



# Intellectual Property and Folk, Arts and Cultural Festivals

Practical Guide



**WIPO**

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Practical Guide



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## Preface

This Guide is produced by the World Intellectual Property Organization (WIPO), a United Nations specialized agency dedicated to the promotion of innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property (IP) system.

WIPO is working with those involved in the organization of cultural events, notably folk, arts and cultural festivals, to develop and apply appropriate strategies to deal with the various IP issues that can arise before, during and after those events.

The program of WIPO's Traditional Knowledge Division addresses the protection of the traditional knowledge (TK) and traditional cultural expressions (TCEs) of indigenous peoples and local communities, which are frequently displayed, represented and shared at festivals around the globe.

For further information about IP in relation to traditional knowledge and traditional cultural expressions, see *[www.wipo.int/tk](http://www.wipo.int/tk)*.

WIPO's Traditional Knowledge Division may be contacted at *[grtkf@wipo.int](mailto:grtkf@wipo.int)*.



## *About this Guide*

Effective IP management is an important consideration for folk, arts and cultural festival organizers who wish to safeguard and promote their own IP interests and those of festival participants.

This Guide provides general information about IP and cultural interests. It identifies the main IP challenges faced by festival organizers and outlines some practical elements of an effective IP management strategy, following a step-by-step approach. It offers suggestions on how to harness a festival's IP assets and how best to promote respect for the world's cultures featured at the festival. It includes a glossary and a model checklist.

This Guide was prepared by the World Intellectual Property Organization. It draws partly from the WIPO publication "Intellectual Property and the 11<sup>th</sup> Festival of Pacific Arts, Solomon Islands, 2012" prepared by Terri Janke, and from various other WIPO sources, including the Background Brief "Intellectual Property and Arts Festivals." This Guide has been principally drafted and edited by Ms. Brigitte Vézina. It has benefited from valuable comments made by several WIPO colleagues, as well as from the careful review of three external peer-reviewers, which WIPO gratefully acknowledges: Mr. Jerzy Chmiel, Vice-president, International Council of Organizations of Folklore Festivals and Folk Arts (CIOFF), Mr. Robert Leopold,

Director, Consortium for World Cultures, Smithsonian Institution, and Ms. Tarisi Vunidilo, Secretary-General, Pacific Islands Museums Association.

## *Who is the Guide for?*

This Guide provides advice to people organizing folk, arts and cultural festivals, but can also be of interest to festival participants, performers and exhibitors, as well as festival visitors and the general public.

Festival organizers can be owners as well as users of IP material. They have the responsibility to monitor the use of their own IP assets, but could also play a part in ensuring respect for the IP of festival participants.

## *How should the Guide be used?*

This Guide is meant to be a practical reference to manage the IP issues that arise in the context of folk, arts and cultural festivals. It does not propose "one-size-fits-all" solutions or answer all the potential IP questions that may confront festival organizers. It provides some basic IP information and some simple tips on how to address the most common IP challenges likely to present themselves.

Suggestions for improvement to this Guide are welcome and may be sent to WIPO at [grtkf@wipo.int](mailto:grtkf@wipo.int).

# Background Information

## Introduction: Intellectual Property Issues and Festivals

### The Importance of Folk, Arts and Cultural Festivals

Folk, arts and cultural festivals honor **the world's rich and diverse cultures**, bringing together long-established traditions and modern creativity in the form of dance, music, theater, ceremonies, customs, rituals, film, photography, visual arts, crafts, food preparations, and much else.

**Festival artists, dancers, singers, artisans and creators** come to celebrate artistic and multicultural life, and are the lifeblood of the festival. Their cultural expressions draw public interest and build the festival's reputation. Their songs, chants, dances, stories and handicrafts are also vital to their cultural distinctiveness, and provide economic opportunities for themselves, their families and communities.

**Culturally**, festivals offer a unique snapshot of a community's identity, providing an opportunity to revitalize and preserve cultural practices, and serving as a creative laboratory for contemporary performers.

**Socially**, they are a means of strengthening intercultural dialogue, revitalizing social practices among communities, promoting deeper understanding through shared experience, and the dissemination of a wide range of cultural heritage elements.

**Economically**, they can generate sizeable long-term financial benefits and business and employment opportunities, and can fuel sustainable economic development if managed appropriately.

## An Overview of Potential Intellectual Property Challenges

Festivals involved in the presentation of arts, folklife and culture through a variety of exhibitions, performances, and other demonstrations of cultural practices, may run into challenges of an **intellectual property** (IP) nature.

It is not the intent of this Guide to list all the potential IP issues that are likely to arise in a festival context. Rather, a few **characteristic examples** have been selected to illustrate the kind of questions that festival organizers may have to grapple with.

IP issues can range from the sale of fake festival **merchandise** to the pirating of the festival's official **broadcast** signal, all the way to the offensive copying of sacred symbols or rituals of festival participants, such as the sale of postcards reproducing **photographs** of a sacred dance or the use without permission of a **video clip** of a traditional performance in a tourism promotion campaign. Furthermore, live

performances provide an opportunity for **bootleggers** (people making and distributing illegally recorded performances) associated with pirate networks to record, produce and distribute materials illegally.

While these issues can pose challenges to festival organizers, an early identification of those challenges, and the strategic use of an **assortment of IP tools**, may successfully deploy IP protection to advance the goals of the festival organizers, participants and the public.

It is true that the **costs** of administering IP can be considerable, but with basic knowledge of IP, festivals can leverage their assets and in the larger scheme of things, investing in good IP management pays off. What is more, used strategically, IP can help **generate revenues**, for example, from the sale of broadcasting rights and the conclusion of sponsorship and merchandizing deals.

Festivals are creative enterprises and proper IP management can significantly contribute to their success, both economic and cultural. But in the absence of a **carefully considered IP strategy**, the interests of the festival itself can be undermined by opportunistic businesses that free-ride on the festival's reputation and popularity, sometimes damaging it irrevocably.

## Basic Notions and Important Terms

### What is Intellectual Property?

IP refers to **creations of the mind**, such as stories, music, art, inventions, words and signs, designs and performances. These creations are protected by laws on copyright, patents, trademarks, designs, unfair competition and so on.

An IP right is a **property right**. Just like a car or house owner has rights over that property (he may use, lend, rent, sell the car or house), a creator has rights over his creations (he may make copies, translate, and upload the creation on the Internet, etc.).

IP rights allow creators to benefit from their own creations. IP rights **reward creativity** and human endeavor, which fuel technological innovation and cultural creativity for the benefit and enjoyment of all humankind. IP protection can drive and sustain diverse cultural and customary traditions, and enhance social values.

IP rights are generally provided in the **national legislation** of each country. Usually, international treaties do not themselves grant rights, but ensure that at least a minimum level of harmonized protection is available under national law.

IP rights are often subject to **exceptions** and most IP rights expire after a certain period.



iStockphoto © Orietta Gaspari

People in traditional dress dancing in the streets of the city during the Bajada de la Virgen de las Nieves, Santa Cruz de la Palma, La Palma, Canary Islands, 2010.

## What are Copyright and Related Rights?

Copyright refers to **rights given to creators** in their **original works**. Works covered by copyright can include novels, poems, plays, films, songs, dances, paintings, drawings, photographs, and sculptures, among many more.

### Box 1. Copyright works in a festival context

In a **festival context**, copyright can protect the songs and dances being performed, as well as, in some cases, costumes, stage sets and props, and other artistic material on display, like banners, posters, artwork and crafts. Many festivals print brochures or publish information leaflets that rely on copyright-protected material.

Copyright arises **automatically**, yet some jurisdictions require that a work be “fixed” in a tangible form in order to be protected. For example, in those jurisdictions that require fixation, a dance may not be protected from the moment that it performed; it must be “fixed,” i.e. somehow recorded or noted down in choreographic notation. Protection is not dependent on registration or use of the © symbol, which may however be useful to alert the public that the material is protected and helps discourage illegal uses.

As a form of *intellectual* property, **copyright is different from physical property**: when an artist sells one of her original paintings, she may relinquish physical property of the painting, but save any agreement to the contrary, she keeps the copyright in the painting. Put differently, copyright in a work generally

remains with the creator unless she expressly assigns it by a written agreement to the buyer of the physical property. In any event, it is always advisable to check the law of the country where the transaction occurs.

### *What Rights does Copyright Provide?*

Copyright law offers a **bundle of exclusive rights** to creators. When a work is protected, no one can, for example, reproduce, distribute, publish or perform it in public, communicate it to the public, broadcast it on radio or television, or make it available on the Internet without the right owner's permission. Rights owners alone can carry out or authorize such acts.

Artists, creators and performers make a living from their works and performances. By permitting others to make certain uses of their works, artists and creators can **monetize their copyright** through contracts, namely assignments and licenses.

