



United Nations Educational, Scientific and Cultural Organization

International Round Table
“Intangible Cultural Heritage” – Working definitions
(Piedmont, Italy, 14 to 17 March 2001)

WORKING DEFINITIONS
IN USE BY INTERGOVERNMENTAL ORGANIZATIONS

**Replies of Inter-Governmental Organizations
Working definitions**

Regional Organizations

Organization	Definitions and/or comments
<i>Africa</i>	
<p>African Intellectual Property Organization (AIPO) Organisation africaine de la propriété intellectuelle (OAPI)</p>	<p>Définitions utilisées par l'Organisation Africaine de la Propriété intellectuelle (OAPI) :</p> <p>1. Patrimoine culturel : article 67 (Accord de Bangui révisé non encore entré en vigueur) : Le patrimoine culturel est l'ensemble des productions humaines matérielles ou immatérielles caractéristiques d'un peuple dans le temps et dans l'espace . Ces productions concernent :</p> <ul style="list-style-type: none"> i) le folklore ; ii) les sites et monuments ; iii) les ensembles. <p>2. Folklore : (article 68 Accord de Bangui révisé) On entend par folklore l'ensemble des traditions et productions littéraires, artistiques, religieuses, scientifiques, technologiques et autres des communautés transmises de génération en génération.</p> <p>Entrent notamment dans cette définition :</p> <ul style="list-style-type: none"> a) les productions littéraires de tout genre et de toute catégorie orale ou écrite, contes, légendes, proverbes, épopées, gestes, mythes, devinettes ; b) les styles artistiques c) les traditions et manifestations religieuses d) les traditions éducatives e) les connaissances et œuvres scientifiques f) les connaissances et les productions de la technologie... <p>Définitions personnelles n'engageant pas l'OAPI :</p> <p>Le savoir traditionnel est tout savoir relatif aux propriétés biologiques, physiques, thérapeutiques et autres développé et / ou maintenu par un peuple traditionnel ou un membre, un détenteur privé ou une famille issus d'un peuple traditionnel.</p> <p>La culture traditionnelle est celle développée et maintenue par les peuples sédentaires ou nomades qui occupaient tout ou partie de l'espace géographique d'un pays et qui conservent et maintiennent tout ou partie de leurs institutions traditionnelles sociales, économiques, culturelles et politiques.</p>

<i>Asia and the Pacific</i>	
Association of South-East Asian Nations (ASEAN) Association des Nations de l'Asie du Sud-Est (ASEAN)	Folklore , in its broadest sense, as defined in a publication of the ASEAN Committee on Culture and Information entitled <i>ASEAN Folk Literature : An Anthology</i> , means « the sum total of the traditional lore or learning of the folk, and includes their literature, their beliefs, customs and usage, games and recreations, music and dances, arts and crafts, and all forms of material culture. This traditional learning has been handed down from generation to generation orally or by means of customary example.
Secretariat of the Pacific Community (SPC) Secrétariat de la Communauté du Pacifique (CPS)	<p>English version</p> <p>Definition given in the Declaration on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific islands (adopted at the Symposium on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific Islands, Nouméa, New Caledonia, 15-19 February 1999) :</p> <p>Definition of traditional knowledge and expressions of the indigenous cultures of the Pacific Islands</p> <p>The traditional knowledge and expressions of indigenous cultures are defined as the ways in which indigenous cultures are expressed and which are manifestations of worldviews of the indigenous peoples of the Pacific. Traditional knowledge and cultural expressions are any knowledge or any expressions created, acquired and inspired (applied, inherent or abstract) for the physical and spiritual well-being of the indigenous peoples of the Pacific. The nature and use of such knowledge and expressions are transmitted from one generation to the next to enhance, safeguard and perpetuate the identity, well-being and rights of the indigenous peoples of the Pacific. This knowledge and these expressions include and are not limited to:</p> <ul style="list-style-type: none"> - spirituality, spiritual knowledge, ethics and moral values, - social institutions (kinship, political, traditional justice), - dances, ceremonies and ritual performances and practices, - games and sports, - music, - language, - names, stories, traditions, songs in oral narratives, - land and sea and air, - all sites of cultural significance and immovable cultural property and their associated knowledge, - cultural environmental resources, - traditional resource management including traditional conservation measures, - all material objects and moveable cultural property, - all traditional knowledge and expressions of indigenous cultures held in ex situ collections, - indigenous peoples ancestral remains, human genetic materials, - scientific, agricultural, technical and ecological knowledge, and the skills required to implement this knowledge (including that pertaining to resource use practices and systems of classification), - the delineated forms, parts and details of visual compositions (designs), <p>permanently documented aspects of traditional indigenous cultures in all forms (including scientific and ethnographic research</p>

reports, papers and books, photographs and digital images, films and sound recordings).
See the text of the Declaration (attached).

