UNIT 55

HAND-OUT 7:

Introduction to intellectual property and Intangible Cultural Heritage

This document explains briefly what intellectual property is and how intangible cultural heritage can be protected by the intellectual property system in some cases. It is intended as a tool for those who want to consider the advantages and disadvantages of different kinds of intellectual property protection when safeguarding ICH in the framework of the implementation of UNESCO’s Convention for the Safeguarding of the Intangible Cultural Heritage. Such an analysis can also help to identify situations when other forms of safeguarding might be more appropriate than intellectual property protection.

**What is intellectual property?**

Intellectual property, very broadly, means the legal rights that can be associated with any intellectual activity in the industrial, scientific, literary and artistic fields that has a tangible expression or output. Intellectual property rights can take different forms, for example:

1. Copyright and related rights
2. Patents and confidential information (trade secrets)
3. Industrial designs (sometimes known as ‘design patents’)
4. Trademarks
5. Collective and Certification marks, and
6. Geographical indications

Intellectual property rights are clearly relevant to intangible cultural heritage, because the practice and transmission of ICH is based on intellectual activity (such as ideas, skills, knowledge and know-how) and can result in a tangible output. Intellectual property rights in the tangible outputs or expressions of ICH practice, such as traditional musical performances recorded on video, traditionally-made products, or descriptions of traditional medicines or healing processes, can be protected in some cases. This can help communities to benefit from their ICH, and to safeguard it, and/or to prevent others from misappropriating or misrepresenting it. Intellectual property protection can also be used in a more general way, to control access to and use of documentation about ICH.

In the field of intellectual property being developed within WIPO, the terms ‘traditional knowledge (TK)’ and ‘traditional cultural expressions (TCEs)’ are used rather than the term ‘ICH’. There are a number of nuances and differences between the concepts of traditional knowledge and traditional cultural expressions on the one hand, and ICH on the other (see glossary below for an explanation of these terms and their relationship to ICH). To avoid confusion, this text will use the terms traditional knowledge and traditional cultural expressions where speaking about intellectual property protection relevant to different domains and aspects of ICH under the Convention.

It should be noted that the aims behind identifying and defining traditional cultural expressions or traditional knowledge for intellectual property protection differ somewhat from those behind identifying and defining ICH for safeguarding under the Convention. Intellectual property protection for traditional cultural expressions and traditional knowledge aims at preventing their misuse, helping for example to ensure that the holders of traditional knowledge can control its use or exploitation. ICH safeguarding is aimed at ensuring continued practice and transmission of ICH, thus supporting sustainable development by ensuring that communities concerned benefit from their ICH.

**What laws protect intellectual property rights?**

The aim of intellectual property protection is twofold:

1. to reward creators by giving them a limited monopoly over use of their creations and ensuring they are acknowledged as creators, and
2. to promote creation and innovation so as to contribute to economic and social development in society as a whole.[[1]](#footnote-1)

Intellectual property rights are therefore usually assigned in the first instance to individual creators or companies that own their work. The rights can be sold or reassigned to companies or other individuals. When the time limits expire, the creations ‘fall’ into what is called the ‘public domain’ where they can be freely used, copied and distributed by others.

There is no international instrument (law, agreement, treaty etc.) protecting intellectual property of all kinds in all countries of the world. Countries make their own laws about intellectual property protection at the national level, usually regulating copyright, trademarks, industrial designs, patents and other fields of intellectual property through separate legal frameworks. Intellectual property rights are usually restricted to the countries (and sometimes the region) where they are granted. There are however a number of international instruments[[2]](#footnote-2) that set minimum standards for national laws and regulate some aspects of intellectual property rights protection internationally. Therefore, some intellectual property rights can be protected across international borders, and much conventional intellectual property law is ‘harmonized’ across countries.