In certain specific cases defined by national legislation, creators may enjoy remuneration rights, according to which, while they receive a compensation for the use of their works, such use is not subject to their prior authorization. Simply put, they cannot object to the use of their work by a third party, but they will receive money in return for that use.

### **Box 2. Can a visitor upload his own photographs of the festival on the Internet?**

Uploading on the Internet, online posting and file-sharing, without permission, of copyright-protected content, such as photos or videos featuring protected performances or artwork, may be an infringement of artists' and performers' rights of communication or rights of making available to the public. However, under some circumstances, exceptions may apply (see below *Are there Exceptions and Limitations to Copyright?*).

Violation of rights is called **copyright infringement** and has legal consequences. Infringers may have to pay damages to the right owner, pay a fine, or may even be imprisoned in particularly serious cases. Sometimes even a slight change to a work without permission can be an infringement.

In many jurisdictions, creators also enjoy the **moral rights** of attribution (the right to claim authorship of a work) and integrity (the right to prevent changes that could harm the creator's reputation or honor). That means that creators have the right to be recognized as the authors of their works. Also, if a work is manipulated or modified in a demeaning or offensive way that is deemed prejudicial to the creator's reputation, he or she can obtain legal relief. In certain countries moral rights cannot be waived nor transferred.

### Box 3. Collective management of copyright and related rights

Collective management is the exercise of copyright and related rights by organizations acting in the interest and **on behalf of right owners**. Those organizations monitor uses of protected works and are in charge of negotiating licenses and collective remuneration.

For more information, see [www.wipo.int/about-ip/en/collective\\_mngt.html](http://www.wipo.int/about-ip/en/collective_mngt.html).

The **rights of performers** are protected as “related” or “neighboring” rights. Performers have rights in their performances of copyright works and expressions of folklore (also known as traditional cultural expressions, which are dealt with further below under *What are Traditional Cultural Expressions and Traditional Knowledge?*). Depending on national legislation, performers may have rights in their sound and audiovisual performances, such as performances recorded in a music video or a film. In many jurisdictions, the rights may cover fixed performances, as in a CD or a film, as well as live or unfixed performances. Specifically, performers may have the right to record, broadcast and communicate to the public their live performances. They may also enjoy exclusive rights of reproduction, distribution, rental, and making available of their fixed performances for Internet use. Remuneration rights for broadcasting and communication to the public are common to many laws. Some national laws also grant performers moral rights, which may be

exercised to ensure attribution and prevent modifications of the performances that are prejudicial to the performers’ reputation.

### Box 4. The many layers of copyright in a song

In a **song**, **copyright** can protect:

- the music by the composer; and
- the lyrics by the writer.

**Related rights** can apply to:

- the performances of the musicians and singers who perform the song;
- the sound recording of the producer in which the song is included; and
- the broadcast program of the organization that broadcasts the program containing the song.

### *How long does Copyright Last?*

Copyright usually expires **50 years after the creator has died**, although many countries extend this period to 70 years or beyond. Rights of performers usually last for a minimum of **20 years** (but sometimes 50) from the date of the performance or its fixation. After the creator’s death, the rights pass on to his heirs. There are various terms of protection for different kinds of works in different countries, so one should always consult national law.



### Box 5. Is copyright protection international?

Most countries are members of one or more **international treaties** to ensure, among other things, that a copyright work created in one country is automatically protected in all countries that are parties to those international treaties.

The foundational treaty on copyright is the ***Berne Convention for the Protection of Literary and Artistic Works*** of 1886 (last amended in 1979). Nationals or residents of a country party to the Berne Convention, or those who have published a work in one of the countries, automatically enjoy the level of protection granted in the Convention in all other countries party to the Convention. The work is protected in the other countries in the same way as the other country protects the works of its own nationals.

However, copyright protection remains **territorial**. Works only enjoy protection if they meet the requirements of the copyright law of the country where protection is sought. There is a separate protection system in each country, which may be based on one or more laws.

### *Are there Exceptions and Limitations to Copyright?*

It is not always necessary to seek permission to use copyrighted works; a balanced copyright system includes exceptions and limitations **in the public interest**. These would usually allow, for instance, a member of the audience to take pictures, film or record a festival performance for personal, private and non-commercial use. Generally, people may use copyrighted works for research or private study, criticism, review, or the reporting of current events. In some jurisdictions, this is called “fair use” or “fair dealing.”

### Box 6. Can visitors take photos, record or film festival performances?

As a general rule, festival visitors cannot take photos, make a sound recording or film the performances at the festival. Nevertheless, in most cases visitors may do so exclusively for personal, private, non-commercial use, unless otherwise advised. But generally, one cannot put them on the Internet, on such websites as Facebook or Flickr, or publicly display them without permission, as this falls outside of the scope of private use.

The ease and quality of individual copying made possible by technology has led some countries to narrow the scope of such exceptions, including through systems which allow certain copying, but incorporate a mechanism for payment to rights owners for the prejudice to their economic interests resulting from the copying.

While copyright confers the exclusive right of **adaptation** of a protected work, it does not stop others from being inspired by it. Drawing a line between **copying and inspiration** is often difficult and is assessed on a case-by-case basis.

**Box 7. Does one need permission to perform or recite a play at a festival?**

If the play is protected by copyright, **authorization** needs to be obtained from the right owner before performing or reciting a play in public. The right owner might be the playwright, his or her publisher, or her heirs, among others. Festival organizers should ensure that actors, theater directors and/or choreographers have obtained permission from the right owner **before the show takes place**.

Where creators enjoy **moral rights**, festival organizers should take care to ensure respect for these rights. For example, the addition of music not originally intended to be played during the play, or the transformation from an antique, rural setting to a modern, urban setting, could be considered a moral rights violation as well as an infringement of the adaptation right.

Under copyright law, the **style of a work** is not protected, since the law only protects **expressions of ideas**. For example, French painter Georges Seurat's method of pointillism painting was emulated by others. The technique consists in small distinct points of primary colors creating the impression of a wide selection of colors. So while copyright could protect Seurat's paintings, it could not protect the style of pointillism; hypothetically, Seurat could not keep others from imitating his technique by invoking copyright law. Likewise, one might wonder whether Jackson's Pollock's paint dripping style could be protected by copyright.

The same may be said about other forms of artistic expressions, such as music or dance. Musical styles may be attributable to an historic period, a geographical location or a certain genre, and may therefore not be protected as the expression of an individual creator. Elements common to jazz music, for instance, cannot be copyrighted by one composer, the same way that traditional ballet movements belong to a style of dancing that cannot be protected by copyright.

It should be noted that some artistic styles associated with traditional cultural expressions are **culturally sensitive** for their community, and according to best practice, traditional styles should not be copied without permission. Permission should be sought from a community representative with authority to grant such permission.





**Box 8. Can copyright protect a festival's name?**

In many countries, names, titles, slogans and other short phrases are excluded from copyright protection. However, some countries protect them if they are creative. The name of a festival or its slogan will usually not be protected by copyright but may be protected under trademark law (see below) or the law of unfair competition. A festival's logo, conversely, may be protected under copyright as well as trademark law, if the respective requirements for such protection are met.

**What are Trademarks and other Distinctive Signs?**

*What are Trademarks?*

Trademarks are distinctive signs, such as words or symbols, which identify certain goods or services as those produced or provided by a specific person or enterprise. By identifying the origin of goods or services, trademarks **help consumers identify** goods or services that meet their needs because of their nature and quality, indicated by its distinctive trademark.

The Paris Convention on Industrial Property, 1883, and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995, establish the international substantive framework for trademark protection.

A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. Provided they remain distinctive and continue to be used in trade, under many national laws, trademarks can be **protected indefinitely** through subsequent renewal of the protection period (usually ten years).

Many festivals “brand” their events through various forms of promotion, marketing or merchandizing of their registered trademarks and can thus develop their reputation over time.

There can be a number of trademarks developed from the festival: traditional (name, image) or non-traditional (3D marks for festival memorabilia and souvenirs; sound and motion marks for video clips, TV spots and advertising; and slogans for promotional ads).



Gypsy artists on street stage during the Maslenitsa carnival, Moscow, Russia, 2014

iStockphoto © Afonskaya



### **Box 9. WOMAD: an example of a registered festival trademark**

WOMAD Festival brings together and celebrates many forms of music, arts and dance drawn from countries and cultures all over the world. First held in the United Kingdom in 1982, the festivals have involved performance events in over 20 different countries. The conference organizers registered “Womad” as a trademark in many of the countries where the WOMAD is held, in relation to the organization of festivals, but also recordings, publications and merchandise. See: <http://womad.org>

### *What are Certification Marks?*

Certification marks are a particular type of trademarks indicating **compliance with defined standards**. Producers of goods or providers of services seeking authorization from the owner of a certification to use that mark have to demonstrate that their goods or services meet the relevant standards. A famous certification mark is WOOLMARK which certifies that the goods on which it is used are made of 100% wool.