Version française

Définition donnée dans la Déclaration sur la protection des savoirs traditionnels et des expressions des cultures traditionnelles et populaires autochtones dans les îles du Pacifique (adoptée lors du symposium sur la protection des savoirs traditionnels et des expressions des cultures traditionnelles et populaires autochtones dans les îles du Pacifique, Nouméa, Nouvelle Calédonie, 15 au 19 février 1999) :

Définition des savoirs traditionnels et des expressions des cultures autochtones dans les îles du Pacifique

Les savoirs traditionnels et expressions des cultures autochtones se définissent comme étant les moyens par lesquels les cultures autochtones s'expriment et qui sont des manifestations des conceptions du monde des peuples autochtones océaniens. Les savoirs traditionnels et les expressions des cultures autochtones recouvrent tous savoirs ou expressions créés, acquis et inspirés (appliqués, inhérents ou abstraits) du bien-être physique et spirituel des peuples autochtones du Pacifique. La nature et l'utilisation de ces savoirs et expressions sont transmises d'une génération à la suivante afin de valoriser, sauvegarder et perpétuer l'identité, le bien-être et les droits des peuples autochtones du Pacifique. Ces savoirs et ces expressions recouvrent les éléments suivants, sans s'y limiter :

- la spiritualité, le savoir spirituel, l'éthique et les valeurs morales,
- les institutions sociales (royauté, politique, justice traditionnelle),
- les danses, les cérémonies et les représentations et pratiques rituelles,
- les jeux et les sports,
- la musique,
- la langue,
- les noms, les contes, les traditions, les chants contenus dans les récits oraux,
- la terre, la mer et l'air,
- tous les sites présentant une signification culturelle et les biens culturels immeubles et les savoirs qui y sont associés,
- les ressources environnementales culturelles,
- la gestion des ressources traditionnelles, y compris les mesures de conservation traditionnelles,
- tous les objets matériels et les biens culturels meubles,
- tous les savoirs et expressions traditionnels des cultures autochtones détenus dans des collections ex situ,
- les restes ancestraux des peuples autochtones, les matériels génétiques humains,
- les connaissances scientifiques, agricoles, techniques et écologiques et les savoir-faire requis pour les mettre en œuvre (y compris les savoir-faire liés aux pratiques d'utilisation des ressources et aux systèmes de classification),
- les formes figuratives, les parties et les détails de compositions plastiques (dessins),

	<p>- les aspects documentés de manière permanente des cultures autochtones traditionnelles sous toutes leurs formes (y compris les rapports de recherche scientifique et ethnographique, les articles et ouvrages, les photographies et images numériques, les films et les enregistrements sonores).</p>
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Voir le texte de la Déclaration (ci-joint).

Interregional organizations

Organization	Definitions and/or comments
Agence de la francophonie (ACCT) Agency of la Francophonie (ACTC)	No definition.
Islamic Educational, Scientific and Cultural Organization (ISESCO) Organisation islamique pour l'éducation, les sciences et la culture (ISESCO)	<p>« Patrimoine culturel immatériel » : « C'est l'ensemble des valeurs, idées, croyances, coutumes, usages et lois hérités par une société donnée. » Cette définition générale n'est valable dans l'optique de l'islam que dans la mesure où elle fait des enseignements de l'islam l'émanation première et dernière de ce patrimoine, dont les composantes ne doivent en aucun cas heurter l'essence de l'islam.</p> <p>« Folklore » : « C'est l'ensemble des us et coutumes, des traditions esthétiques et des arts populaires et des métiers d'artisanat ».</p> <p>« Culture » : Dans la langue arabe, « Athaqafa », expression équivalente du mot français « culture » renvoie à l'idée d'adresse et de vivacité d'esprit dont fait preuve la personne cultivée. C'est l'ensemble des connaissances cohérentes et établies, qui sont acquises par une société donnée dans les différents domaines.</p> <p>« Patrimoine oral » : « C'est l'ensemble des valeurs, idées et croyances acquises par une société donnée et transmises de génération en génération par des modes d'expression littéraire orale (poésie, contes, histoires). » Cette définition générale n'est valable dans l'optique de l'islam que dans la mesure où elle fait des enseignements de l'islam l'émanation première et dernière de ce patrimoine, dont les composantes ne doivent en aucun cas heurter l'essence de l'islam.</p> <p>« Savoirs traditionnels » : « C'est l'ensemble des connaissances établies dans une société donnée et difficiles à changer ».</p> <p>« Culture autochtone » : « C'est l'ensemble des connaissances établies dans une société donnée et rattachées à son identité ».</p> <p>En considérant ces définitions et leurs applications dans les sociétés, on s'aperçoit que les religions célestes se rangent dans la catégorie des savoirs traditionnels.</p> <p>Dans les sociétés islamiques, la Charia, source première de la culture, fait la distinction entre les composantes du patrimoine qui sont conformes au système de valeurs religieux et celles qui ne le sont pas. Vu son étroite corrélation avec l'identité des peuples islamiques, l'islam est considéré comme une culture autochtone de ces peuples.</p> <p>Bien qu'en adoptant ces définitions générales, il est précisé que celles-ci restent sujettes à caution en islam tant qu'elles ne répondent pas aux critères définis par l'islam. De fait, l'Occident considère comme patrimoine islamique toute œuvre émanant des pays islamiques, cependant que l'islam ne prête l'attribut de l'islamité qu'aux faits humains qui satisfont aux prescriptions de la Charia, ou pour le moins qui n'entrent pas en contradiction avec elles. Par Charia, on entend évidemment l'ensemble des commandements dérivés du Coran et de la Sunnah.</p>

