

Documenting and Disseminating Traditional Knowledge and Cultural Expressions in Brazil

Prepared for the
World Intellectual Property Organization (WIPO)

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Executive Summary

This survey focuses on the codes, guidelines and practices regarding intellectual property (IP) issues relevant to registers of intangible cultural heritage (ICH) in Brazil. Being one in a series commissioned by the World Intellectual Property Organization (WIPO) under the Creative Heritage Project, it aims to provide a practical complement to the ongoing discussion of *sui generis* measures for the protection of “traditional cultural expressions” (TCEs) and “traditional knowledge” (TK) in the international sphere.

The survey relies on the assumption that registers produced by researchers, filmmakers and institutional officers tend to focus on cultural items that are valued by cultural communities as particularly strong expressions of their identities, carrying communally-produced information, know-how and beliefs. The production of such documents and their dissemination affect the bearers of ICH in several ways.

In the first place, documentation - like any social practice - belongs to a specific cultural universe and is guided by beliefs, codes and values that are not necessarily shared by the communities whose heritage it portrays. Thus, institutional documentation consists of culturally foreign interpretations of tradition, adding symbolic and exchange value to their objects, i.e., current knowledge and social practices. This added value, designated here as *heritage value*, may be in conflict with the world views of the cultural communities concerned. Furthermore, the dissemination of pictures, movies, sound recordings, etc., discloses to the general public the cultural realities embedded in them. This affects the effectiveness of the control exerted by cultural bearers on the degree of publicity that they deem appropriate for specific aspects of their own social practices and cosmology.

Consequently, the understanding of the problems raised by the making and implementation of codes and guidelines for the production and dissemination of TK and TCEs depends on the identification of the specific social arenas in which IP issues and negotiations arise. Local communities often have their own procedures to regulate the creation, development, transmission and dissemination of cultural practices and knowledge that operate on a local level. However, the ethical, political and legal parameters that usually govern decision-making processes limit the efficiency of the customary regulatory processes. The empowerment of traditional communities in the multicultural arenas where IP issues arise, both nationally and internationally, is an urgent need, and the safeguarding of TK and TCEs as ICH may be a powerful instrument to attain this.

This survey is made up of two volumes. In Volume I, the challenges of establishing a difficult but necessary intercultural dialogue in the production, documentation and dissemination of TK and TCEs, and related IP codes and guidelines, are presented and empirically illustrated.

Volume II is a collection of legal provisions, institutional codes and guidelines that regulate nationally the safeguarding of cultural heritage and the protection of IP rights, especially those concerning traditional communities. It also includes the relevant international conventions ratified by Brazil to this date.

Volume I contains the analytical core of the survey and the results of the consultations with the most relevant institutions of the IP and ICH national arenas. Chapter 1 addresses the methodological issues involved in the construction of the empirical object of the survey. Chapter 2 looks at the flipside of the coin, so to say, by presenting the problem from the perspective of an indigenous people, the Wajãpi of the Brazil-French Guiana border. The example drawn from their experience provides empirical evidence that (1) representations, values and procedures that operate on a local level usually regulate the creation, development, transmission and dissemination of cultural practices and knowledge; (2) indigenous notions that are central to IP disputes have no equivalent and are very seldom translatable under the Western legal tradition, (3) the way in which the Wajãpi and most traditional communities participate in more inclusive political and economic spheres limits the efficiency of existing customary regulatory mechanisms, often producing disruptive reflexive effects.

The Brazilian agencies consulted by the research team are grouped into five clusters, designated as: 1. Cultural heritage and IP rights management institutions; 2. Public collections; 3. Heritage holders and support organizations, 4. Traders, and 5. Media producers. The institutions belonging to the first group constitute the system that provides the legal and administrative framework and were all consulted. As to the other four categories, given their large number and the practical limits of this survey, representative samples were constructed so as to offer a draft picture of the amplitude and complexity of the subject in the case of Brazil.

A significant number of institutions made suggestions to WIPO. These are summarized in the last part of Volume I. One common idea is that any further action should aim to guarantee the cultural communities' control over the safeguarding and dissemination of their own TK and TCEs. Consultation and in-depth discussion based on specific cases are seen as urgent and strongly needed for the adequate planning of the actions that could lead to that objective. Furthermore, capacity-building and awareness-raising on IP rights is seen by many as priorities.

It is argued that the principal contribution that an entity such as WIPO could make to the consolidation of suitable legal and cultural mediation would be to strengthen the recognition of the irreducible nature of the traditional cultural realities to the institutions

and norms of the world system. The thorough recognition of this right to difference would pave the way for the construction of mutual understanding.

Upon adopting the premise that each case must be resolved in its particularity, it becomes necessary to formulate a code of ethics that provides parameters for negotiations and solution for conflicts. The promotion of successful projects, as well as the denunciation of anti-ethical practices can stimulate the creation of useful international parameters for institutions and researchers from different countries and help the keepers of TCEs and TK defend their IP rights.