#### **Box 10. Green certification for festivals**

In 2010, the Tim Hortons Ottawa Dragon Boat Festival, North America's largest dragon boat festival, became the **first festival in the world to attain EcoLogo certification** under its standards for Events. EcoLogo provides assurance that an event bearing its certification mark meets stringent standards of environmental leadership, in a variety of categories including material, waste, energy, and transportation.

Sources: [www.dragonboat.net/festival/ecologo-certified-event.aspx](http://www.dragonboat.net/festival/ecologo-certified-event.aspx) and [www.ecologo.org/en/](http://www.ecologo.org/en/)

An important requirement for certification marks is that the entity which applies for registration is considered **“competent to certify”** the products concerned. Moreover, under many national laws, the entity as the owner of a certification mark cannot use that mark in trade itself.

Certification marks may be used together with the individual trademark of the festival. The label used as a certification mark is evidence that the festival **meets the specific standards** required for the use of the certification mark.

A certification mark can help prevent the sale of **fake arts and crafts** and protect artists. For example, the Indian Arts and Crafts Association developed a “seal” which authenticates the American Indian arts and crafts of its members. See [www.iaca.com](http://www.iaca.com).

### *What are Geographical Indications?*

A geographical indication (GI) is a sign used on goods that have a **specific geographical origin** and possess qualities, reputation or characteristics that are essentially attributable to that origin. Most commonly, a GI includes the name of the place of origin of the goods.

GIs may be used for a wide variety of products, whether natural, agricultural or manufactured. **Products made or sold at festivals** may bear a GI that may be related to the location of the festival or to the place of origin of the products themselves.

**Box 11. The Idrija Lace Festival: celebrating a geographical indication-protected handmade lace**

The Idrija Lace Festival – an ethnological, economic, educational, cultural and entertainment event – takes place annually in June in Idrija, Slovenia.

Bobbin lace-making has a special place in Idrija's culture. It was first documented in the 17<sup>th</sup> century, and spread to rural areas in the 19<sup>th</sup> century. A lace-making school was founded in 1876 and it is still in operation today. Handmade Idrija lace is protected as a GI in Slovenia since 2000.

The festival is intended for both locals and tourists. During the festival, one may participate in professional lectures, take part in lace-making workshops, see exhibitions of Idrija and other types of lace, taste the special local dishes, join the lace-making competition and listen to concerts in the evenings.

Sources: [www.sycultour.eu/news/project-news/31st-idrija-lace-festival](http://www.sycultour.eu/news/project-news/31st-idrija-lace-festival) and [www.culture.si/en/Idrija\\_Lace\\_Festival](http://www.culture.si/en/Idrija_Lace_Festival).



iStockphoto © matejmm

Almost finished handmade lace from Idrija, Slovenia

### ***What are Industrial Designs?***

Another practical element of an effective IP management strategy is the protection afforded to **industrial designs**. An industrial design is the ornamental or aesthetic aspect of an article. The 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.

Industrial designs are applied to a **wide variety of products** of industry and handicraft, including jewelry, textile designs and leisure goods, among many others. Some items and creations, used or sold during folk, arts or cultural festivals, could be protected as industrial designs. In some festivals, industrial designs could even play a major role.



Silk lantern bazaar display, Hoi An, Vietnam

iStockphoto © Kevin Miller

For example, **in a festival context**, the following elements could be protected by an industrial design right: festival logo printed on posters, t-shirts, etc., festival merchandising products (bracelets, bags, umbrellas, etc.) and handicraft articles.

As mentioned, a **festival logo** can be registered as a trademark but it can also be protected as an industrial design, in class 32 of the *Locarno Agreement Establishing an International Classification for Industrial Designs*, which deals with “graphic symbols and logos, surface patterns, ornamentation.”

To be protected under most national laws, an industrial design must be **new and/or original**. Novelty or originality is determined with respect to the existing design corpus. An industrial design is primarily of an aesthetic nature, and does not protect any technical features of the article to which it is applied.

The three **main international agreements** on industrial designs are the Paris Convention for the Protection of Industrial Property, 1883; the Hague Agreement Concerning the International Registration of Industrial Designs, 1925; and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995.



## What are Traditional Cultural Expressions and Traditional Knowledge?

Interest in and support for the protection of traditional knowledge and traditional cultural expressions is an emerging phenomenon.

### *Descriptions of Traditional Cultural Expressions and Traditional Knowledge*

**Traditional cultural expressions**, often abbreviated to “TCEs,” may be considered as the forms in which traditional culture is expressed. They form part of the identity and heritage of a traditional or indigenous community and are passed down from generation to generation. They include dances, songs, handicrafts, designs, ceremonies, tales, and many other artistic and cultural expressions that are considered traditional. Traditional cultural expressions are sometimes also referred to as “expressions of folklore.”

**Traditional knowledge**, or “TK,” includes innovations, practices, skills and know-how passed down the generations in a traditional or customary context. They form part of the traditional lifestyle of indigenous communities who act as their guardian or custodian. Traditional knowledge may be, for example, knowledge about plant breeding, irrigation systems, health and medicine, food preparation, animal hunting and fishing grounds.

Traditional knowledge and traditional cultural expressions are an integral part of the **cultural and social identity** of the com-

munities that bear them. They can also present economic opportunities and play a significant role for community development.

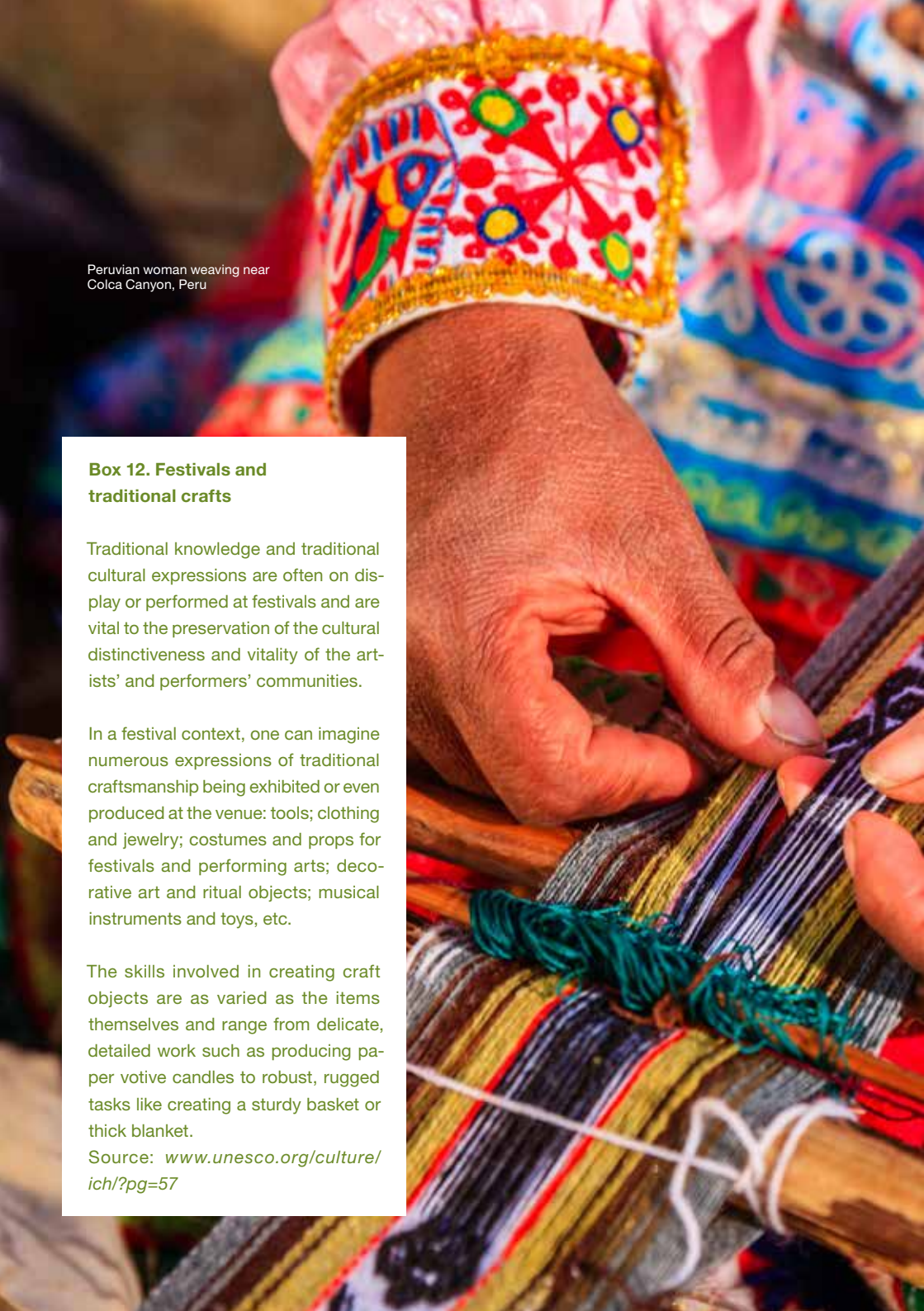
Together, traditional knowledge and traditional cultural expressions can form what is referred to as “**intangible cultural heritage**” and defined as: “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. [...]” (Article 2, UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003).