International Organizations

Organization	Definitions and/or comments
<p>Convention on Biological Diversity Secretariat Secrétariat de la Convention sur la diversité biologique</p>	<p>While the Secretariat has not developed definitions, they, however, use the term « traditional knowledge, innovations and practices » to mean « the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity » as stated in article 8(j) of the Convention. This also encompasses the key elements of cultural heritage, innovations and practices of indigenous and local communities. However, the SCBD has elaborated on the key terms of article 8(j) and related provisions of the Convention (article 10(c), 17.2 and 18.4) which will be of value to UNESCO's discussion on a working definition :</p> <p>« Traditional knowledge » refers to the « body of knowledge built by a group of people through generations living in close contact with nature ». It includes a system of classification, a set of empirical observations about the local environment and a system of self-management that governs resource use.</p> <p>« Traditional forest-related knowledge » is associated with the following features :</p> <ul style="list-style-type: none"> i. information about the various physical, biological and social components of a particular landscape ; ii. rules for using them without damaging them irreparably ; iii. relationship among their users ; iv. technologies for using them to meet the subsistence, health, trade and ritual needs of local people ; and v. a view of the world that incorporates and makes sense of all the above in the context of a long-term and holistic perspective in decision-making. <p>During the Madrid workshop it was noted that the topic of « definition » is a very sensitive issue and of major concern to indigenous and local communities. Therefore, it is important that indigenous and local communities are involved, particularly in issues relating to « cultural heritage », « folklore » ; « traditional knowledge » and « indigenous culture ». The Conference of the Parties to the Convention on Biological Diversity at its fifth meeting emphasized the fundamental importance of ensuring the full and effective participation of indigenous and local communities in the implementation of article 8(j) and related provisions.</p> <p>The definition in the « Draft Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples » as elaborated by the Sub-Commission on the Elimination of Discrimination and Protection of Minorities could also be considered. It is based on a holistic definition of what constitutes indigenous heritage : « [it] is comprised of all objects, sites and knowledge, the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory. The heritage of an indigenous people also includes objects, knowledge and literary or artistic works which may be created in the future based upon its heritage [and] includes all moveable cultural property as defined by the conventions of UNESCO, all kinds of literary and artistic works such as music, dance, song, ceremonies, symbols and technical and ecological knowledge, including cultigens, medicines and the rationale use of flora</p>

	and fauna ; human remains ; immovable cultural burials ; and documentation of indigenous people's heritage on film, photographs, videotape or audiotape. »
UNHCHR	<p>English version Annex 1 to document E/CN.4/Sub.2/2000/26 (report of the seminar on the draft principles and guidelines for the protection of the heritage of indigenous people)</p> <p>Principles and guidelines for the protection of the heritage of indigenous people</p> <p>Guidelines</p> <p><i>Definitions</i></p> <p>12. The heritage of indigenous peoples has a collective character and is comprised of all objects, sites and knowledge including languages, the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory of traditional natural use. The heritage of indigenous peoples also includes objects, sites, knowledge and literary or artistic creation of that people which may be created or rediscovered in the future based upon their heritage.</p> <p>13. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies, symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity-related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immovable cultural property such as sacred sites of cultural, natural and historical significance and burials.</p> <p>14. Every element of an indigenous peoples' heritage has owners, which may be the whole people, a particular family or clan, an association or community, or individuals, who have been specially taught or initiated to be such custodians. The owners of heritage must be determined in accordance with indigenous peoples' own customs, laws and practices.</p> <p>Version française Annexe 1 au document E/CN.4/Sub.2/2000/26 (rapport du Séminaire sur le projet de principes et directives pour la protection du patrimoine des peuples autochtones)</p> <p>Principes et directives pour la protection du patrimoine des peuples autochtones</p> <p>Directives</p> <p><i>Définitions</i></p> <p>12. Le patrimoine des peuples autochtones revêt un caractère collectif et se compose de tous les objets, sites et connaissances, y compris les langues, dont la nature ou l'utilisation a été transmise de génération en génération et qui sont considérés comme appartenant à un peuple particulier ou à son territoire d'utilisation normale traditionnelle. Le patrimoine d'un peuple autochtone comprend aussi les objets, les sites, les connaissances et les créations littéraires ou artistiques susceptibles d'être générées ou redécouvertes à l'avenir à partir de son patrimoine.</p>

