

Protection of Traditional Knowledge as a Part of Cultural Heritage in Industrial Property Law

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Protection of cultural heritage is a formidable task that requires the lawmaker to establish values crucial to preserving the identity of a given community. The concept of cultural heritage is understood differently in different national systems, where it primarily describes cultural activities aimed at preserving tangible and intangible cultural heritage, while in international law its meaning signifies the right to self-determination and existence, particularly in countries with a colonial history. However, due to the expanding influence of international regulations on national legal orders, the two indicated meanings of cultural heritage are mixed. This is reflected in the use of legal institutions, which *ratio legis* does not refer the function of protection of cultural heritage at all. The aim of this article is to explore whether and how cultural heritage is protected in industrial property law.

The article addresses the understanding of the concept of cultural heritage and the means of its protection in industrial property regulations in selected countries. Based on the analysis, the general conclusions establish models for the protection of cultural heritage in industrial property law. The article aims to show that cultural heritage is a broader concept than cultural activities and that it is also protected by intellectual property law.

Keywords: cultural heritage; intellectual property; traditional knowledge

Introduction

The development of knowledge is an integral part of the development of every community. The acquisition of new skills contributes to economic growth and improves living standards.¹ Transmitted customs and habits are often based on years of experiences. They are based on a certain kind of innovation that has become widespread within a given community over time. The globalisation of world markets and the legacy of colonisation have contributed to the exploitation of indigenous peoples' practices and knowledge in economic transactions. This raises the question of whether the civilisational achievements of indigenous peoples should benefit from intellectual property protection.

¹ KUPER, Adam. *The invention of primitive society*. New York: Routledge, 1988, p. 47; PRINEAS, Peter, LEMBIT, Roger, FISHER, Nicholas. *Australia's wilderness: an inventory. A report to the Australian Conservation Foundation*. Fitzroy: Australian Conservation Foundation, 1986, p. 21.

Initially, international legal action was aimed at protecting indigenous peoples' right to self-determination.² Over time, however, indigenous peoples began to demand not only the right to autonomy and respect for their cultures and customs, but also the establishment of a fair system for the use of their traditional knowledge by manufacturing companies, primarily pharmaceutical and textile companies.³ This required determining whether knowledge possessed only by a certain group of entities could constitute intellectual property.⁴ In Europe, these issues were not socially significant due to the lack or scarcity of indigenous peoples. However, this was different in African, South American and Asian countries whose territories had been under European rule for many years. This required legislators to determine whether the solutions used by indigenous peoples and adopted by colonizers constituted the indigenous peoples' intellectual property, and if so, what legal means should be used to protect them.⁵

These issues are evident in international law relating to the protection of cultural heritage. In national legal systems, this concept is equated with cultural activity. In international regulations, it is understood from an anthropological perspective, as a manifestation of human activity, both material and immaterial. Thus, it remains strongly linked to the protection of indigenous peoples and their "culture", which is a manifestation of autonomy and the right to self-determination.⁶

Methodology

The study utilises an analytical approach, analysing legal sources related to the understanding of the concept of cultural heritage and its components. A historical-legal approach was also employed to present the evolution of the understanding of culture and cultural heritage, as well as cultural property and cultural activities in law over the years. The analysis encompassed acts of international law that have served as a catalyst for national legislation to introduce legal protection for traditional knowledge. The analysis examined whether legal acts relating to the protection of industrial property contain references to traditional knowledge and, if so, how this affects the protection resulting from exclusive rights when traditional knowledge is implemented in industrial property.

Knowing the conceptual scope of cultural heritage, we determined the legal means of protecting it that have been developed in international law. It was determined that protection applies to both tangible and intangible heritage, and that the legal means of protection, although institutionally similar, remain distinct.

