practices, abilities, innovations and know-how



Development, maintenance and transmission from generation to generation



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



Not subject to a specific technical field, may 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 people.	Origin Passed down from generation to generation, usually from unknown authors.

Genetic Resources



Genetic Resources: “genetic material of actual or potential value.”
Article 2 of the Convention on Biological Diversity (1992)



Genetic material: “any material of plant, animal, microbial or other origin containing functional units of heredity.”



The use of IP provides legal certainty and incentives for innovation in using genetic material and data in biosciences. Since the beginning of the application of IP protection to biological material and data, there has been a continuous evolution in IP systems and their application to biological matter.

Sources:

<https://www.wipo.int/tk/es/genetic/>

https://www.wipo.int/academy/es/news/2021/news_0013.html

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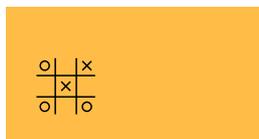
Intellectual Property

Intellectual Property: creations of the mind



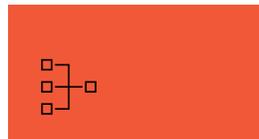
Intellectual Product

Subject to protection under Intellectual Property



Unfitness

Full protection is not possible under the current IP system



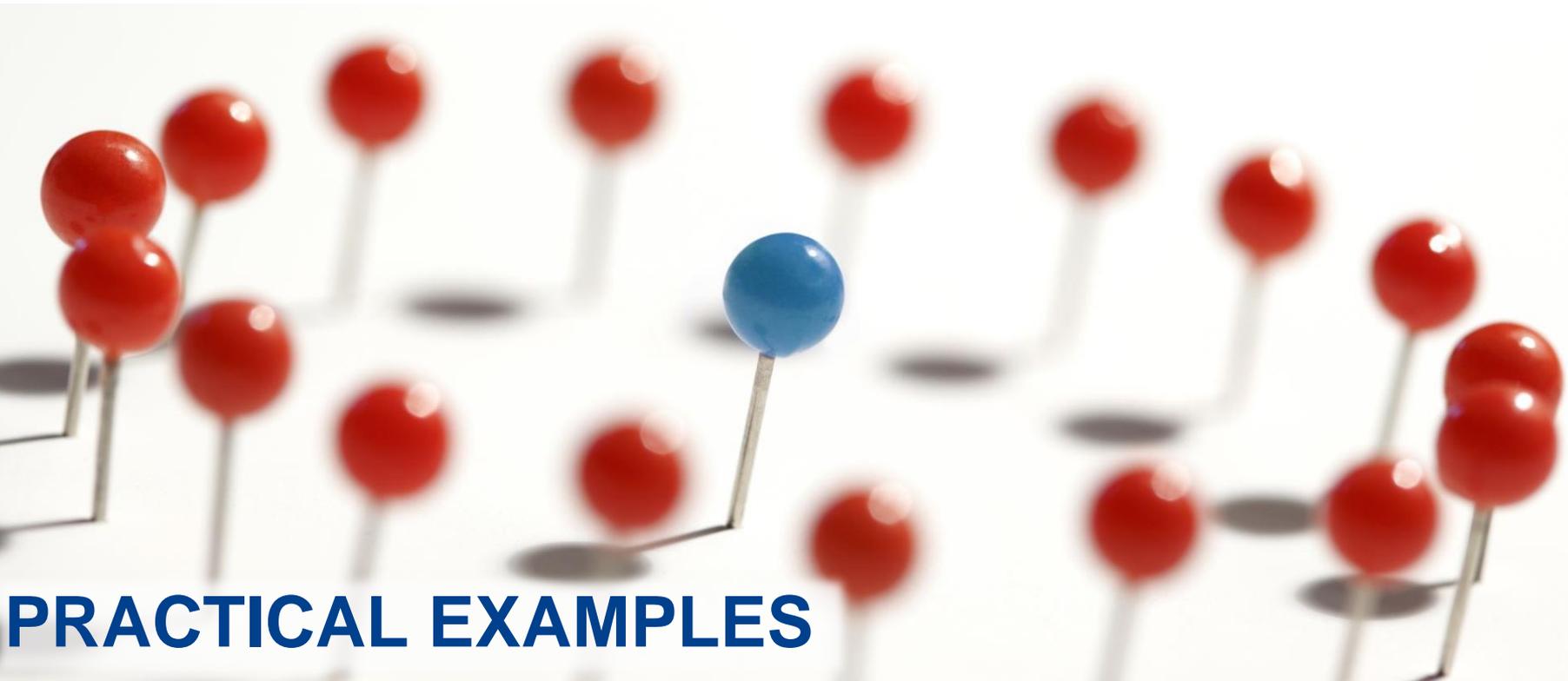
Adaptation

Possibility of changes to conventional or existing IP



Special

Possibility of creating a new *sui generis* system of protection



PRACTICAL EXAMPLES

Trademark

1



First come first served

First to register usually secures the exclusive rights

Trademark registration will confer an exclusive right to the use of the registered trademark



Prevention

Preventing offensive and deceptive marks



Distinctiveness

Use as a distinctive tool – marketing tool

Sign capable of distinguishing the goods or services of one enterprise from those of other enterprises



Commercialization

May be licensed

Trademark: New Zealand and Adean Community

Examples from New Zealand and from the Andean Community