	<p>13. Le patrimoine des peuples autochtones comprend tous les biens culturels meubles tels que définis par les conventions pertinentes de l'UNESCO; toutes les formes de création littéraire et artistique telles que la musique, la danse, les chants, les cérémonies, ainsi que les symboles et graphismes, les narrations et la poésie et toutes les formes de documentation appartenant aux peuples autochtones ou générées par eux; toutes les formes de connaissances scientifiques, agricoles, techniques, médicinales, liées à la diversité biologique et écologique, y compris les innovations fondées sur ces connaissances, les cultigènes, les remèdes, les médicaments et l'utilisation de la flore et de la faune; les restes humains; les biens culturels immeubles tels que les sites sacrés revêtant une importance culturelle, liée à la nature et historique, et les lieux de sépulture.</p> <p>14. Chaque élément du patrimoine des peuples autochtones a des propriétaires : soit l'ensemble du peuple, soit une famille ou un clan donné, soit une association ou une communauté, soit des individus spécialement formés ou initiés pour en être les gardiens. Les propriétaires du patrimoine doivent être déterminés conformément aux coutumes, lois et pratiques des peuples autochtones.</p>
<p>International Labour Office (ILO) Organisation internationale du travail (OIT)</p>	<p><i>Gives references to articles of the Convention n° 169 referring to the protection of the rights of indigenous and tribal peoples.</i></p> <p>Although Convention n° 169 does cover a wide range of issues that are of primary importance to indigenous and tribal peoples, it does not contain precise definitions. The Convention does address the cultures, traditions and institutions of indigenous and tribal peoples in a number of its articles, taking into account the broader context in which these exist. To the extent that traditional knowledge, folklore, and oral and cultural heritage constitute elements of these cultures, traditions and institutions, they are covered by these provisions. Those of particular relevance are outlined below.</p> <p>The Convention adopts an holistic approach to the protection of the rights of indigenous and tribal peoples, stipulating that in applying the provisions of the Convention, due account must be taken of their cultures, traditions, institutions and their social and cultural identities. This a theme that is reflected in several articles of the Convention. In this respect, article 4.1 reads as follows : « Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned ».</p> <p>With regard to the protection of traditional knowledge through customary law and practice, article 8 states that indigenous and tribal peoples have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights enshrined by the national legal system, and with internationally recognized human rights.</p> <p>The Convention also highlights the importance of addressing the special educational needs of indigenous and tribal peoples as an important medium through which traditional knowledge and culture, including folklore and oral heritage, may be passed from generation to generation. In this respect article 27.1 of the Convention provides that education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. In addition, article 27 also recognises the right of indigenous and tribal peoples to establish their own educational institutions and facilities, provided that these meet with minimum standards established by the competent authority, and in consultation with these peoples. Article 28 highlights the importance of indigenous and tribal children being taught in their own indigenous language, or in the language most commonly used by the group to which they belong.</p>