**What rights does intellectual property protection confer?**

Just as a house owner has rights over his/her house, a creator or inventor has rights over his/her creations/inventions. However, intellectual property rights work somewhat differently from other kinds of property rights: they are not generally attached to the physical object (the creative expression of the idea) but instead to the intellectual creativity behind it.[[3]](#footnote-3) For example, although artists may sell their products (such as paintings or books), they retain the copyright in those artistic creations (such as the right to sell copies of the artworks to others). Purchasing a product of an invention still under patent protection (such as a new kind of mobile phone) does not give the purchaser the right to manufacture those products and re-sell them. The rights given to creators under conventional intellectual property regimes are usually limited in time and scope.

Different kinds of rights, and conditions for conferring them, are available for different kinds of creative outputs, see the table below.

| **Tangible output / expression of creativity** | **Intellectual property rights** |
| --- | --- |
| Literary, artistic and scientific works (e.g. books, films, paintings) | Copyrights |
| Performances of performing artists, phonograms (e.g. a recording of a song on CD) and broadcasts  | Related rights (under copyrights) |
| Inventions (e.g. a medical remedy) | Patents |
| External appearance of functional articles (e.g. design of a chair) | Industrial designs |
| Signs or symbols indicating commercial source or origin (e.g. ‘coca-cola’) | Trademarks |
| Signs or symbols indicating geographical origin (e.g. ‘feta’ cheese) | Geographical indications (appellations of origin) |

When intellectual property rights are infringed (for example when a third party publishes a book, works a patent or uses a trademark without having the right to do so), the rights owner can take legal action against the infringers (for example by taking them to court). This is called enforcement of intellectual property rights. A successful action in court can result in the infringers having to stop the infringement, or to pay damages (compensation).

**copyright and related rights[[4]](#footnote-4)**

Copyright covers a wide range of works including artistic works, photographs, films, and music. To be protected by copyright, these creative works cannot just be ideas – they have to be expressions of those ideas, recorded on audiotape, paper or some other fixed format. These creative works also have to be original. Copyright gives creators of original literary, artistic and scientific works the right to control or prevent the use of the work by others (including the public display, copying, distribution, translation and adaptation of the work).

Copyright covers individual works that are never published as well as works created for mass communication. No registration is required to get copyright over one’s works, although in some countries registration is required in order to get damages from infringement (unauthorized use of the work). Copyright lasts from the time of creation up to a minimum of 50 years after the author’s death. Because of various international agreements, countries generally give the same copyright protection to works that are created in their own and other countries.

Under copyright, the ‘moral rights’ of authors are also protected to some extent. The Berne Convention requires member countries to grant to authors both the right to claim authorship of the work and the right to object to any modification of, or other derogatory action in relation to, the work that would be prejudicial to the author’s honour or reputation.[[5]](#footnote-5)

Contemporary original adaptations of traditional cultural expressions, whether made by members of the communities concerned or by third parties, may be protected by copyright law. This might include new narrative scenarios in a traditional storytelling format, composite works (for example, a collection of fairy tales) and derivative works (such as variations on folk songs).

Those who assist intellectual creators to communicate their message and to disseminate their works to the public, such as performing artists, audio-visual producers and broadcasting organizations, can claim neighbouring or related rights. Performances of traditional music may in this way be protected by copyright law. The WIPO Performances and Phonograms Treaty, 1996, and the Beijing Treaty on Audiovisual Performances (2012) grant ‘performers of folklore’ the right to authorize recordings of their performances, and the right to authorize certain dealings in those recordings. Article 15.4 of the Berne Convention for the Protection of Literary and Artistic Works (1886) provides a mechanism for the international protection of unpublished and anonymous works, including traditional cultural expressions.[[6]](#footnote-6)

Those who document cultural practices (for example through audio-visual or documentary means) hold the copyright over the documentation, unless they have assigned it to someone else, and can thereby control its distribution and use.

##### patents[[7]](#footnote-7)

Patents confer intellectual property rights in an invention in any field of technology. An invention is usually defined as a new and non-obvious solution that is industrially applicable to address a specific problem. Non-obviousness (also referred to as ‘inventive step’), means that the invention would have not been obvious to a person having ordinary skill in the art.