In some countries, the national trademark law does not allow the registration of trademarks that include the names or expressions of the culture of indigenous peoples, unless the trademark applications are filed by the indigenous people or with their consent.

New Zealand and the Andean Community provide interesting examples.

In New Zealand, the Trade Marks Act 2002 prevents a trade mark from being registered if its use or registration would be likely to offend a significant section of the community, including Māori.⁵ According to section 178, the Commissioner of Trade Marks may appoint an advisory committee to advise whether the proposed use or registration of a trade mark that is, or appears to be, derivative of a Māori sign, including text or imagery, is, or is likely to be, offensive to Māori.

Papatūānuku is a significant Māori *atua* or *tipuna* (god or spiritual ancestor) for the indigenous peoples of New Zealand. According to a guide produced by the New Zealand Intellectual Property Office, a trademark containing the word "Papatūānuku" would be offensive, and could be a basis for objection against a trademark application in New Zealand as provided for under the Trade Marks Act 2002.⁶

In the Andean Community,⁷ Decision 486 provides that signs which consist of the names of indigenous, Afro-American or local communities, or the names, words, letters, characters or signs used to distinguish their goods or services or the manner of their processing, or which constitute an expression of their culture or practice, may not be registered as marks, except where the application is filed by the community itself or with its express consent.⁸

A number of trademark applications have been rejected under Article 136(i) of Decision 486. For instance, a trademark application filed for the mark "WAYUU" was rejected in Colombia and a trademark application filed for the mark "SHUARA" was rejected in Ecuador because these are names of indigenous communities.

These examples show how trademark law can include specific provisions to better protect the interests of indigenous peoples and local communities.

New Zealand

- Trademark Act 2002
- The Act prevents trademark registration that could likely offend a significant section of the community, including Māori.