Next, an analysis was conducted of national legal systems that explicitly refer to the protection of traditional knowledge in legal acts concerning industrial property protection. Such legal systems are few in number. In most cases, traditional knowledge is not recognised in legal acts as a circumstance or institution affecting the scope of protection resulting from exclusive rights. Based on this, the protection of cultural heritage in industrial property law was distinguished as a specific form of legal protection of cultural heritage.

² LENZERINI, Federico. *The Culturalization of Human Rights Law*. Oxford: Oxford University Press, 2014, p. 203.

³ BARSH, Russel. Who steals indigenous knowledge? In: LOVALL, Erin (ed.), *Proceedings of the ASIL Annual Meeting*. New York: Cambridge University Press, 2001, pp. 153-161.

⁴ RILEY, Angela. Straight stealing: Towards an Indigenous system of cultural property protection. In: *Washington Law Review*, 80, 2005, pp. 69-164.

⁵ HUNT, Alan. *Governing Morals*. Cambridge: Cambridge University Press, 1999, p. 74.

⁶ DUTFIELD Graham. *Intellectual Property, Biogenetic Resources and Traditional Knowledge*. London: Earthscan, 2004, p. 32.

Based on the analysis, specific models of traditional knowledge protection in industrial property law were identified (inductive method). The special role of cultural institutions, including museums, in supporting the continued functioning of solutions derived from traditional knowledge in contemporary societies and the need for their protection was also demonstrated (axiological method).

Relations between culture, cultural heritage, cultural activity and cultural property

The concept of culture appears in the metalanguages of a vast portion of the humanities. It is defined differently in various fields of knowledge. However, no synthetic definition of the term has been developed.⁷ E. Casey analysed the linguistic etymology of the concept of culture, pointing out that

the word culture itself in Middle English meant “a cultivated place”, and this word itself derives from the Latin *colere*, meaning “to dwell, to care for, to cultivate, to worship”, and *cultus*, meaning a cult, especially a religious one. To be cultured means to possess culture, that is, to inhabit a place intensely enough to cultivate it – to be responsible for it, accountable for it, to care for it.⁸

Currently, culture is defined in two ways: objectively and subjectively. In the first variant, culture is understood as any transformation (intellectualisation) of nature. Any human activity undertaken for reasons other than instinctive reflexes is a component of cultural heritage.⁹ The second approach limits the definition of cultural activities or products to those which have positive effects in the moral or ethical sphere, or that aim to improve the existing state of affairs.¹⁰

These two ways of defining culture indirectly influence their legal understanding. Scholarship in this area determines the conceptual scope of legal protection of culture by defining what culture is. This is particularly evident in the case of cultural activities, which legally refer to a subjective understanding of culture. It is a similar case with the meaning of “cultural property”, which has a legal definition. In the 1954 Hague Convention,¹¹ Article 1 indicates that,

for the purposes of this Convention, the following shall be considered to be cultural property, regardless of their origin and owner:

- a) movable or immovable property which is of great importance to the cultural heritage of a nation, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; complexes of buildings possessing historical or artistic interest in themselves; works of art, manuscripts, books and other objects of artistic, historical or archaeological importance, as well as scientific collections and important collections of

⁷ KROEBER Alfred Louis, KLUCKHON Clyde. *Culture. A critical review of concepts and definitions*, Massachusetts: Peabody Museum Papers, 1952.

⁸ CASEY Edward. Early on Memory and the Past. In: CASEY, Edward (ed.), MORANO, Donald (ed.), *The Life of the Transcendental Ego. Essays in Honor of William Earle*. New York: Suny Press, 1986, p. 183.

⁹ WEBER, Alfred. *History of philosophy*, New York: Charles Scribren's Sons, 1897, p. 570.

¹⁰ SMITH, Anthony. *Kulturowe podstawy narodów*. Kraków: Wyd. UJ, 2009, p. 201.

¹¹ Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with the Regulations for the Implementation of this Convention, and the Protocol for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May 1954 (Journal of Laws 1957, No. 46, item 212).