A patent is an official (government-issued) document giving an inventor (or his/her successor in title) the right to prevent unauthorized exploitation (e.g. manufacture, use, sale, importation) by others of his/her invention. The protection conferred by the patent is limited in time (generally 20 years), and only relates to a specific country or region. Usually, patents need to be applied for in all countries where the patentee wishes to market their invention (this can be a product or a process), or wishes to prevent others marketing it.

Patents can only be granted in respect to inventions whose subject matter is new, i.e. is not already disclosed, or made public either by written or oral means, or through use in public. In most countries, patents are only granted if the invention has never been disclosed or used anywhere else in the world. ‘Disclosure’ has quite a broad meaning in this context, and in most jurisdictions involves sharing the information with any other person who is free to disclose the subject matter to others. Patents cannot be granted in respect of traditional knowledge that has already been disclosed to the public, for example in academic texts or databases, even if the community in which it originated wishes it to be secret.

If the traditional knowledge has not already been disclosed, the holders of that knowledge may patent it themselves, but this involves disclosure of the secret traditional knowledge because disclosure is one of the core rationales of the patent system. If the holders do not wish to disclose their secret traditional knowledge since, they can use the law of confidentiality or trade secrets to protect it against disclosure.

The holders of traditional knowledge could also reveal sufficient information to the patent officer in order to show that the invention being claimed in the rival patent application is not new. This does not require the knowledge holders to file their own patent; they simply prevent the other patent being filed: this is called defensive protection.

For example, a patent was granted in the United States for the use of turmeric in wound healing by administering a certain amount of turmeric powder to the wound. The patent applicants acknowledged the known use of turmeric in traditional medicine for the treatment of various sprains and inflammatory conditions. 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. Because this way of assisting wound healing was already described in ancient Sanskrit texts and other documentation, the patent was later challenged and found to be invalid.

##### Industrial Designs

Industrial design law protects the external appearance of independently created functional items that are new or original. ‘New’ generally means that no identical or very similar designs have been made ‘available to the public’ (e.g. sold or displayed) before the registration or priority date. ‘Original’ on the other hand means that the design must be different from known designs or combinations of known design features, although this difference does not have to be substantial. Design rights can in some cases arise automatically on creation; in other cases they require registration. The duration of protection available for design rights amounts to at least 10 years, and confer exclusive rights to the owner of the design to prevent unauthorized third parties from reproducing, selling or importing articles which embody the same or similar design to that of the protected design.

There are many traditional cultural expressions that could be protected by industrial design rights: textiles (such as fabrics, costumes, garments or carpets) and other tangible expressions of culture, such as carvings, sculptures, pottery, woodwork, metalware, jewelry, basket weaving and other forms of handicrafts. For example, in Kazakhstan, industrial design protection has been granted to the outward appearance of the national costume, head dresses (sakyele), carpets (tuskiiz), decorations of saddles, and women’s bracelets (blezik).

##### trademarks[[8]](#footnote-8)

A trademark is any sign (for example a logo, or word) that distinguishes the goods or services of a given enterprise from those of its competitors.[[9]](#footnote-9) Signs can consist of a wide range of expressions, including names, words, numbers, drawings, sounds, colours, three dimensional shapes, and even (in some jurisdictions) smells. Most countries only allow the registration of signs that can be represented graphically. Trademarks can be registered by individuals or companies for a specific country or region, and specific goods and services; they usually have to be renewed every ten years. Most countries require the use of a trademark in the course of trade as a condition of registration. The owner of a trademark can prevent other people using confusingly similar marks for similar goods or services, in that territory, unless they registered (or started using) their own mark first.