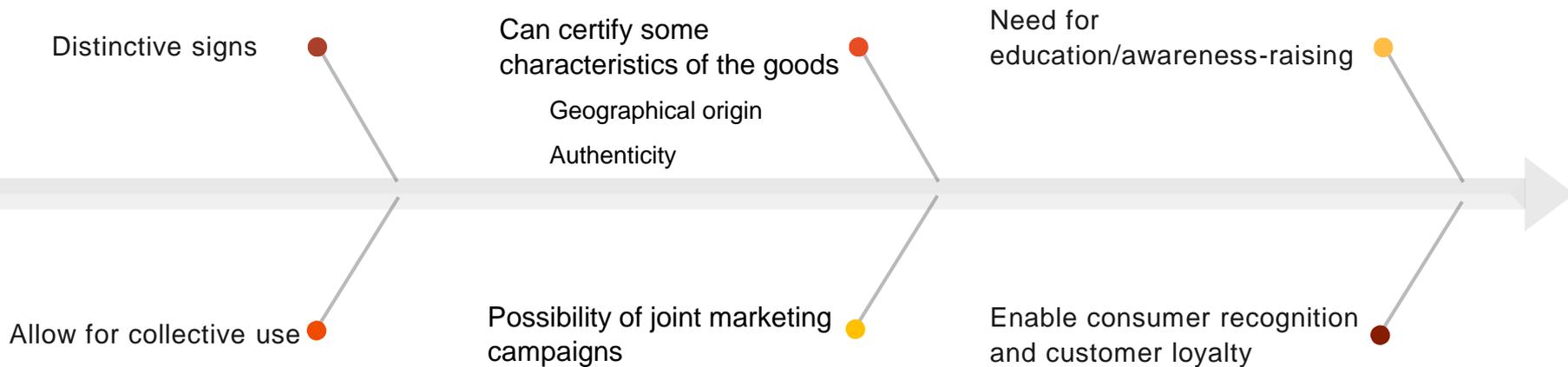
Andean Community (Bolivia, Colombia, Ecuador and Peru)

- Decision 486 prevents trademark registration if the sign constitutes an expression of indigenous, Afro-American or local communities cultures or practices

Source:

<https://www.wipo.int/publications/en/details.jsp?id=4195>

Collective and certification marks



Certification marks: COWICHAN

COWICHAN: a certification mark from Canada

The Cowichan tribe is located in the Cowichan Valley region of Vancouver Island in British Columbia, which consists of seven traditional villages: Kw'amutsun, Owum'yiqun', Hwulqwselu, S'amuna', L'uml'umuluts, Hinupsum and Ti'ulpalus.¹ Traditionally, the Cowichan tribe lived outdoors and they knitted clothes and blankets to withstand the climate, including what has become known as the Cowichan sweater.

In 1995, the Cowichan Band Council of British Columbia filed a trademark application with the Canadian Intellectual Property Office for "COWICHAN".² The mark was registered as a certification mark in 1996.³ The COWICHAN mark distinguishes "clothing, namely sweaters, vests, ponchos, hats, toques, mittens, scarves, socks and slippers". According to the register: "The certification mark, to be used by persons authorized by the certifier, will certify that the wares have been hand-knit in one piece in accordance with traditional tribal methods by members of the Coast Salish Nation using raw, unprocessed, undyed, hand-spun wool made and prepared in accordance with traditional tribal methods."

This example shows that indigenous peoples and local communities can use certification marks to certify that the products they market are made using traditional methods (TK).

Photo: ©Shawn Jones

Cowichan tribe from the Cowichan Valley, Vancouver, Canada

Certification mark registered in 1996 to distinguish: clothing, namely sweaters, vest, ponchos, hats, toques, mittens, scarves, socks and slippers.

The mark certifies: the authorization to use and the compliance with traditional tribal methods to create the items.

Source: <https://www.wipo.int/publications/en/details.jsp?id=4195>

Geographical Indications

Indication used
on products

Specific
geographical origin

Qualities, characteristics
or a reputation

Collective use

Can help preserve
traditional ways

TK as such not
protected

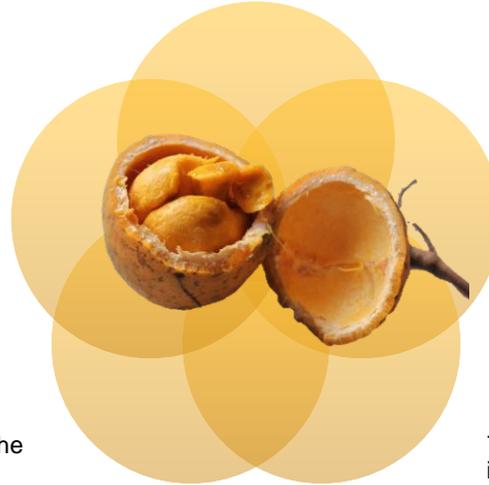
Premium price

Heavier
implementation

Geographical Indications: Madd de Casamance

Gathered all the stakeholders and created the *Association pour la Protection et la Promotion de l'Indication Géographique Madd de Casamance (APPIGMAC)* in Senegal.