- books, archives or reproductions of the above-mentioned property;
- b) buildings the principal and practical purpose of which is the preservation or exhibition of movable cultural property as defined in subparagraph a), such as museums, large libraries, repositories of archives, as well as shelters intended to preserve, in the event of armed conflict, movable cultural property as defined in subparagraph a);
 - c) centres containing a significant amount of cultural property as defined in subparagraphs a) and b), hereinafter referred to as “historic centres”.

A similar definition is contained in Article 2(1) of Directive 2014/60/EU, according to which “cultural object” means an object which, before or after its unlawful removal from the territory of a Member State, has been classified or defined by a Member State under national legislation or administrative procedures as a national treasure possessing artistic, historic or archaeological value within the meaning of Article 36 of the Treaty on the Functioning of the European Union (TFEU).¹²

However, the meaning of cultural heritage is determined by an objective understanding of culture, as will be presented hereinafter.

Evolution of legal meaning of cultural heritage

The origins of contemporary legal protection of cultural heritage can be traced back to the nineteenth century, and more specifically to the decisions of the Congress of Vienna, held in 1814–1815, which stipulated that works of art should not be removed from their places of origin during wartime.¹³ A similar provision was also introduced by the Second Hague Convention of 29 July 1899. Pursuant to Article 56 of the Convention, the property of the communes; that of religious, charitable, and educational institutions; and those of arts and science, even when State property, shall be treated as private property. All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, or to works of art or science, is prohibited, and should be made the subject of proceedings.¹⁴

However, the work of Nicholas Roerich, author of the draft Pact for the Protection of Cultural Values of 1929, ratified by 21 members of the Pan-American Union in 1935 as the Treaty for the Protection of Artistic and Scientific Institutions and Monuments (Roerich Pact),¹⁵ played a significant role in building awareness of the need to protect cultural heritage. Although this document did not become global law, it stimulated the emergence of an international movement promoting the need to protect cultural goods and values.¹⁶ The entire Roerich Pact consisted of just eight articles. Article 1 calls for: “monuments, museums, scientific, artistic, educational, and cultural institutions, as well as their employees, to be recognised as neutral both in time of peace and war, and as such respected and protected by belligerents”. Article 4 states that:

In order to identify the monuments and institutions in question, the signatory states and those that accede to this treaty shall, at the time of signature or accession, or at any time

¹² Treaty on the Functioning of the European Union (Official Journal C 202 of 7 June 2016).

¹³ Schutz des kulturellen Erbes. In: Öffentliche Sicherheit, 1–2/2011, p. 13. (Author not indicated)

¹⁴ Laws of War: Laws and Customs of War on Land (Hague II); July 29, 1899.

¹⁵ <http://hrlibrary.umn.edu/instree/1935a.htm> (accessed 12.10.2025).

¹⁶ MCCANNON, John. *Nicholas Roerich. The Artist Who Would Be King*. Pittsburgh: University of Pittsburgh Press, 2022, pp. 362–395.

thereafter, forward to the Pan-American Union a list of monuments and institutions for which they wish the protection agreed upon in this treaty.

The Roerich Pact served as a model for the subsequent Hague Conventions of 1954,¹⁷ 1972¹⁸ and 2003.¹⁹

Cultural heritage is the collection of all cultural property. Article 1 of the 1972 Convention states that:

for the purposes of this Convention, the following shall be considered as “cultural heritage”:

- monuments: works of architecture, works of monumental sculpture and painting, elements and structures of an archaeological character, inscriptions, caves and groupings of these elements, having outstanding universal value from the point of view of history, art or science;
- groups: separate or combined buildings which, by reason of their architecture, their unity or their integration with the landscape, have outstanding universal value from the point of view of history, art or science;
- historic sites: works of man or the joint works of man and nature, as well as archaeological zones and sites, having outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