Marks are generally denied registration only if ‘they are devoid of any distinctive character’ or if ‘they are contrary to morality or public order and, in particular, of such a nature as to deceive the public’.[[10]](#footnote-10) Non-distinctive marks refused registration include those that simply describe the goods (e.g. ‘apple’ for apples); distinctive marks that can be registered will better indicate the origin of the goods (e.g. ‘apple’ for computers). ‘Deceptive’ marks may be refused registration because they wrongly imply that goods or services originate from a specific group or area, or are made in a specific way, when they are not.

Trademarks can be used to market products based on traditional knowledge and traditional cultural expressions, and to prevent deceptive marketing or the use of terms that are insulting to specific groups of people, or the public in general. In New Zealand, ‘the Trade Marks Act now contains a provision which allows the Commissioner of Trade Marks to refuse to register a trademark if it is considered by the Commissioner that, on reasonable grounds, the use or registration is likely to offend a significant section of the community, including the indigenous people of that country, Maori.’[[11]](#footnote-11)

Article 136(g) of Decision 486 of the Commission of the Andean Community provides that ‘signs, whose use in trade may unduly affect a third party right, may not be registered, in particular when they consist of the name of indigenous, Afro-American or local communities, denominations, words, letters, characters or signs used to distinguish their products, services, or the way in which they are processed, or constitute the expression of their culture or practice, except where the application is filed by the community itself or with its express consent’. Colombia applied this Decision of the Andean Community in refusing the registration of the trademark TAIRONA because it refers to an indigenous culture that inhabited Colombian territory. Only representatives of this culture or persons with the authorization of those representatives would be entitled to request consent to use the expression as a distinctive sign and, in this particular case, as a trademark.[[12]](#footnote-12)

In 1999 ‘the Snuneymuxw First Nation of Canada used the Trademarks Act to protect images of ten petroglyphs (ancient rock paintings). Because the petroglyphs have special religious significance to the members of the First Nation, the unauthorized reproduction and commodification of the images was considered to be contrary to the cultural interests of the community, and the petroglyph images were registered in order to stop the sale of commercial items, such as T-shirts, jewelry and postcards, which bore those images. After this was done, and an education campaign was launched to explain the significance of the petroglyphs to the Snuneymuxw First Nation, local merchants and commercial artisans stopped using the petroglyph images.[[13]](#footnote-13)

##### CERTIFICATION AND COLLECTIVE MARKS

Some legal systems allow for the registration of collective and certification marks; this may be done within the trademark registration system. Collective marks are used to denote the goods or services of a group of people, such as indigenous peoples and local communities. This can be a group with membership rules and limitations on admission. Certification marks are used to denote goods and services that meet specific criteria, such as being made in a specific area using a specific method. Any group whose goods or services comply with the criteria (after an assessment process) can use the mark. A certification mark has to be administered by the owner of the mark (an independent actor that cannot sell the goods and services, but has to assess the compliance of other’s goods and services with the criteria), whereas a collective mark can be administered by the group themselves. Where certification marks use a geographical designation of origin as one of their criteria they are in effect very similar to a geographical indication (see below), but may be administered by different agencies.

The Sámi, who are the indigenous people living within the northern regions of Norway, Sweden, Finland and Russia, registered a SÁMI DUODJI trademark in 1982. The SÁMI DUODJI mark involves a label showing which handicrafts are Sámi-produced products. Entitlement to use the label is limited to Sámi individuals who fulfill certain criteria of community membership. Use of the label has proved useful to ensure that Sámi handicraft products made by Sámi can be distinguished in the marketplace from those made by non-Sámi.[[14]](#footnote-14)

##### geographical indications[[15]](#footnote-15)

Geographical indications are names and symbols that indicate (directly or indirectly) the geographical origin of a given product. One of the most widely known examples is the use of the word ‘champagne’ for sparkling wine produced in a particular part of France (the ‘Champagne’ region) using a specific method. Geographical indications can indicate the origin of goods without literally naming its place of origin (for example, the Eiffel Tower indicates Paris).