### *Are Traditional Cultural Expressions and Traditional Knowledge Protected as Intellectual Property?*

To this day, traditional knowledge and traditional cultural expressions, unless secret or protected through some special legislation, are generally regarded by conventional IP systems as being **in the public domain**. However, indigenous peoples and others question this.

At the international level, unlike most conventional forms of IP, **traditional knowledge and traditional cultural expressions are not directly protected** through IP law, save for the protection of performances of expressions of folklore under the WIPO Performances and Phonograms Treaty, 1996, and the Beijing Treaty on Audiovisual Performances, 2012.

This does not mean that traditional knowledge and traditional cultural expressions



Peruvian woman weaving near  
Colca Canyon, Peru

### **Box 12. Festivals and traditional crafts**

Traditional knowledge and traditional cultural expressions are often on display or performed at festivals and are vital to the preservation of the cultural distinctiveness and vitality of the artists' and performers' communities.

In a festival context, one can imagine numerous expressions of traditional craftsmanship being exhibited or even produced at the venue: tools; clothing and jewelry; costumes and props for festivals and performing arts; decorative art and ritual objects; musical instruments and toys, etc.

The skills involved in creating craft objects are as varied as the items themselves and range from delicate, detailed work such as producing paper votive candles to robust, rugged tasks like creating a sturdy basket or thick blanket.

Source: [www.unesco.org/culture/ich/?pg=57](http://www.unesco.org/culture/ich/?pg=57)







WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, February 3, 2014

can be used freely at any festival. **Works that are based on traditional cultural expressions** may be protected by copyright or related rights: for example, a film of a traditional ceremony will likely be protected as a cinematographic work, a recording of a song will attract related rights, a contemporary adaptation of a folksong is probably protected under copyright, and photographs of traditional costumes may not be used without the photographer's permission. In these examples, the use of the work based on the traditional cultural expressions may require prior authorization as is the case for any copyrighted work.

While traditional crafts and designs, as well as many rituals and ceremonies, are unlikely to qualify for IP protection in many jurisdictions, there are several **national and regional instruments** that deal with the IP protection of traditional knowledge and traditional cultural expressions against misappropriation and misuse. So, in some countries, it might be required by IP-type laws to seek the permission of the rights owner over traditional knowledge or traditional cultural expressions before making any use of it.

For a list of legislative texts and measures, see the WIPO database at [www.wipo.int/tk/en/legal\\_texts/](http://www.wipo.int/tk/en/legal_texts/).

Moreover, the rights of indigenous peoples are addressed in the ***United Nations Declaration on the Rights of Indigenous Peoples***, 2007. Under this Declaration, as well as under some national laws, indigenous people have the right to maintain, control, protect and develop their IP over cultural heritage, traditional knowledge and traditional cultural expressions. The Declaration is available on the website of the United Nations Permanent Forum on Indigenous Issues at [www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html](http://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html).

At WIPO, there are **normative discussions** underway to develop balanced and appropriate legal and practical means to protect traditional knowledge and traditional cultural expressions; the possible outcomes of these negotiations, taking place in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), are likely to affect festivals worldwide. To follow the work of the WIPO IGC, see [www.wipo.int/tk/en/igc](http://www.wipo.int/tk/en/igc).

In sum, even though there is no formal recognition of the IP rights of traditional holders over their traditional knowledge and traditional cultural expressions at the international level, **best practices** are developing which encourage fair treatment of traditional knowledge and traditional cultural expressions, respect for the cultural and ethical rights and interests, and respect for the customary values of their

holders, especially indigenous peoples and local communities. For example, festivals would be encouraged, following general trends, to develop measures to prevent misuse and misappropriation of traditional knowledge and traditional cultural expressions at festivals, as well as to ensure proper attribution of their custodians, respect for the sacred character of a performance, and other forms of protection. According to customary practices, traditional artists may have rights to control who can copy and photograph the art and crafts on display at the festival, and organizers could decide to honor this prerogative.

### *What is the Difference between Protection, Safeguarding and Preservation?*

In the IP sense, “protection” refers to measures **protecting intellectual creations and innovations** against acts of misappropriation and misuse such as copying, adaptation or dissemination, or derogatory uses by third parties. The objective of protection, in short, is to make sure that the intellectual innovation and creativity embodied in traditional knowledge or traditional cultural expressions are not wrongly used. Moreover, IP protection can help a community benefit from its traditional knowledge and traditional cultural expressions, such as traditional motifs and crafts, which can be sold and provide a source of income.

“Protection” is therefore different from “preservation” or “safeguarding,” which are the identification, documentation, transmission, revitalization and promotion of cultural heritage in or-

der to ensure its **viability, continued use and transmission**. The objective, in that case, is to make sure that the traditional knowledge or traditional cultural expressions do not disappear and are maintained and promoted.

While there is possible tension between them, **IP protection, preservation and safeguarding are not mutually exclusive**. Having different objectives, they may be implemented in conjunction with one another and help promote each other. With proper management, IP may create an opportunity to advance the goals of both those who seek legal protection and those who advocate safeguarding. For instance, making an inventory of cultural expressions for safeguarding purposes could also serve as a registry for IP protection purposes.

A folk, arts or cultural **festival** may thus, through its various activities, at the same time contribute to the **safeguarding and preservation of cultural heritage as well as its protection in the IP sense**, by ensuring that **no illicit uses** are made of the cultural heritage. New life can be given to traditional practices and manifestations by showcasing them at festivals, thereby promoting their safeguarding and preservation. Allowing traditional artists to demonstrate and pass on the art form in a risk-free environment will also contribute to their IP protection and may help communities benefit both culturally and economically from their IP exploitation. Furthermore, festival organizers could collaborate with local and regional organizations dealing with IP on these questions.

# Practical Management Information

## Devising a Festival's Intellectual Property Strategy

A positive, forward-looking IP strategy, developed well ahead of time, enables festival organizers to exercise greater control and derive benefits from a festival's IP assets and cultural interests. A mix of IP tools, particularly copyright and trademark rights – used in association with contracts, guidelines, notices, accreditation and access conditions – can provide a comprehensive framework to protect IP and guard against the misuse of traditional knowledge and traditional cultural expressions.

Festival organizers often need to manage their **own IP** rights as well as those of others, such as festival participants or their representatives (referred to as **third-party rights**). Festival organizers, as both IP owners and users of others' IP, can be part of a **complex network of relationships** which can be difficult to manage without full acquaintance with the many types of IP agreements. They also need to take into consideration the **cultural and ethical interests** associated with traditional knowledge and traditional cultural expressions and their communities.

The practical approach taken in this Guide follows this three-tiered format and breaks down some of the IP measures addressing (1) the festival's rights; (2) the rights of third parties, and (3), traditional knowledge and traditional cultural expressions interests. To more easily develop and implement the strategy, festival organizers may wish to set up a specific **committee** dealing with IP, to start its work months or even a year ahead of the festival taking place.



A Checklist in the annex may be consulted as a reference to ensure key issues are properly dealt with.

## Managing the Festival's Own Intellectual Property Assets

**Festivals may own IP assets** in the form of original literary or artistic material (like artwork, posters, logos, characters, programs and information leaflets, among others), broadcasting rights, trademarks, and many others.

Festivals can benefit from the proactive utilization **of these IP assets**: for example, licensing a trademark or copyright-protected audiovisual material can generate an extra source of income for a festival so as to secure the long-term financial viability of the event. At the same time, organizers should be **vigilant to avoid IP infringement** by others, who may or may not actually attend the festival. This means taking several precautionary steps, as detailed below under *Monitoring Infringement and Taking Legal Action*.

### *Building the Festival Brand – Registering a Trademark*

Trademark registration can open the way for festival organizers to develop an effective **marketing strategy** and to conclude **profitable deals**.

### **Box 13. How can a festival register a trademark?**

An **application for registration** of a trademark must be filed with the appropriate national or regional trademark office in each location where the festival takes place. The application must contain a clear representation of the sign. The sign must fulfill certain conditions in order to be protected as a trademark: it must be **distinctive** in that it must enable consumers to distinguish the product of one producer from those products of other producers; it must **neither mislead nor deceive** consumers or violate public order or morality.

The application must also contain a **list of goods or services** to which the sign would apply. Trademarks associated with festivals can be registered for a variety of products and services in a **variety of classes**.