	<p>Another aspect of traditional knowledge that is addressed by the Convention relates to health care. In this respect, the Convention maintains the importance of traditional systems of health care, asserting that in the planning and administration of health services, and in co-operation with the peoples concerned, their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.</p>
<p>World Trade Organization (WTO) Organisation mondiale du commerce (OMC)</p>	<p><i>Abstract from the letter (21.2.01) :</i> The TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement, which is part of the Agreement establishing the World Trade Organization, incorporates some international treaties, in particular the Berne Convention for the Protection of Literary and Artistic Works, administered by the World Intellectual Property Organization. The TRIPs Agreement itself does not deal with the definitions of the concepts [...]. The body responsible for the TRIPs Agreement, the TRIPs Council, is currently discussing the reviews of articles 27.3(b) and 71.1. In the context of the review under article 27.3(b) (exclusion of certain plant and animal inventions from patentability), some delegations have raised the issue of the protection of « traditional knowledge ». In the discussions, questions were raised concerning the clarification of the concept of « traditional knowledge » and of its ownership. However, the TRIPs Council has not addressed the issue of definitions specifically and has not an agreed mandate to work on them.</p>
<p>World Health Organization (WHO) Organisation mondiale de la santé (OMS)</p>	<p><i>Abstract from the General Guidelines for methodologies on research and evaluation of traditional medicine :</i> « Traditional medication involves the use of herbal medicines, animal parts and minerals. As herbal medicines are the most widely used of the three, and as the other types of materials involve other complex factors, the guidelines presented concentrate on herbal medicines. Certain definitions in the field of herbal medicines have been presented in other WHO guidelines: <i>Guidelines for the assessment of herbal medicines</i> and <i>Research guidelines for evaluating the safety and efficacy of herbal medicines</i>. In order to make WHO definitions consistent, certain terms have now been redefined. Furthermore, the following definitions have been developed in order to meet the demand for the establishment of standard, internationally accepted definitions to be used in the evaluation and research of herbal medicines. These definitions may differ from those in regulations in countries where traditional medicine is used. Therefore, these definitions are for reference only: Herbs: Herbs include crude plant material such as leaves, flowers, fruit, seed, stems, wood, bark, roots, rhizomes or other plant parts, which may be entire, fragmented or powdered. Herbal materials: Herbal materials include, in addition to herbs, fresh juices, gums, fixed oils, essential oils, resins and dry powders of herbs. In some countries, these materials may be processed by various local procedures, such as steaming, roasting, or stir-baking with honey, alcoholic beverages or other materials. Herbal preparations: Herbal preparations are the basis for finished herbal products and may include comminuted or powdered herbal materials, or extracts, tinctures and fatty oils of herbal materials. They are produced by extraction, fractionation, purification, concentration, or other physical or biological processes. They also include preparations made by steeping or heating herbal materials in alcoholic beverages and/or honey, or in other materials.</p>

	<p>Finished herbal products: Finished herbal products consist of herbal preparations made from one or more herbs. If more than one herb is used, the term mixture herbal product can also be used. Finished herbal products and mixture herbal products may contain excipients in addition to the active ingredients. However, finished products or mixture products to which chemically defined active substances have been added, including synthetic compounds and/or isolated constituents from herbal materials, are not considered to be herbal.</p> <p>Traditional use of herbal medicines: Herbal medicines include herbs, herbal medicines, herbal preparations and finished herbal products, that contain as active ingredients parts of plants, or other plant materials, or combinations. Traditional use of herbal medicines refers to the long historical use of these medicines. Their use is well established and widely acknowledged to be safe and effective, and may be accepted by national authorities.</p> <p>Therapeutic activity: Therapeutic activity refers to the successful prevention, diagnosis and treatment of physical and mental illnesses; improvement of symptoms of illnesses; as well as beneficial alteration or regulation of the physical and mental status of the body.</p> <p>Active ingredients: Active ingredients refer to ingredients of herbal medicines with therapeutic activity. In herbal medicines where the active ingredients have been identified, the preparation of these medicines should be standardized to contain a defined amount of the active ingredients, if adequate analytical methods are available. In cases where it is not possible to identify the active ingredients, the whole herbal medicine may be considered as one active ingredient.</p>
<p>World Intellectual Property Organization (WIPO) Organisation mondiale de la propriété intellectuelle (OMPI)</p>	<p>Abstract from the reply (attached): The working definitions presently being used by WIPO derive from the information obtained during the fact-finding missions (FFM's), as well as the results of other WIPO activities in this field, such as the Roundtables on Intellectual Property and Traditional Knowledge held in 1998 and 1999.</p> <p style="padding-left: 40px;">Before listing the working definitions, a few preliminary comments are necessary:</p> <ol style="list-style-type: none"> 1. Within any discussion, the importance of establishing a common framework of understanding is vital for productive dialogue. One of the complicating factors in any discussion of appropriate terminology in relation to TK, is perhaps not the lack of terminology, but rather the diverse meanings and connotations associated with the existing terminology. As traditional knowledge and folklore receive increased attention in numerous policy forums and debates, ranging from food and agriculture, the environment, health, human rights, and cultural policies, to trade and economic development, various related, and in some cases overlapping, terms are used in each of these forums and debates. In addition, as was found on the FFM's, many of the words used to describe issues in this field have different meanings in different countries and regions and in different languages; 2. We also learned from the FFM's that the context in which TK is generated and preserved is important to its meaning. Therefore, any description or definition of TK must reflect the internal cultural cognitive categories of the particular community and must necessarily be developed on a case by case basis. It would be incorrect to assume that all indigenous communities are homogenous. Only the most general definitions can be formulated. In addition, WIPO acknowledges the right of indigenous groups, local communities and other TK holders, to decide what constitutes their own

knowledge, innovation, cultures and practices, and the ways in which they should be defined;

3. A related, but equally important, point relating to the selection of appropriate terms to describe the subject matter, is the selection of terms to describe the holders/custodians of such subject matter. This question is linked in some respects to questions concerning the beneficiaries of the conservation, preservation, dissemination and protection of the subject matter;

4. As mentioned above, the working definitions below are as contained in the draft report on WIPO's fact-finding missions on traditional knowledge conducted in 1998 and 1999. On the basis of comments received during the public commenting period, these working definitions are the subject of further reflection and will undergo some revision.