There are many different systems for protecting geographical indications, covered by different national laws and international agreements. Usually, these systems differentiate between geographic indications that (a) merely indicate the place of origin of one or more ingredients in the goods (‘indications of source’), or (b) indicate that the qualities of a given product can be ascribed to its geographical origin (‘appellations of origin’). Sometimes geographical indications can only be applied to food products or wines and spirits, but more systems are starting to protect non-agricultural goods as well. Cultural factors (such as the use of traditional methods of processing and production) have become increasingly important in specifications for geographical indications. Geographical indications protect the use of the name or symbol (which can be a traditional name of the product) for the products made using specific criteria for production and origin.

Registering a geographical indication is not like registering a patent – it does not prevent others using the same method of production or the same ingredients, just the same name or symbol to describe the products. Thus if secret methods of production are revealed as part of a geographical indication specification, they can be used by anyone.

Geographical indications differ from trademarks in that the protection given to the use of the name or symbol is usually stronger than for a trademark. Unless cancelled, it lasts in perpetuity without any need for re-registration. Geographical indications are granted not to a group or individual but to any producer that meets the production criteria, in a similar way to a certification mark. And finally, the geographical indication is usually managed and enforced by an official body, although in some legal systems, companies and individuals can also take legal action against infringement of the geographical indication. The registration of a geographical indication can therefore in many cases be a more powerful tool for protecting use of a name than a trademark, and it may be used alongside existing trademarks, but producers have less control over the use and enforcement of geographical indications than trademarks.

There are many examples of registration of words relating to the products of traditional knowledge or traditional cultural expressions as geographical indications. These include:

* TALAVERA DE PUEBLA pottery and OLINALÁ handicrafts from Mexico;
* JABLONEC jewellery, glass and crystal from the Czech Republic;
* MADEIRA embroidery from Portugal;
* KARGOPOL clay toys, and FILIMONOV toys in the Russian Federation;
* MODRANSKÁ MAJOLIKA hand-painted pottery from Modra in Slovakia;
* LAMPHUN BROCADE THAI SILK from Thailand;
* MYSORE silk and BANARAS brocades and sarees in India.

##### Sui generis systemS

Conventional intellectual property law does not generally recognize collective ownership and communal authorship of cultural expressions, and it provides only time-limited protection for many kinds of intellectual property. Modifications to conventional intellectual property law to protect intellectual property rights in traditional knowledge or traditional cultural expressions and codes of ethics or protocols for dealing with ICH and communities concerned can help to address these problems.

Legal systems are sometimes designed specifically (and therefore called ‘sui generis’ systems) to protect communal rights in traditional cultural expressions[[16]](#footnote-16) and traditional knowledge.[[17]](#footnote-17) Legal frameworks protecting such intellectual property rights in traditional knowledge and traditional cultural expressions tend to be quite diverse, and protect different kinds of rights in different ways. In Brazil, for example, the State has passed sui generis legislation that recognizes the right of the indigenous and local communities to decide on the use of their traditional knowledge related to the genetic heritage of the country, to prevent its illicit use and exploitation.[[18]](#footnote-18) This legislation gives indigenous and local communities the right to acknowledgement of the origin of their traditional knowledge, to prevent unauthorized use and dissemination of their traditional knowledge, and to receive economic benefits from its use by third parties.

Regional agreements encourage some countries to adopt national legislation on intellectual property relating to traditional knowledge and traditional cultural expressions.[[19]](#footnote-19)

No international instrument has yet been agreed in regard to intellectual property protection of traditional knowledge and traditional cultural expressions, and no minimum standards have been set. The World Intellectual Property Organization (WIPO)’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore has been working to develop a sui generis framework for Intellectual property rights protection over community-owned aspects of cultural practice since 2001.[[20]](#footnote-20)