For the contact information of national IP offices, see [www.wipo.int/members/en/](http://www.wipo.int/members/en/)

See the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification): [www.wipo.int/classifications/nice/en/](http://www.wipo.int/classifications/nice/en/)

As owners of registered trademarks, festivals are well-placed to **market their merchandise** and **promote the sale**, both onsite and online, of official, authentic products, like t-shirts, toys, umbrellas, hats, posters, books, stationary items, CDs, DVDs, coffee mugs, bags, as



#### Box 14. What is merchandizing?

Merchandizing is a form of marketing whereby an IP asset (typically a trademark or copyright-protected work) is used on a product to **enhance its attractiveness** in the eyes of customers. Many images associated with festivals, like a mascot, logo or artwork, can appear on a whole range of products.

The owner of a trademark can use the trademark and can also let other people use it with permission. This is known as granting a **trademark license**.

For festivals that own IP rights, licensing these rights to potential merchandisers may bring in **additional income**, through license fees and royalties, in a relatively risk-free and cost-effective way.

well as handmade arts and crafts, among a plethora of products.

It is not rare to find, around the festival premises, cheap t-shirts or other souvenirs with the festival name or logo, being **passed off** as “official merchandise.” Festival audiences risk being duped into buying fake merchandise, and festivals lose out on some precious income. Festival organizers might wish to collaborate with a local IP watchdog to clamp down on passing off.

The unauthorized use of a **festival’s name or logo** is a serious threat. Where festival organizers register such name or logo as a trademark, they are granted the legal right to prohibit the use of the trademark by third parties in relation to the goods and services for which the trademark has been registered. Moreover, a festival’s mark can indicate to consumers which **products are genuine or authentic** and distinguish them from counterfeits and knock-offs. Knock-offs are cheap items that convey an impression of authenticity but in fact are not authentic; they are often mass-produced and made with inferior materials. At time, words are misspelled or logos placed upside down, projecting a potentially negative image of the festival.

With a registered trademark, festivals are also better equipped to defend themselves against **cybersquatting**, thereby safeguarding their web presence, a powerful means of marketing the festival.

### Box 15. What is a domain name?

Domain names are forms of **Internet addresses** and are commonly used to find web sites. For example, the domain name *wipo.int* is used to locate the WIPO web site *www.wipo.int*. A domain name also forms the basis of other methods or applications on the Internet, such as email addresses; for example WIPO’s Traditional Knowledge Division’s email address, *grtkf@wipo.int*, is also based on the domain name *wipo.int*.

**Cybersquatting** is the abusive registration of a trademark as a domain name. Trademark owners can invoke their rights in a trademark in order to obtain the termination or transfer of a domain name. The WIPO Arbitration and Mediation Center provides domain name dispute-resolution services. For example, in 2004, the Roskilde Festival, the largest North European culture and music festival, obtained transfer of the domain name “*roskilde-festival.com*” (WIPO Case No. D2004-0285) and, in 2005, the Glastonbury Festival of Contemporary Performing Arts obtained transfer of the domain name “*glastonburyfestival.com*” (WIPO Case No. D2005-0188).

For more information, see [www.wipo.int/amc/en/center/faq/domains.html](http://www.wipo.int/amc/en/center/faq/domains.html)

Festival organizers need to **be proactive** and prevent infringements before they occur. Infringing merchandise will often be sold near the festival site and can include t-shirts, hats, and jerseys. Where

such merchandise is of poor quality, it can injure the reputation of the festival and its artists. Many festival attendees are likely to be confused as to whether the goods are festival-approved or not. Hence festival organizers should diligently monitor the market (including on the Internet) for the unauthorized sale of merchandise that features the festival's trademark or imitation thereof and other infringing products.

### Key Points

In order to build and safeguard its brand, a festival should:

- register a trademark;
- secure a domain name;
- develop a merchandizing program that defines the festival's product portfolio;
- establish a sponsorship program and define levels of sponsorship and associated rights;
- establish official retail outlets on-site and online; and
- diligently monitor the market for infringing products.

### *Managing the Festival's Copyright – the Art of Licensing*

Festival organizers may own items protected by **copyright and related rights** such as photographs or images of festival events or locations, audio recordings (on tape, CD or in mp3 format), audiovisual works (film and video), multimedia productions (such as the festival's website, which will incorporate text, images, sounds, videos, animations, etc.), publications (print or electronic) and databases containing information of relevance to the festival.

A festival organizer may thus be the owner of the copyright in a multitude of works, which it may decide to exploit or authorize others to exploit, either for commercial or non-profit purposes. Festivals interested in properly managing their copyright assets should conduct what is called an **IP “audit”** which is a survey of all materials in which the festival may own IP rights.

One way to **leverage the business opportunities** offered by the holding of copyright-protected material is to **grant licenses to third parties** to exploit the material in return for payment or other kind of benefit, monetary or not. A license is a permission that is granted by the copyright owner to others to exercise one or more economic rights over a work.

The advantage of licensing is that the creator of the works remains the rights owner, while allowing others to make certain uses, such as, for example, to copy, distribute, broadcast, webcast, or make derivative works. One may license **some rights and not others** and **specify the terms and conditions** for the use. For example, while licensing the right to copy a poster designed by festival staff to promote the festival, the festival can retain the rights to create derivative works from it (e.g. taking photographs of the poster or making a sculpture out of the image). Likewise, when licensing the right to publish an official photograph taken during a festival in a newspaper or magazine, the festival, owner of the rights in the photograph, is not necessarily authorizing publication in any other format (such as in a book or on the Internet).



Traditional Thai dancing in Rocket festival "Boon Bang Fai," Yasothon, Thailand, 2013

iStockphoto © topten22photo

### *Controlling the Media*

Festival organizers could monitor how the media (photographers as well as print, TV, web, and radio journalists) are capturing and **representing the festival**. This may make it easier to prevent misuses and to clamp down on infringing image and audiovisual content.

**Professional and commercial recordings** of official events and performances (including photography, film and sound recording) can be controlled by the festival organizing committee.

Inviting the media to apply to attend the festival is a good way of managing risk. Festivals organizers can set up a **media accreditation system** to approve proposed uses of photography, audio and

audiovisual recordings by the photographers, filmmakers, broadcasters and media representatives, in line with the festival's IP policy and the national IP laws. The festival can appoint limited media to attend the events, and make their entry conditional upon respecting IP guidelines. Festival participants (performers, exhibitors, etc.) who wish to set **specific conditions for attendance** (such as conditions based on their customary laws or practices) should inform the festival organizers accordingly in writing. For example, at the 11<sup>th</sup> Festival of Pacific Arts which took place in Honiara, Solomon Islands, in 2012, all media had to attend a media briefing and confirm their registration to then receive an official media card.



This accreditation system may be done electronically, online, with all important information and forms made available to applicants. For instance, the Dreaming Festival takes online applications from the media prior to the event.

iStockphoto © Vingeran



Festival organizers can implement measures to monitor use of **official broadcasts**. The rights to **communicate the festival to the public** include broadcasting via television, radio and the Internet. Broadcasters in many countries pay large amounts for exclusive coverage of events of high popularity or reputation. In order to fully leverage the sale of broadcast rights, organizers of such events need to guarantee this exclusivity.

## Managing the Intellectual Property of Others

Festivals may have to manage or deal with the **IP assets of third parties**: examples include the trademarks of sponsors displayed on the festival premises, the songs performed by invited musicians, and the artwork exhibited by artists and craftspeople. Indeed, festivals need to ensure that proper authorization has been obtained before projecting a film, authorizing the performance of a play or the recitation of poems or even when posting material on the festival's website. Even when using just a part of a copyright-protected work, one will generally need prior permission.

### Box 16. When does one need permission to use the works of others?

Festivals often need to use works protected by copyright or objects of related rights as part of their activities. When using the work of others, one must first determine if permission is required. In principle, authorization from the owner is needed:

- if the material is covered by copyright and/or related rights and thus not in the public domain;
- if the planned exploitation implies the use of all or part of the rights granted to the copyright and/or related rights owner; and
- if the intended use is not covered by "fair use" or "fair dealing" or by a limitation or exception specifically included in the national law.

Preserving the rights of third parties may be vital to a **festival's reputation and longevity**. Certainly, artists whose rights have been violated at a festival are unlikely to return or to speak highly of the festival.

While many abuses can ensue from a lack of proper IP management on the part of festival organizers, a simple **strategy aimed at securing authorizations** from all potential right owners can shield festival organizers from sticky situations. Hence, festival organizers should, **well ahead of time**, diligently inquire about the works that will be presented, displayed or performed at the festival, and ensure that all IP rights have been cleared.

**Obtaining a license or a release** (preferably in writing) from the rights owners to use a work for a specific purpose is often the best way to avoid disputes that may otherwise result in potentially time-consuming, uncertain, and expensive litigation.

Arguably, though, it is not always easy to identify what material is protected and to **identify and locate** who may own rights in that material; all the more reason to start early!