The working definitions for the terms "expressions of folklore", "heritage", "indigenous", "indigenous knowledge", "traditional knowledge" and "traditional knowledge holder" are set out below:

Expressions of Folklore

WIPO uses the term "expressions of folklore" in the sense in which it is used in the WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Prejudicial Actions, 1982 (the "Model Provisions"). Section 2 of the Model Provisions provides that "expressions of folklore" are understood as productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community in the country or by individuals reflecting the traditional artistic expectations of such a community.

Only "artistic" heritage is covered by the Model Provisions. This means that, among other things, traditional beliefs, scientific views (e.g. traditional cosmogony) or merely practical traditions as such, separated from possible traditional artistic forms of their expression, do not fall within the scope of the proposed definition of "expressions of folklore." On the other hand, "artistic" heritage is understood in the widest sense of the term and covers any traditional heritage appealing to our aesthetic sense. Verbal expressions, musical expressions, expressions by action and tangible expressions may all consist of characteristic elements of the traditional artistic heritage and qualify as protected expressions of folklore.

The Model Provisions also offer an illustrative enumeration of the most typical kinds of expressions of folklore. They are subdivided into four groups according to the forms of the "expressions," namely expressions by words ("verbal"), expressions by musical sounds ("musical"), expressions "by action" (of the human body) and expressions incorporated in a material object ("tangible expressions"). The first three kinds of expressions need not be "reduced to material form," that is to say, the words need not be written down, the music need not exist in musical notation and the dance need not exist in choreographic notation. On the other hand, tangible expressions by definition are incorporated in a permanent material, such as stone, wood, textile, gold, etc. The Model Provisions also give examples of each of the four forms of expressions. They are, in the first case, "folk tales, folk poetry and riddles," in the second case, "folk songs and instrumental music," in the third case, "folk dances, plays and artistic forms of rituals," and in the fourth case, "drawings, paintings, carvings, sculptures, pottery, terra-cotta, mosaic, woodwork, metalware, jewelry, basket weaving, needlework, textiles, carpets, costumes; musical instruments; architectural forms."

WIPO is aware that the term "folklore" is believed to have a pejorative meaning by many commentators. As this is,

however, the term that has been used at the international level for many years, WIPO has retained it for the present.

Heritage

The term “heritage” appears within the context, of for example, the “heritage of indigenous peoples”. WIPO understands “heritage of indigenous peoples” (and other peoples) to refer broadly to the items described in paragraphs 11 and 12 of the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People, 1995, elaborated by the Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Dr. Erica Irene Daes. This document is currently under revision. However, paragraph 12 currently provides that:

“The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic works such as music, dance, song, ceremonies, symbols and designs, narratives and poetry; all kinds of scientific, agricultural, technical and ecological knowledge, including cultivars, medicines and the rational use of flora and fauna; human remains; immovable cultural property such as sacred sites, sites of historical significance, and burials; and documentation of indigenous peoples’ heritage on film, photographs, videotape or audiotape.”

Indigenous

The description of the concept “indigenous” in the Study of the Problem of Discrimination Against Indigenous Populationsⁱ, prepared by Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. J. Martínez Cobo, is regarded as an acceptable working definition by many indigenous peoples and their representative organizations. The Study understands indigenous communities, peoples and nations as *“those which, having a historical continuity with ‘pre-invasion’ and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those countries, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identities, as the basis of their continued existence as peoples, in accordance with their own cultural pattern, social institutions and legal systems”*.

WIPO uses the term “indigenous” communities, peoples and nations in the sense as so described.

Indigenous Knowledge

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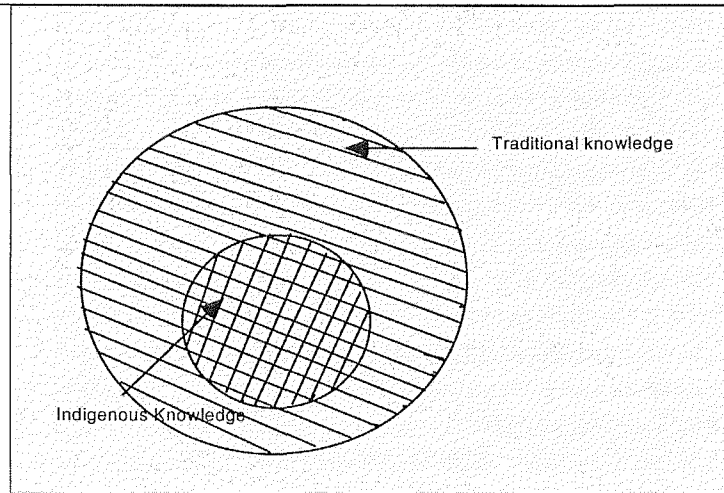


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ⁱ E/CN.4/Sub.2/1986/7 and Add. 1-4

ⁱⁱ J. Mugabe, “Intellectual Property Protection and Traditional Knowledge”, *Intellectual Property and Human Rights* (WIPO, 1999), p. 97 at pp. 98-99

Intellectual Property and Traditional Knowledge and Expressions of Folklore: Terminological and Definitional Issues

Contribution by the World Intellectual Property Organization (WIPO).