Outside of the intellectual property field, other approaches can be used to help ensure that communities benefit from safeguarding their ICH. For example, the Convention for Biological Diversity (CBD) article 8(j) recognizes community rights over their traditional knowledge and the need for them to enjoy benefits from its commercial exploitation.[[21]](#footnote-21) The Nagoya Protocol under this Convention sets out guidelines for the fair and equitable sharing of benefits arising out of the utilization of traditional knowledge and genetic resources.[[22]](#footnote-22)

##### glossary[[23]](#footnote-23)

Traditional knowledge (TK) and traditional cultural expressions (TCEs)

In the field of intellectual property being developed within WIPO, the terms ‘traditional knowledge’ and ‘traditional cultural expressions’ are used rather than the term ICH. TK is sometimes used in a general sense (covering both TK and TCEs), and sometimes a distinction is made between TK and TCEs, partly because in conventional intellectual property rights regimes, different kinds of legal protection are available for these different kinds of creative endeavour (e.g. patents for TK, and copyright and design protection for TCEs).[[24]](#footnote-24)

TK in the general sense (i.e. TK and TCEs) is roughly equivalent to the concept of ICH as set out in article 2.1 of the Convention. When the term ‘TK’ is used in the narrower sense, it refers to the ‘knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations’. The Convention introduces five domains of ICH in article 2.2: two of these, ‘Knowledge about nature and the universe’ and ‘traditional craftsmanship’, correspond to TK in the narrow sense.

TCEs refer to ‘tangible and intangible forms in which traditional knowledge and cultures are expressed, communicated or manifested’, including ‘traditional music, performances, narratives, names and symbols, designs and architectural forms’.[[25]](#footnote-25) TCEs are roughly equivalent to expressions (tangible manifestations) emerging from the other domains of ICH mentioned in article 2.2, such as oral, performing arts, social practices, rituals and festive events.

Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

Geographical indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

Industrial design

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Patent

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how – or whether – the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.

Trademark

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises.

Positive protection of TK/TCEs

Positive protection grants intellectual property rights in the TK and TCEs. These rights may be used to prevent unauthorized or inappropriate uses by third parties. It may also enable active exploitation of TK and TCEs by the originating community itself, for example to build up its own handicraft enterprises.

Defensive protection of TK/TCEs

Defensive protection does not grant intellectual property rights over the subject matter of TK and TCEs but aims to stop such rights from being acquired by third parties. Defensive strategies include the use of documented TK to preclude or invalidate patents that illegitimately claim pre-existing TK as inventions.

Public domain and publicly available

Broadly speaking, a work is considered to be in the public domain if there is no legal restriction on its use by the public. ‘Publicly available’ does not necessarily mean ‘in the public domain’. Material in the public domain is freely available for use without charge. Material that is ‘publicly available’ may be available only on agreed terms that could include payment for access. It is often assumed that ‘publicly available’ traditional knowledge that has been accessed and disseminated is in the public domain and hence freely available. But this may not be the case. The use of ‘publicly available’ traditional knowledge may still require prior informed consent from the holders as well as agreement on benefit-sharing provisions.