### **Box 17. Who owns rights in a photograph taken at a festival?**

Original photographs are generally protected by copyright. Several people may hold rights in a **photograph**: the photographer who took the picture and the **creator of the work depicted** in the picture (if the image represents a protected painting, building, sculpture, etc.)—but some exceptions may apply.

In addition, if a **person appears on the photograph**, for example a performer in costume or a member of the public, that person may have image and privacy rights. In many countries, a photograph of a person taken in a public space (like a festival site) may be licit if the photograph has been taken as part of current events and does not prejudice the person's dignity or privacy. But if the intended use is commercial, then permission will be needed.

Photographs of stage sets as well as of performers rehearsing, acting, dancing or singing (theater, dance, concert, opera...) may be used to **promote the festival**, for example on posters, postcards or information leaflets. In light of the above, for the festival to use photographs, authorization from the photographer, the copyright owner in the work depicted, as well as the people featured in the picture, will likely be necessary. For general releases, see *Box 18 Can festival organizers film and broadcast all festival events?*



Adults dressed in Native American Indian clothing dancing at the Celebration of Life Pow Wow Festival at Mount Trashmore Park, Virginia Beach, USA, 2011. This was a free public event on public property

Festival organizers can **commission professional photographers** to document the festival and provide valuable promotional and archival material. A **written contract** between the festival and the photographer will specify who owns the rights in the photographs (in some jurisdictions, the copyright in commissioned photographs vests in the person commissioning the works; in this case, the festival), all the permitted uses of the photographs (reproduction, display, modification, dissemination, etc.), and the duration and territory of the uses, among other important considerations. The contract could also specify other uses, such as donation of negatives to the festival archive for cultural maintenance purposes.

Moreover, best practice would indicate that the **photograph caption** clearly state the name of the photographer as well as the subject in the photograph (title of work or name of performer, for example).

Festivals could put a mechanism in place whereby, as a condition of their attendance at the festival, visitors consent to be filmed, photographed and recorded as part of the audience. A warning could be placed on the festival ticket and/or at the venue's entrance stating that: "By attending the festival, visitors voluntarily and irrevocably consent to their images being recorded in general photos, sound and videos. Recordings may be taken by the official film crew and photographers employed, engaged, or otherwise approved by the festival." There is indeed an expectation that by attending public events, the visitor might have his or her picture taken as part of news coverage or for documentation purposes. As a courtesy, though, photographers may still wish to request permission verbally from individual subjects.

**Box 18. Can festival organizers film and broadcast all festival events?**

Festival organizers need to seek permission from the right owners of the works being displayed or performed, as well as from the performers (singers, musicians, actors, etc.) before filming them during their live performance.

A **standard release** form signed by all festival participants before the festival is a good practice to avoid misunderstandings and legal issues. Release forms are used to advise performers of the use of the recording, seek written consent for its use, and outline its long-term use for storage and other contexts. The same will apply for sound recording and still photography (for photographs, see Box 17 *Who owns rights in a photograph taken at a festival?*).

**Box 19. What are orphan works?**

Orphan works are works that are protected by copyright, but whose **author or right owner cannot be identified or found**. These may be because the author has died and his or her heirs cannot be located, or because the works are out-of-print and all traces of the author have vanished.

Examples of orphan works include photographs that do not note the photographer, such as photos from scientific expeditions and historical images, old folk music recordings, or little known novels.

Festival organizers often need to invest considerable resources to locate the copyright owner. The **search process is costly and time-consuming**, and often fruitless. If organizers decide to use the work despite not having obtained permission, they can be faced with a legal action for infringement. Because of these risks, festivals should avoid using the work.

Various possibilities are being explored at national, regional and international levels for an optimum solution to this major problem, including a defense for diligent search.

**Traditional cultural expressions are often compared to orphan works**, because it is often difficult to identify the “author.” Nevertheless, a different set of policy issues come into play, for various reasons, two of them being that traditional cultural expressions are often not the creation of an individual author, and that they were never protected by copyright in the first place.



## Managing the Cultural and Customary Interests of Festival Participants

**Festivals often encompass a variety of traditional cultural expressions and traditional knowledge**, which often lie at the heart of the cultural identity of their bearers – dance, ceremonies, music, theater, arts and crafts, body painting and art, costumes and masks, traditional food, etc. While traditional knowledge and traditional cultural expressions may be displayed and shared at festivals, permission to exploit them is not necessarily given by their custodians or traditional holders. Festival organizers themselves can suffer from wrongful uses of the cultural content presented during the festival and thus have every incentive to take a strong stand for the protection of traditional cultures.

For example, there may be instances where industrial replicas of **dance costumes**, made using ancestral weaving methods, are sold as “authentic” near the festival venue, or where ritual **face or body painting** or tattoos are used out of context by outsiders in an offensive way.

Even if, strictly speaking, it may not be a violation of IP law, it may still be considered **offensive and culturally inappropriate** to photograph, record, film, copy, imitate or commercialize the performances and exhibitions that include traditional knowledge or traditional cultural expressions, especially if culturally sensitive or sacred material is involved.

Unauthorized uses may cause offense or harm to individuals and can also interfere with the cultural integrity of material linked to an entire community.

Without **appropriate measures** specifically designed to address the interests in traditional knowledge and traditional cultural expressions put in place and enforced, the festival’s manifestations can become vulnerable to inappropriate exploitation by others.

Hence, festival organizers may need to take **complementary steps**, going beyond existing IP law, to protect the cultural interests of participants whose artistic expressions do not qualify for IP protection. These steps, which include guidelines, contracts, as well as notices and warnings, are explained in the following paragraphs.

**Guidelines** are often used to inform, advise and instruct visitors and the media about the need to respect the traditional knowledge and traditional cultural expressions of festival participants. Guidelines are a way of encouraging appropriate ways of behaving and respecting culture at the festival. They can, for example, be used to ensure proper attribution to custodians of traditional knowledge and traditional cultural expressions or to promote respect for the sacred character of a performance.



Traditional black hat dance performed in Bhutanese  
tshechu religious festival, Bhutan





**Contracts**, especially in writing, can be an option to deal with traditional knowledge and traditional cultural expressions in a sensitive way. These can state the terms and conditions for using material according to the values and needs of their holders (e.g. recognition, acknowledgement, respect for cultural values and interests). Contracts are also a means to concretize **financial deals** and can provide for the **sharing of benefits** derived from the exploitation of traditional knowledge or traditional cultural expressions with their holders. Festival organizers could encourage visitors to obtain permission from traditional holders before using **traditional knowledge learned at the festival**, especially if further use is for commercial gain.

**Box 20. Unauthorized photographs of a festival performance: a case study**

The Laura Aboriginal Dance and Cultural Festival is a celebration of indigenous Australian song, dance and music. Indigenous dancers perform their traditional dances as their community has performed them for generations. The performances represent the diversity of indigenous cultures. Tourists, from Australia and abroad, attend the festival.

In 1998, the Wik Apalech dancers were alerted to products that reproduced their images without their knowledge. A photograph depicting the dance group dressed for ceremony with body painting and feathered headdresses was taken by a commer-

cial photographer who had attended the festival in 1995. The photograph was reproduced onto CDs, postcards, and cassettes, as well as on a website without the consent of the performers. The Wik Apalech dancers found the unauthorized use of their images culturally offensive. According to Wik customary law, their cultural material was suitable for dissemination only by those with the relevant status.

The dancers decided to take action to end the manufacture of the products and to remove the photographs from the website. Under copyright law, rights in photographs usually vest in the photographer, so the dancers could only rely on the good faith of the manufacturer to prevent the use of their image.

In 1999, organizers of the Laura Festival adopted a **written agreement** concerning all photography and filming at the festival. The agreement contains terms requiring that consent be obtained from the performers and that certain conditions for control of commercial photography be complied with, including obtaining prior consent from the performers.

See WIPO, *Minding Culture*, 2003, written by Terri Janke, Case Study 5 “Protection of indigenous dance performances,” [www.wipo.int/edocs/pubdocs/en/tk/781/wipo\\_pub\\_781.pdf](http://www.wipo.int/edocs/pubdocs/en/tk/781/wipo_pub_781.pdf).

Likewise, **notices and warnings** can help protect the traditional knowledge and traditional cultural expressions interests of participants and restrict unauthorized uses. Oral warnings may be given prior to a performance or at appropriate times on the festival site. The example below could serve that purpose.

**It should never be assumed that one may copy, record, film or adapt any of the songs, dances, stories and craft displays. By respecting creators' cultural rights and interests, one respects their creative endeavors and livelihoods.**

### **Raising Awareness and Enforcing the Intellectual Property Policy**

Festivals need to ensure respect for IP rights at the festival; this may be done through various measures, presented below.