I. Introduction

During 1998 and 1999, WIPO conducted nine fact-finding missions (FFM's) to identify, as far as possible, the intellectual property needs and expectations of the holders of traditional knowledge (TK). WIPO undertook the FFM's as part of an explorative study of current approaches to, and future possibilities for, the protection of the intellectual property rights of TK holders. During these missions, WIPO staff visited 28 countries, developing and developed, and consulted with a broad range of stakeholders, including indigenous peoples, local communities, non-governmental organizations, governments, research institutions, academics and private sector representatives. The information compiled from these missions, and conclusions based thereon, were published by WIPO for public comment in July, 2000. The commenting period has now closed, and a revised Report will be published as soon as possible. The draft Report is available on WIPO's website at <http://www.wipo.int/traditionalknowledge/report/contents.html>.

As the draft Report notes, one of the needs and expectations of TK holders identified by WIPO during the FFM's relates to certain terminological and definitional questions. More specifically, many of the stakeholders consulted during the FFM's expressed the need for the selection of an appropriate term or terms to describe the subject matter for which protection is sought. Similarly, many persons expressed the need for a clear definition or description of what is meant (and not meant) for intellectual property purposes by the term or terms so selected.

The need for clarity on relevant terms and concepts has also been raised by Member States and participants in other WIPO activities relating to intellectual property and access to and benefit-sharing in genetic resources, TK and expressions of folklore. These activities include a WIPO meeting on Intellectual Property and Genetic Resources (April, 2000), and a WIPO Inter-Regional Meeting on Intellectual Property and Traditional Knowledge, held in Thailand, from November 9 to 11, 2000.

At the WIPO General Assembly, Twenty-Sixth (12 Extraordinary) Session held from September 25 to October 3, 2000, the Member States of WIPO approved the establishment of an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The Intergovernmental Committee will constitute a forum in which discussions can proceed among Member States on the three primary themes which they have identified: intellectual property issues that arise in the context of (I) Access to genetic resources and benefit-sharing; (II) Protection of traditional knowledge, whether or not associated with those resources; and (III) The protection of expressions of folklore. One of the issues which the Committee may

address relates to the selection of appropriate terms to describe the subject matter for which protection is sought, and the need for a clear definition or description of what is meant (and not meant) for intellectual property purposes by the selected terms. The first session of the Intergovernmental Committee will take place, in Geneva, from April 30 to May 3, 2001. Sessions of the Intergovernmental Committee are open to all Member States of WIPO, and relevant intergovernmental organizations and accredited international and regional non-governmental organizations are invited to participate in an observer capacity.

II. Working Definitions

As mentioned above, the working definitions presently being used by WIPO derive from the information obtained during the FFM's, as well as the results of other WIPO activities in this field, such as the Roundtables on Intellectual Property and Traditional Knowledge held in 1998 and 1999.

Before listing the working definitions, a few preliminary comments are necessary:

1. Within any discussion, the importance of establishing a common framework of understanding is vital for productive dialogue. One of the complicating factors in any discussion of appropriate terminology in relation to TK, is perhaps not the lack of terminology, but rather the diverse meanings and connotations associated with the existing terminology. As traditional knowledge and folklore receive increased attention in numerous policy forums and debates, ranging from food and agriculture, the environment, health, human rights, and cultural policies, to trade and economic development, various related, and in some cases overlapping, terms are used in each of these forums and debates. In addition, as was found on the FFM's, many of the words used to describe issues in this field have different meanings in different countries and regions and in different languages;
2. We also learned from the FFM's that the context in which TK is generated and preserved is important to its meaning. Therefore, any description or definition of TK must reflect the internal cultural cognitive categories of the particular community and must necessarily be developed on a case by case basis. It would be incorrect to assume that all indigenous communities are homogenous. Only the most general definitions can be formulated. In addition, WIPO acknowledges the right of indigenous groups, local communities and other TK holders, to decide what constitutes their own knowledge, innovation, cultures and practices, and the ways in which they should be defined;
3. A related, but equally important, point relating to the selection of appropriate terms to describe the subject matter, is the selection of terms to describe the holders/custodians of such subject matter. This question is linked in some respects to questions concerning the beneficiaries of the conservation, preservation, dissemination and protection of the subject matter;

4. As mentioned above, the working definitions below are as contained in the draft report on WIPO's fact-finding missions on traditional knowledge conducted in 1998 and 1999. On the basis of comments received during the public commenting period, these working definitions are the subject of further reflection and will undergo some revision.