##### Further information

* Terri Janke, Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions: <http://www.wipo.int/edocs/pubdocs/en/tk/781/wipo_pub_781.pdf>
* WIPO, Traditional Knowledge and Intellectual Property (also in Arabic, Chinese, French, Russian, and Spanish): <http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief1.pdf>
* WIPO, Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (also in Arabic, Chinese, French, Russian, and Spanish): <http://www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf>
* WIPO Intellectual Property Handbook <http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf>
* WIPO, Customary Law and Traditional Knowledge (also in Arabic, Chinese, French, Russian, and Spanish): <http://www.wipo.int/export/sites/www/tk/en/resources/pdf/tk_brief7.pdf>
* WIPO, Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition (also in Russian)
* <http://www.wipo.int/export/sites/www/dcea/en/pdf/tk_guide_e.pdf>
1. . WIPO Intellectual Property Handbook, p.3 [↑](#footnote-ref-1)
2. . Key international instruments in intellectual property include the Paris and Berne Conventions and the Hague and Lisbon Agreements (administered by WIPO) and the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement (administered by the World Trade Organization, WTO). [↑](#footnote-ref-2)
3. . WIPO Intellectual Property Handbook, p.3. [↑](#footnote-ref-3)
4. . International agreements relating specifically to copyright include the Berne Convention for the Protection of Literary and Artistic Works, and the WIPO Performance and Phonograms Treaty (WPPT); the UNESCO Universal Copyright Convention has become redundant. [↑](#footnote-ref-4)
5. . WIPO Intellectual Property Handbook, p.46. [↑](#footnote-ref-5)
6. . WIPO, Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions – An Overview, p. 31-32. [↑](#footnote-ref-6)
7. . International agreements relating specifically to patents include the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT) and the Patent Law Treaty (PLT). [↑](#footnote-ref-7)
8. . International agreements relating specifically to trademarks include the Paris Convention for the Protection of Industrial Property. [↑](#footnote-ref-8)
9. . In some cases, trademarks for services are known as ‘service marks’. [↑](#footnote-ref-9)
10. . WIPO Intellectual Property Handbook, p.71. [↑](#footnote-ref-10)
11. . <http://www.wipo.int/edocs/pubdocs/en/tk/785/wipo_pub_785.pdf>, p.47. [↑](#footnote-ref-11)
12. . <http://www.wipo.int/edocs/pubdocs/en/tk/785/wipo_pub_785.pdf>, p.46 [↑](#footnote-ref-12)
13. . <http://www.wipo.int/edocs/pubdocs/en/tk/785/wipo_pub_785.pdf>, pp.47-48. [↑](#footnote-ref-13)
14. . See WIPO Intellectual Property Handbook, pp.31-32. [↑](#footnote-ref-14)
15. . International agreements relating specifically to geographical indications are not yet well developed, but see Articles 22-24 of the TRIPs Agreement (although no enforcement is required from signatories), and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (signed by less than 30 countries so far). [↑](#footnote-ref-15)
16. . <http://www.wipo.int/wipolex/en/results.jsp?countries=&cat_id=16> [↑](#footnote-ref-16)
17. . <http://www.wipo.int/wipolex/en/results.jsp?countries=&cat_id=18> [↑](#footnote-ref-17)
18. . Provisional Act No. 2186-16, August 23, 2001, Brazil. [↑](#footnote-ref-18)
19. . For example, the Pacific Model Law for the Protection of Traditional Knowledge and Expressions of Culture [http://www.forumsec.org.fj/resources/uploads/attachments/documents/PacificModelLaw,ProtectionofTKandExprssnsofCulture20021.pdf](http://www.forumsec.org.fj/resources/uploads/attachments/documents/PacificModelLaw%2CProtectionofTKandExprssnsofCulture20021.pdf) [↑](#footnote-ref-19)
20. . The draft of the negotiated texts is available at http://www.wipo.int/tk/en/igc/draft\_provisions.html. [↑](#footnote-ref-20)
21. . The Convention for Biological Diversity (CBD), article 8(j), <http://www.cbd.int/traditional/> [↑](#footnote-ref-21)
22. . The Nagoya Protocol, <http://www.cbd.int/abs/text/default.shtml> [↑](#footnote-ref-22)
23. . <http://www.wipo.int/about-ip/en/index.html#ip> and WIPO, Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions/Folklore: A Guide for Countries in Transition

 <http://www.wipo.int/export/sites/www/dcea/en/pdf/tk_guide_e.pdf> [↑](#footnote-ref-23)
24. . The domains of ICH in article 2.1 of the Convention also distinguish to some degree between ‘oral expressions’ and other ‘expressive’ domains which could be described as TCEs, and ‘traditional knowledge associated with nature and the universe’, which could be described as TK. [↑](#footnote-ref-24)
25. . WIPO Glossary <http://www.wipo.int/tk/en/resources/glossary.html#49> [↑](#footnote-ref-25)