#### *Preparing Signs, Notices and Warnings*

While festival organizers may be fully aware and ready to enforce the IP rights and cultural interests emerging from the festival, visitors and participants may not. Hence it is important to **inform and instruct visitors** about respect for IP and traditional knowledge and tradi-

tional cultural expressions rights and interests of the festival and its performers, exhibitors, artists and creators as well as their communities. These may even have an enforceable, contractual character if so worded and brought to the attention of the public.

Signs, notices and warnings can be a good way to provide clear information about **what may or may not be done**. They can appear:

- at ticket sales points;
- on site at the festival venues;
- at the performance or exhibition site;
- on visitors' maps, information brochures and leaflets;
- on the festival's program;
- on festival tickets;
- on the festival website;
- in newspapers and in radio announcements, as part of information or advertising campaigns; or
- any other suitable channel.

**Annex I** at the end of this Guide provides examples of what those signs, notices and warnings might contain. They could be drafted in all relevant languages to reach the widest possible audiences.

### Box 21. Training of festival staff and volunteers

Those working permanently or temporarily for the festival should have at least a **minimum understanding of the IP issues** surrounding the festival. For instance, festival staff or volunteers might be called to intervene against bootleggers at a concert scene or to explain to visitors why certain art displays may not be photographed. Organizing a short briefing session for festival staff and volunteers, or handing out information sheets as part of the training material could be efficient ways of ensuring awareness about IP. This should be organized with ample time leading up to the festival, giving time to staff and volunteers to research, revise and further learn on these questions.

### Developing a Respect Strategy

It is the responsibility of the festival organizers to ensure that the event's **IP policy is effectively respected and applied**: on site, off site and online as well as before, during and after the festival takes place. Indeed, monitoring is not limited to the festival premises and does not end on the last day of the festival. Violations can surface or be brought to the festival organizers' attention days, months or even years after the event took place and may arise in unsuspected places.

To assume this responsibility, organizers are advised to develop an **IP respect strategy** well ahead of time. This strategy will include, *inter alia*, elements to stop unauthorized uses, deter future infringements, and obtain recovery for damages resulting from infringing acts. An effective strategy may encompass, for example: civil procedure, remedies, access to courts, cost of litigation and legal advice. Additionally, alternatives to court procedures, such as arbitration or mediation, and technological measures that festivals may take to prevent others from contravening the IP policy, may be relevant, together with criminal sanctions, and the role of customs services. Some of these aspects are detailed below.

### Monitoring Infringement and Taking Legal Action

Before taking any action, a festival organizer should carefully **examine the situation**: who is the alleged infringer, what is the impact of the violation on the festival, how serious is the violation and what is its scale, and, is it a repeated violation? Answering these questions can help define the path to take to resolve the problem.

At times, it may be useful for festival organizers to **seek professional assistance** from an IP lawyer before deciding on the appropriate course of action. In the area of copyright, collective management organizations could also be a contact point.

Generally, it is advisable to try to settle the dispute at an early stage. It is also worth attempting to settle the situation **in a mutually beneficial, friendly way** by informing the infringer and pointing out the existence of the festival's or its participants' IP rights. In cases of non-voluntary infringements, an infringer may stop his action upon being informed of the illegality of his behavior.

If an infringer does not agree to stop or change his activities, **negotiation** may become an important element of enforcing the festival's rights. **Alternative dispute resolution** (ADR) procedures are increasingly recognized as offering an effective means for settling disputes. Recourse to ADR mechanisms may be an option for those seeking a time and cost-effective method to settle IP conflicts as well as traditional knowledge and traditional cultural expressions issues. Such disputes are complex and bring about not only legal, but also cultural or ethical questions, and therefore remedy through litigation in a national court is not always possible or desirable. The WIPO Arbitration and Mediation Center can assist parties in the resolution of disputes and has a dedicated service for art and cultural heritage [www.wipo.int/amc/en/center/specific-sectors/art/](http://www.wipo.int/amc/en/center/specific-sectors/art/) which may apply to festivals. See also Box 15 *What is a domain name?*

In a number of cases, festivals can decide to take legal action against the infringer. In most jurisdictions, **remedies** that may be available such as injunctions, damages, or provisional measures, will be handled in civil courts. Because of the costs involved in civil litigation, it may be worth considering **legal insurance policies** in advance, where applicable.

In most countries, **criminal sanctions** are available for serious IP infringements, which are undertaken intentionally and for commercial purposes. National laws govern the procedures as well as the relationship between such criminal action and any other action taken by the right holder.

Jalisco Mexican Folkloric Dance,  
Seoul, Republic of Korea, 2009







## In a Nutshell

Folk, arts and cultural festivals are **elaborate manifestations of cultural heritage** that include singing, dancing, theater, feasting, oral tradition and storytelling, displays of craftsmanship, sports and other forms of entertainment.

**Organizing a festival is a complex undertaking** encompassing many cultural, logistical, legal, marketing and managerial elements. An effective strategy designed to uphold the **IP and cultural interests** of all parties is central to this endeavor.

An **effective IP management strategy** helps foster cultural respect and generates economic opportunities for these vibrant celebrations of the variety and diversity of the world's cultures. **Conventional IP tools** offer some degree of protection; additional protection may come from **complementary measures** such as cultural guidelines and notices.

IP management does not end with the festival's closing ceremony. Festivals may be busy tackling IP issues well beyond the festival, both in time and space. And when preparing for the **next edition**, festival organizers could analyze and put into practice the **lessons learned** at past occasions: a festival's acquired IP experience is central to its continuing success.

# Annex

## Annex I: Examples of Notices

*These examples are provided for information purposes only. WIPO is not responsible for their implementation or enforceability.*

### ***Trademark Notice***

The festival name and logo are registered trademarks of [the festival] and are owned and managed by [the festival]. No unauthorized use is permitted. For licensing enquiries, please contact [the Festival Organizing Committee].

### ***Copyright Notice***

©, [date], [Festival Name]. All rights reserved.

### ***Photography, Recording, Filming and Publishing Notices***

- Respect intellectual property rights when taking photographs/recording/filming.
- Photography/Recording/Filming is restricted to private, personal, non-commercial use.
- Photography/Recording/Filming is not permitted unless expressly stated on a sign, notice, warning or announcement.
- Permission to photograph/record/film must be obtained from the festival staff.
- Flash photography is not permitted.
- No photography/filming/recording of sacred or secret content, nudity and/or art exhibitions is allowed.
- No publishing on the Internet is allowed, including on YouTube, Facebook, Twitter and other social media sites.

- Seek permission, covering all intended uses, from the performers/exhibitors and festival organizers prior to any photography/recording/filming.
- No commercial photography/recording/filming is allowed without a valid festival permit/accreditation.

### *Traditional Cultural Expressions and Traditional Knowledge Notices*

The festival displays a range of art, body painting, tattoos, dance, music, ceremonies, plays, films, sound recordings, traditional knowledge, traditional cultural expressions lifestyles, food preparation, traditional healing and technical skills. These may be protected by intellectual property laws and/or customary laws. Some may be sacred and/or culturally sensitive.

- Traditional knowledge should be respectfully used. No derogatory use is allowed.
- No use, adaptation or commercialization of traditional knowledge is allowed without the free, prior informed consent of its custodians.
- Dealing with part or whole of the performances and displays, for any unauthorized purpose, may be a serious breach of customary laws.
- Please exercise courtesy and sensitivity: seek the permission of the performers when taking photographs/recording/filming.
- Audiences are reminded not to behave in ways that can harm traditional artists and performers, their rights to culture and their traditional knowledge.

### *Festival Liability Disclaimer*

Festival organizers are not liable for any unauthorized use or reproduction of traditional knowledge or traditional cultural expressions, including sacred material, or for any repercussions for failure to obtain permissions.

## Annex II: Checklist

### 1. Be in charge

Identify the person or establish a committee in charge of intellectual property for the festival.

Make sure festival staff and volunteers are aware of intellectual property matters and can intervene in case of violation, as appropriate.

### 2. Know your rights and interests

#### *2.1 Survey the Festival's Intellectual Property and Cultural Assets*

Conduct an “audit” to get an overview of the intellectual property rights owned by the festival and the cultural interests at stake.

##### *2.1.1 Brands*

- Does the festival have a trademark?
- If not, create one.
- If yes, is it registered with the national trademark office in every country where the festival takes place?
- Does the festival have a domain name for its website?

### **2.1.2 Copyright**

- Does the festival own copyright-protected material or objects of related rights?

*Remember, copyright material need not be registered to be protected!*

For example:

- Posters
- Brochures
- Banners
- Leaflets
- Website content
- Sound recordings
- Audio-visual material
- Songs
- Photographs

### **2.1.3 Traditional Knowledge and Traditional Cultural Expressions**

- Does the festival hold elements of traditional knowledge or traditional cultural expressions?
- Do festival participants hold elements of traditional knowledge or traditional cultural expressions which the festival should contribute to protect?