The 2003 Convention expanded this concept to include “intangible cultural heritage,” which refers to the practices, representations, expressions, knowledge and skills – as well as the associated instruments, objects, artefacts, and cultural spaces – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage; that are transmitted from generation to generation; that are continuously recreated by communities and groups in response to their environment, their interactions with nature and their history; and that provide them with a sense of identity and continuity, thus contributing to respect for cultural diversity and human creativity. However, the Convention introduced a limitation on the protection of intangible cultural heritage, specifying that, for the purposes of this Convention, consideration will be given exclusively to intangible cultural heritage that complies with existing international human rights instruments; the requirements of mutual respect between communities, groups, and individuals; and the principles of sustainable development.

Article 2 of Council of Europe Framework Convention on the Significance of Cultural Heritage of 27 October 2005²⁰ states that cultural heritage comprises resources inherited from the past which identify peoples, regardless of ownership, and constitute a form of preservation and expression of constantly changing values, beliefs, knowledge and traditions, as well as

¹⁷ The Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with the Regulations for the Implementation of this Convention, and the Protocol for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague on 14 May 1954 (Journal of Laws 1957, No. 46, pos. 212).

¹⁸ Convention concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris on 16 November 1972 by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its seventeenth session (Journal of Laws 1976, No. 32, item 190).

¹⁹ UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, signed in Paris on 17 October 2003 (Journal of Laws 2011, No. 172, pos. 1018).

²⁰ Journal of Laws 2023. pos. 396.

encompassing all aspects of the environment resulting from the interaction between people and their surroundings over time.²¹

In legal terms, cultural heritage is a narrower concept than culture. It encompasses only cultural goods that meet specific legal requirements. For tangible goods, this means possessing exceptional, universal value from the perspective of history, art or science; for intangible goods, it means compliance with existing international human rights instruments, as well as with the requirements of mutual respect between communities, groups and individuals, and with the principles of sustainable development. By introducing the concept of cultural heritage, attempts are being made to move away from the objective scope of culture in the anthropological and ethnological sense, resulting in limiting the scope of cultural protection solely to cultural heritage. It should be noted that the term “heritage” – understood as the totality of values inherited from ancestors – has evaluative implications, i.e., a positive connotation. When “heritage” consists of assets that represent no value, there is no longer any talk of inheritance; rather, it is said that nothing was inherited, that there was no inheritance. The lack of value of an inheritance, in a sense, negates inheritance. The legal granting of protection to cultural norms is based on this connotation.

Components of cultural heritage and legal means of their protection

Cultural heritage can be divided into two main components: material cultural heritage and intangible cultural heritage.

The legal protection of tangible cultural heritage can be considered from both international and national perspectives. The protection measures are identical and include maintaining registers of cultural heritage sites, regulations related to their maintenance, conservation and restitution, and financing-related activities. As indicated, granting legal protection to tangible heritage primarily involves determining what the legislator considers to be components of this heritage.

Under international law, the 1972 Convention establishing the World Heritage List contains guidelines and procedures for inscription on the list. The inscription process is as follows: states/parties select properties worthy of inscription and include them on their national Tentative Lists. Next, national Tentative Lists are submitted to the World Heritage Centre. All states or parties then prepare nomination proposals, but can only nominate properties from the Tentative Lists. The nomination proposals are then submitted to the World Heritage Centre, which registers them and forwards them to experts from the International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature (IUCN). After receiving positive expert opinions, the World Heritage Committee decides whether to inscribe a property on the World Heritage List. Inscription is determined by the property’s “outstanding universal value” and whether it meets at least one of the ten cultural or natural criteria. If an application to include a given property on the list is not accepted, it can be resubmitted only if exceptional circumstances arise, for example, new discoveries or new scientific information about the property or criteria other than those presented in the first application.²²

The safeguarding of intangible cultural heritage is guaranteed by the 2003 Convention, on the basis of which UNESCO established the List of Intangible Cultural Heritage to

²¹ <https://rm.coe.int/1680083746> (accessed 20 October 2025).