The GI process is ongoing



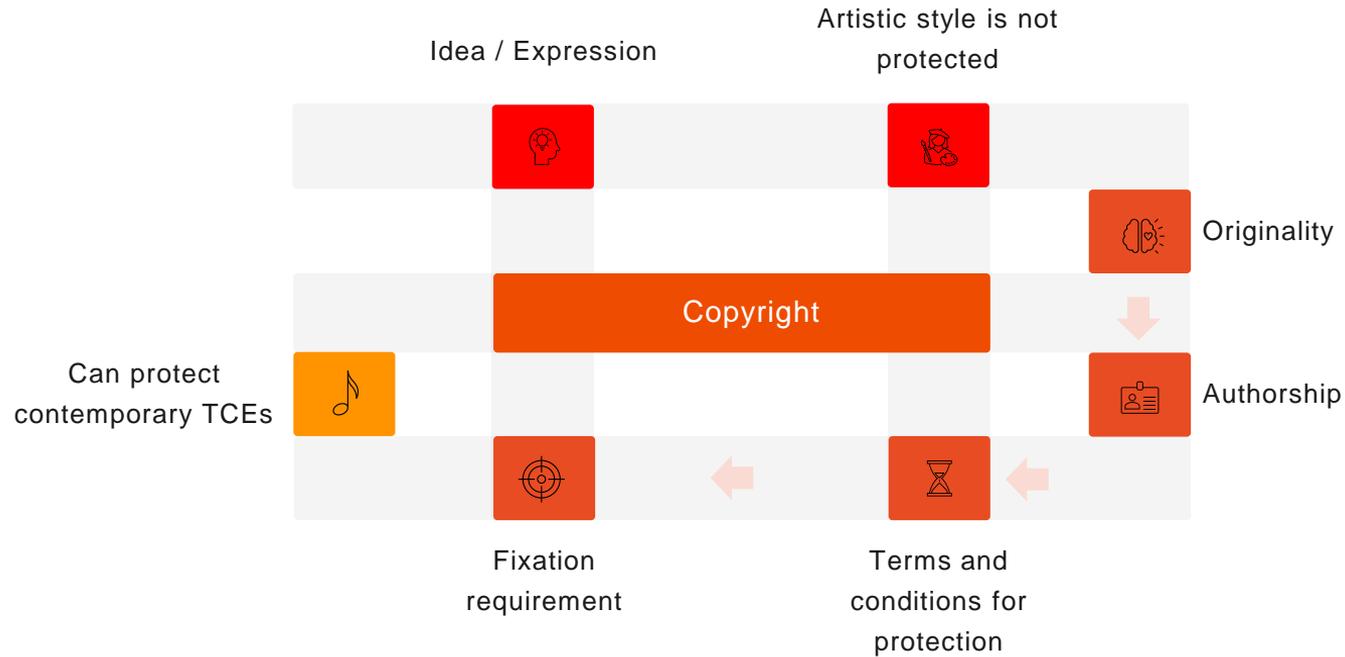
The purpose of this Association is to promote the Madd, protect the forest, raise awareness and provide women with market access.

Contributes greatly to the income of rural populations

The Madd of Casamance is a Forest fruit specific of that area

Source: https://www.wipo.int/meetings/fr/doc_details.jsp?doc_id=540358

Copyright



Copyright: Kente

An example from Ghana: Kente

Kente cloth is a form of strip weaving with patterns "woven into the cloth in alternating blocks so when the strips are sewn together to form a piece of cloth the overall effect is that of a checkerboard".³ It is a mosaic fabric made from colorful threads, with designs depicting historical events or social beliefs of the community's significant persons and experiences.⁴ It is produced by the Asante ethnic group and is closely associated with Asante royalty.⁵

Around the 1980s, imitation Kente cloths appeared on textiles in markets around the world, raising concerns about how to protect it. Copyright law in Ghana aimed to respond to those concerns.