## **2.2 Ascertain the Festival's Rights and Interests**

### **2.2.1 Register the Trademark**

- Contact the national intellectual property office for information on the registration process. For contact details, see [www.wipo.int/members/en/](http://www.wipo.int/members/en/) and select the country.
- Get assistance from a trademark agent or lawyer if necessary

### **2.2.2 Register a Domain Name**

- The domain name could be based on the festival's trademark(s)

## **3. Deal with Rights and Interests**

### **3.1 Develop Strategies to Authorize Uses by Others**

Develop marketing and merchandising programs to determine how the trademark(s) and copyrighted material will be used by the festival and by others.

Enter into contracts, such as licensing agreements, with:

- those who will use the trademark(s) on merchandise
- those who will use the copyrighted works
- the media who will cover the festival's events

### **3.2 Get Permission to Use the Materials of Others**

Identify the material whose rights belong to others and for which permission to use is required.

Make sure the festival or relevant participant has obtained permission to use:

- Copyright works: songs, plays, photographs, films, artworks, etc.
- Objects of related rights: recorded performances, sound recordings, broadcasts, etc.
- Trademarks: from sponsors or others

Enter into contracts, such as licensing agreements, with those owning the rights over these materials.



### ***3.3 Manage the Cultural Interests Associated with Traditional Knowledge***

Prepare guidelines, notices, and warnings to:

- Inform visitors about the need to respect the traditional knowledge and traditional cultural expressions of festival participants
- Instruct visitors about the appropriate behavior to adopt

Enter into agreements for commercial uses by others to ensure proper use and establish terms and conditions, including benefit sharing.

## **4. Ensure Respect for Rights and Interests**

Ensuring respect does not start and end with the festival's celebration. This needs to be done on an ongoing basis, but of course, during the festival, activity will intensify.

### ***4.1 Monitor the use of the rights-protected material***

#### ***4.1.1 On the festival site***

#### ***4.1.2 Around the festival site***

#### ***4.1.3 On the Internet***

### ***4.2 Prevent and stop unauthorized uses***

#### ***4.2.1 Raise awareness and warn against unauthorized uses***

#### ***4.2.2 Inform violators of the infringing activity***

### ***4.2.3 If appropriate, negotiate with violators***

- Resort to mediation
- Resort to arbitration

### ***4.2.4 Take legal action against violators***

## Annex III: Glossary

Note: The Glossary is intended to explain some of the key concepts at the heart of this Guide. The definitions provided are limited to the use of the Guide and the use of these terms is not intended to suggest any consensus among WIPO Member States on their validity or appropriateness.

### **Arbitration**

Arbitration is a neutral procedure in which the dispute is submitted to one or more arbitrators who make a binding decision on the dispute.

### **Certification mark**

Certification marks are a type of trademarks indicating compliance with defined standards. A famous certification mark is WOOLMARK which certifies that the goods on which it is used are made of 100% wool.

### **Copyright**

Copyright refers to rights given to creators in their original works. Works covered by copyright can include novels, poems, plays, films, songs, dances, paintings, drawings, photographs, and sculptures, among many more.

### **Geographical indication**

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

### **Industrial design**

An industrial design is the ornamental or aesthetic aspect of an article. The 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.

### **Infringement**

An infringement is a violation of an intellectual property right.

### **Intellectual property**

Intellectual property refers to creations of the mind, such as stories, music, art, inventions, words and signs, designs and performances. These creations are protected by laws on copyright, patents, trademarks, designs, unfair competition and so on.

### **License**

A license is a type of contract whereby permission is granted by the intellectual property right owner to others to exercise one or more rights over the subject of that right (a work, a trademark, a patent, etc.).

### **Mediation**

Mediation is a non-binding procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of the dispute.

### **Moral rights**

Moral rights are the right to claim authorship of the work and the right to object to any mutilation or deformation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to the author's honor or reputation.

### **Performer**

Under international copyright law, performers are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore

### **Preservation**

Preservation may refer to the conservation of traditional knowledge and cultural expressions in a fixed form, such as their identification, documentation, transmission, revitalization and promotion in order to ensure its maintenance or viability. Its goals are to make sure that they do not disappear, are lost or degrade and/or to make them available to a wider public (including scholars and researchers), in recognition of their cultural importance.

### **Protection**

Protection refers to the intellectual property protection of traditional knowledge and cultural expressions against some form of unauthorized use by third parties.

### **Safeguarding**

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) describes safeguarding measures as: "measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non formal education, as well as the revitalization of the various aspects of such heritage."

### **Trademark**

Trademarks are distinctive signs, such as words or symbols, which identify certain goods or services as those produced or provided by a specific person or enterprise. By identifying the origin of goods or services, trademarks help consumers identify goods or services that meet their needs because of their nature and quality, indicated by its distinctive trademark.

### **Traditional cultural expressions**

“Traditional cultural expressions” are the forms in which traditional cultures are expressed, communicated or manifested. Examples include traditional music, performances, narratives, names and symbols, designs and architectural forms.

### **Traditional knowledge**

“Traditional knowledge” refers in particular the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills, and innovations. Traditional knowledge can be found in a wide variety of contexts, including: agricultural; scientific; technical; ecological; medicinal knowledge, including related medicines and remedies; and biodiversity-related knowledge, etc.

## Annex IV: Further Reading

### *WIPO Publications*

Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: An Overview, WIPO Publication No. 933  
[www.wipo.int/edocs/pubdocs/en/tk/933/wipo\\_pub\\_933.pdf](http://www.wipo.int/edocs/pubdocs/en/tk/933/wipo_pub_933.pdf)

Protect and Promote Your Culture: A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities, WIPO Publication No. 1048  
[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1048.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_1048.pdf)

Intellectual Property and the Safeguarding of Traditional Cultures – Legal Issues and Practical Options for Museums, Libraries and Archives, WIPO Publication No. 1023  
[www.wipo.int/edocs/pubdocs/en/tk/1023/wipo\\_pub\\_1023.pdf](http://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo_pub_1023.pdf)

Documenting Traditional Knowledge – A Toolkit, WIPO Publication No. 1049  
[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1049.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_1049.pdf)

Intellectual Property and the 11<sup>th</sup> Festival of Pacific Arts, Solomon Islands, 2012  
[www.wipo.int/edocs/pubdocs/en/tk/tk\\_fpa/tk\\_fpa\\_2012.pdf](http://www.wipo.int/edocs/pubdocs/en/tk/tk_fpa/tk_fpa_2012.pdf)

Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions, WIPO Publication No. 781  
[www.wipo.int/edocs/pubdocs/en/tk/781/wipo\\_pub\\_781.pdf](http://www.wipo.int/edocs/pubdocs/en/tk/781/wipo_pub_781.pdf)

Marketing Crafts and Visual Arts: The Role of Intellectual Property, WIPO ITC Publication No. 159

[www.wipo.int/edocs/pubdocs/en/intproperty/itc\\_p159/wipo\\_pub\\_itc\\_p159.pdf](http://www.wipo.int/edocs/pubdocs/en/intproperty/itc_p159/wipo_pub_itc_p159.pdf)

Brief 1: IP and Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions – An Overview

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_1.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_1.pdf)

Brief 2: The Intergovernmental Committee

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_2.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_2.pdf)

Brief 3: Developing a National Strategy on IP and TK, TCEs and GRs

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_3.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_3.pdf)

Brief 4: IP and Arts Festivals

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_4.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_4.pdf)

Brief 5: IP and Handicrafts

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_5.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_5.pdf)

Brief 6: IP and Traditional Medical Knowledge

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_6.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_6.pdf)

Brief 7: Customary Law and Traditional Knowledge

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_7.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_7.pdf)

Brief 8: Alternative Dispute Resolution for Disputes Related to IP and TK, TCEs and GRs

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_8.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_8.pdf)

Brief 9: Documentation of Traditional Knowledge and Traditional Cultural Expressions

[www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_tk\\_9.pdf](http://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_9.pdf)

“Celebrating Culture: IP & Arts Festivals,” WIPO Magazine, February 2012

[www.wipo.int/wipo\\_magazine/en/2012/01/article\\_0008.html](http://www.wipo.int/wipo_magazine/en/2012/01/article_0008.html)

## **WIPO Websites**

WIPO Traditional Knowledge

[www.wipo.int/tk/en/](http://www.wipo.int/tk/en/)

WIPO Copyright

[www.wipo.int/copyright/en/](http://www.wipo.int/copyright/en/)

WIPO Trademarks Gateway

[www.wipo.int/trademarks/en/](http://www.wipo.int/trademarks/en/)

WIPO Geographical Indications Gateway

[www.wipo.int/geo\\_indications/en/](http://www.wipo.int/geo_indications/en/)

WIPO Industrial Designs

[www.wipo.int/designs/en/](http://www.wipo.int/designs/en/)

WIPO SMEs

[www.wipo.int/sme/en/](http://www.wipo.int/sme/en/)





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