²² LEASK, Anna, FYALL Alan. *Managing World Heritage Sites*, New York: Routledge, 2006, pp. 10–12.

ensure better protection of intangible cultural heritage worldwide and raise awareness of its importance.²³ It is published by the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage. The first list was established in 2008, and since 2010, three lists have been in force.²⁴ The first – the Representative List of the Intangible Cultural Heritage of Humanity – includes “cultural practices and expressions that help to demonstrate the diversity of this heritage and raise awareness of its importance”. The List of Intangible Cultural Heritage in Need of Urgent Safeguarding includes elements of culture that, according to the communities and countries concerned, require urgent action to keep them alive.²⁵ The third list is the Register of Good Safeguarding Practices, which compiles the experiences of the parties to the Convention in safeguarding intangible cultural heritage, demonstrating how they have overcome challenges in transmitting their living heritage, including traditional practices and knowledge, to future generations. These methods and approaches are collected to serve as lessons learned and models that can be adapted to the circumstances of other countries.²⁶

Traditional knowledge as a part of cultural heritage

The above-discussed inconsistencies in the understanding of the concept of culture and the related cultural heritage reveal that the law understands culture in two ways, similarly to the understanding among cultural studies scholars. It should be emphasised, however, that cultural heritage in its objective sense – that is, encompassing the entirety of a community's tangible and intangible achievements – remains present in the legal framework of cultural heritage protection related to the protection of the right to self-determination and the so-called right to culture.²⁷ This right includes the authority of a community to decide on the choice of axioms on which its functioning is based and how this manifests itself in everyday life. The solutions adopted are based on norms of conduct developed through evolutionary development. These principles may be characterised by an innovative value which, under intellectual property law, may give rise to patentability, and thus entitle the invention to registration and legal protection.

It should also be highlighted that traditional knowledge will always precede the development of material cultural. To create something, one must first know how to do it. Therefore, traditional knowledge is prior to other human production. Its legal protection cannot be the same as that of material objects. Such protection of traditional knowledge must precede the violation of traditional knowledge, for example, through the mass production of goods based on that knowledge, without permission from the indigenous community from which it originated. Numerous studies have revealed that the unauthorised use of indigenous peoples' achievements contributes to problems such as indifference or a lower sense of self-esteem

²³ SCHREIBER, Hanny. Niematerialne dziedzictwo kulturowe jako element softpower państw. In: *e-Politikon. Polityka w Kulturze. Kultura w Polityce*, 18, 2016, p. 55.

²⁴ SKOUNTI, Ahmed. The intangible cultural heritage system: Many challenges, few proposals. In: *Santander Art and Culture Law Review*, 3(2), 2017, p. 69.

²⁵ HAFSTEIN, Valdimar. Intangible heritage as a list: From masterpieces to representation. In: SMITH, Laurajane, AKAGAWA, Natsuko (eds.), *Intangible heritage*. New York: Routledge, 2008, p. 117.

²⁶ ALIVIZATOU, Marilena. *Intangible heritage and participation. Encounters with safeguarding practices*, New York: Routledge, 2022, pp. 120–124.

²⁷ NAJMAN Michał. *Prawo a kultura. Analiza skuteczności kształtowania norm kulturowych na drodze prawnej*, PWN, Warszawa 2025, pp. 114–115.

among members of the indigenous community, which in turn leads to a loss of innovation and, consequently, the disappearance of cultural diversity.²⁸

Protection of traditional knowledge has particular meaning not only for indigenous peoples but for the whole global community. It is not always possible to predict what kind of knowledge can be useful in future. Implementing solutions from other cultures leads to lower levels of self-independence and creativity. The unification of use of unique information may lead to the disappearance of the core of a majority of cultures, diminishing humanity's chances for survival in the long term.