The working definitions for the terms "expressions of folklore", "heritage", "indigenous", "indigenous knowledge", "traditional knowledge" and "traditional knowledge holder" are set out below:

Expressions of Folklore

WIPO uses the term "expressions of folklore" in the sense in which it is used in the WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Prejudicial Actions, 1982 (the "Model Provisions"). Section 2 of the Model Provisions provides that "expressions of folklore" are understood as productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community in the country or by individuals reflecting the traditional artistic expectations of such a community.

Only "artistic" heritage is covered by the Model Provisions. This means that, among other things, traditional beliefs, scientific views (e.g. traditional cosmogony) or merely practical traditions as such, separated from possible traditional artistic forms of their expression, do not fall within the scope of the proposed definition of "expressions of folklore." On the other hand, "artistic" heritage is understood in the widest sense of the term and covers any traditional heritage appealing to our aesthetic sense. Verbal expressions, musical expressions, expressions by action and tangible expressions may all consist of characteristic elements of the traditional artistic heritage and qualify as protected expressions of folklore.

The Model Provisions also offer an illustrative enumeration of the most typical kinds of expressions of folklore. They are subdivided into four groups according to the forms of the "expressions," namely expressions by words ("verbal"), expressions by musical sounds ("musical"), expressions "by action" (of the human body) and expressions incorporated in a material object ("tangible expressions"). The first three kinds of expressions need not be "reduced to material form," that is to say, the words need not be written down, the music need not exist in musical notation and the dance need not exist in choreographic notation. On the other hand, tangible expressions by definition are incorporated in a permanent material, such as stone, wood, textile, gold, etc. The Model Provisions also give examples of each of the four forms of expressions. They are, in the first case, "folk tales, folk poetry and riddles," in the second case, "folk songs and instrumental music," in the third case, "folk dances, plays and artistic forms of rituals," and in the fourth case, "drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, needlework, textiles, carpets, costumes; musical instruments; architectural forms."

WIPO is aware that the term “folklore” is believed to have a pejorative meaning by many commentators. As this is, however, the term that has been used at the international level for many years, WIPO has retained it for the present.

Heritage

The term “heritage” appears within the context, of for example, the “heritage of indigenous peoples”. WIPO understands “heritage of indigenous peoples” (and other peoples) to refer broadly to the items described in paragraphs 11 and 12 of the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People, 1995, elaborated by the Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Dr. Erica Irene Daes. This document is currently under revision. However, paragraph 12 currently provides that:

“The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic works such as music, dance, song, ceremonies, symbols and designs, narratives and poetry; all kinds of scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the rational use of flora and fauna; human remains; immoveable cultural property such as sacred sites, sites of historical significance, and burials; and documentation of indigenous peoples’ heritage on film, photographs, videotape or audiotape.”

Indigenous

The description of the concept “indigenous” in the Study of the Problem of Discrimination Against Indigenous Populations¹, prepared by Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. J. Martínez Cobo, is regarded as an acceptable working definition by many indigenous peoples and their representative organizations. The Study understands indigenous communities, peoples and nations as *“those which, having a historical continuity with ‘pre-invasion’ and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those countries, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identities, as the basis of their continued existence as peoples, in accordance with their own cultural pattern, social institutions and legal systems”*.

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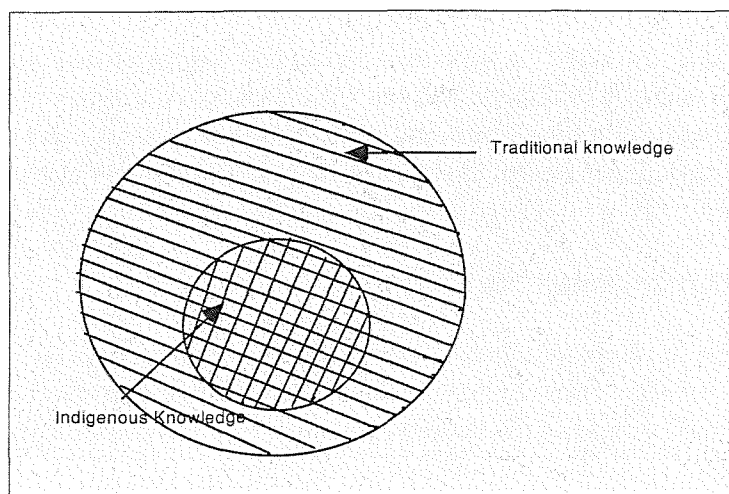


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