Under section 76 of the Copyright Act 2005 of Ghana, folklore is defined as "the literary, artistic and scientific expressions belonging to the cultural heritage of Ghana which are created, preserved and developed by ethnic communities of Ghana or by an unidentified Ghanaian author, and includes kente and adinkra designs, where the author of the designs are not known, and any similar work designated under this Act to be works of folklore". Expressions of folklore are protected under that Act against reproduction, communication to the public, adaptation, translation and other transformation. The rights of folklore are vested in the President on behalf of and in trust for the people of the Republic of Ghana.⁶

This example shows that intellectual property laws can be adapted to provide some protection for TK and TCEs. In this particular case, the Copyright Act of Ghana protects TCEs.

Kente cloth produced by the Asante ethnic group in Ghana

Copyright Act 2005 introduced protection to expressions belonging to the cultural heritage of Ghana which are created, preserved and developed by ethnic communities of Ghana or unidentified Ghanaian author

Protection against reproduction, communication to the public, adaptation, translation and other transformation

Source: <https://www.wipo.int/publications/en/details.jsp?id=4195>

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Patents

Patent is an exclusive right to a product or a process that generally provides a **new way** of doing something, or offers a new technical solution to a problem



The subject matter must be accepted as “patentable” under law



Patents may be granted for inventions in any field of technology



Key conditions to obtain a patent



The invention must show an element of **novelty**; that is, some new characteristic which is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called “prior art”



The invention must involve an “**inventive step**” or “non-obvious”, which means that it could not be obviously deduced by a person having ordinary skill in the relevant technical field



The invention must be capable of **industrial application**, meaning that it must be capable of being used for an industrial or business purpose beyond a mere theoretical phenomenon, or be useful

The turmeric patent



©iStock.com/bruwellphotography

United States Patent 5,401,504 was initially granted with a main claim directed at “a method of promoting healing of a wound in a patient, which consists essentially of administering a wound-healing agent consisting of an effective amount of turmeric powder to said patient.”

The patent application was examined, and the claimed invention was considered novel at the time of application on the basis of the information then available to the examining authority.

The patent applicants acknowledged the known use of turmeric in traditional medicine for the treatment of various sprains and inflammatory conditions.

The patent was subsequently challenged and found invalid, as further documentation was made available (including ancient Sanskrit texts) that demonstrated that the claimed invention was actually already known TK.

The turmeric patent



TK constitutes an increasingly relevant body of prior art. Therefore, its effective identification is of growing importance for the functioning of the IP system.



Existing international patent law already requires some patent information to be disclosed by the applicant. Some claim that patent applicants should in some way disclose TK and GRs used in the claimed invention or that are otherwise related to it. There are several proposals to extend and focus these requirements and to create specific disclosure obligations for TK and GRs.

WIPO's search tools and patent classification systems take TK into account. See for example the International Patent Classification System (www.wipo.int/classifications/ipc/en/index.html) and the Patent Cooperation Treaty Minimum Documentation (www.wipo.int/standards/en/part_04.html).



TRADITIONAL KNOWLEDGE DIVISION

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COMMUNITY ENTERPRISES PROGRAM



DOCUMENTATION OF TK AND TCEs



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REACHING OUT WORLDWIDE AND PROVIDING HIGH QUALITY KNOWLEDGE



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WIPO provides practical assistance to Indigenous and local communities entrepreneurs to make strategic and effective use of intellectual property tools in support of their businesses.



Training, Mentoring and Matchmaking Program on IP for Indigenous and Local Community Women Entrepreneurs



Webinar series: How to Protect and Promote Your Culture



IP and Traditional Knowledge Language Pack



Publications, studies and documents

More information:

<https://www.wipo.int/tk/en/entrepreneurship/index.html>

Danza folclórica mexicana de Jalisco,
Seúl (República de Corea), 2009



Stockphoto © jules99



Thank you

Leticia Caminero

leticia.caminero@wipo.int

grtkf@wipo.int