Protection of cultural industrial heritage in international law

Legal protection of the industrial property of indigenous peoples, generally understood as traditional knowledge,²⁹ has been recognised in numerous international legal instruments³⁰ and is derived from Article 27 of UDHR (The Universal Declaration of Human Rights³¹).³² From the outset, a distinction was made between the protection of industrial property and folklore, but initially these issues were treated uniformly.³³ The Belem Declaration³⁴ stipulates that “all other inalienable human rights be recognized and guaranteed, including cultural and linguistic identity” and that “Mechanisms [shall] be established by which indigenous specialists are recognized as proper authorities and are consulted in all programs affecting them, their resources, and their environment.”

Similarly, the Kari-Oca Declaration and Indigenous Peoples' Land Charter³⁵ state that:

procedures must be put in place to compensate indigenous peoples for the use of their knowledge and biological resources,” and that “the misappropriation of traditional medicines and traditional knowledge of indigenous peoples should be considered a crime against humanity. [...] As creators and bearers of civilization, who have given and continue to share with humanity their knowledge, experience, and values, we ask that our

²⁸ REYNOLDS, Brenda. *Systematic Review on Trauma Interventions for Cultural Genocide Survivors*. Doctoral Thesis, Chancellor: California Southern University, 2025; LUMAS-WRIGHT, Monique. *Trauma across culture. A phenomenological study exploring the historical effect of colonialism, genocide, and resilience on descendants of indigenous peoples in the United States*. Malibu: Pepperdine University, 2024; MAHMOOD, Shakeel, et al. The need to strengthen Australian health and social policy to support survivors of the Stolen Generations. In: *BMJ Global Health*, 11(5), 2026, pp. 1–7; BUSHELL, Vanessa, STEVENS, Bruce. The stolen generation: Psychological effects of the systematic removal of indigenous children from their families and culture. In: *Ethos: Official Publication of the Law Society of the Australian Capital Territory*, 178, 2000, pp. 17–20.

²⁹ LI, Luo. *Intellectual Property Protection of Traditional Cultural Expressions. Folklore in China*. London: Springer, 2014, p. 38.

³⁰ CURCI, Jonathan. *The protection of biodiversity and traditional knowledge in international law of intellectual property*. Cambridge: Cambridge University Press, 2010, p. 5.

³¹ The Universal Declaration of Human Rights, adopted by the UN General Assembly by resolution 217/III A on 10 December 1948 in Paris.

³² HANSEN, Stephen, VANFLEET, Justin. *Traditional Knowledge and Intellectual Property: A Handbook on Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property and Maintaining Biological Diversity*. New York: AAAS, 2003, p. 9.

³³ OGUAMANAM, Chidi. *International Law and Indigenous Knowledge. Intellectual Property, Plant Biodiversity, and Traditional Medicine*. Toronto: University of Toronto Press, 2006, p. 76.

³⁴ <https://www.ethnobiology.net/wp-content/uploads/Decl-Belem-Eng-from-Posey.pdf> (accessed 20 October 2025).

³⁵ https://cendoc.docip.org/collect/cendocdo/index/assoc/HASH51e7/4adac409.dir/Kari-Oca_and_Earth_Charter_1992.pdf (accessed 20 October 2025).

intellectual and cultural property rights be guaranteed and that their mechanisms benefit our populations. (...) Protection, standards, and mechanisms for the artistic and artisanal creations of our peoples must be established and implemented to prevent plunder, plagiarism, exploitation, and abuse.

The Rio Declaration, in Principle 22, emphasises that:

indigenous peoples and their communities, as well as other local communities, play a significant role in environmental management and development, because of their experience and traditions. States should recognize and appropriately support the identity, culture and interests of communities and enable them to participate effectively in achieving sustainable development.³⁶

The implementation of the indicated Principle is detailed in the Convention on Biological Diversity. Its Preamble highlights the importance of

recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.³⁷

The objectives of this Convention include the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and transfer of relevant technologies, taking into account all rights over those resources and technologies, and by appropriate funding (Article 1).

Subsequently, the Mataatua Declaration on the Intellectual and Cultural Property Rights of Indigenous Peoples, adopted on 18 June 1993, emphasises that:

indigenous peoples are the custodians of their traditional knowledge and have the right to control the dissemination of such knowledge; they have the right to create new knowledge from their traditional cultures, and the rights to the intellectual and cultural heritage of indigenous peoples are recognized by the people who are its creators.³⁸

Following this, the Julayinbul Declaration on the Intellectual Property Rights of Indigenous Peoples, adopted in November 1993, stated that:

³⁶ Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development held in Rio de Janeiro from 3 to 14 June 1992, <https://libr.sejm.gov.pl/tek01/txt/inne/1992.html> (accessed 12 November 2025).

³⁷ Convention on Biological Diversity, opened for signature in Rio de Janeiro on 5 June 1992, Dz. U. 2002 nr 184 poz. 1532.

³⁸ https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/mataatua.pdf, (accessed 20 October 2025).

Indigenous peoples and nations are willing to share their intellectual heritage with all humanity, provided that the fundamental rights to define and control that heritage are recognized by the international community. Aboriginal intellectual property, under Aboriginal customary law, is an inherent and inalienable right that cannot be invalidated, extinguished, or stolen. Any use of the intellectual heritage of Aboriginal peoples and nations is subject to respect for Aboriginal customary law, and any use without express consent is strictly prohibited.³⁹

Similarly, the Santa Cruz de la Sierra Declaration on Intellectual Property, adopted in September 1994, noted that

studies must be carried out to design a system of protection and recognition that is consistent with the traditional concept of intellectual property, and mechanisms must be developed to prevent the misappropriation of traditional knowledge and biological resources, and appropriate mechanisms must be established to maintain and ensure the right of indigenous peoples to deny unrestricted access to the cultural resources of their communities and to enable the challenge of patents and other rights based solely on what is essentially indigenous.⁴⁰

In addition, the 1995 Tambunan Declaration on the Protection and Preservation of Indigenous Knowledge⁴¹ and the Suva Declaration on Indigenous Knowledge and Intellectual Property Rights noted that “indigenous peoples do not benefit from the intellectual property rights system. Traditional knowledge and cultural resources are depleted, exploited or appropriated by outsiders such as multinational companies, institutions, researchers and academics who seek profit and increased profits.”⁴² It further states that “indigenous peoples have the right to repatriation of indigenous cultural resources held in foreign collections, as well as compensation and the granting of royalties for the commercial use of these resources,” and that

opposition to the provisions of the General Agreement on Tariffs and Trade that facilitate the expropriation of indigenous knowledge and resources should be urged. It calls for building the legal capacity of indigenous peoples to preserve their oral traditions and supporting indigenous peoples’ initiatives to record their knowledge in accordance with their customary access procedures.⁴³

³⁹ FOURMILE, Henrietta. Making things work. Aboriginal and Torres Strait Islander Involvement in Bioregional Planning. In: BRECKWOLDT, Roland (ed.), *Approaches to bioregional planning*, Canberra: Department of Environment, Sport and Territories Publishing, 1996, p. 236.

⁴⁰ <https://www.segib.org/wp-content/uploads/DeclaraciondeSantaCruz.pdf>, (accessed 20 October 2025).

⁴¹ ANDERSON, Jane. *Indigenous/ traditional knowledge and intellectual property*. Durham: Duke University School of Law, 2010, p. 62.

⁴² PIRES DE CARVALHO, Nuno, From the Shaman’s Hut to the Patent Office. A Road Under Construction. In: MCMANIS, Charles (ed.), *Biodiversity and the Law Intellectual Property, Biotechnology and Traditional Knowledge*. London: Earthscan, 2007, p. 242.

⁴³ CHEN, Jim. Across the Apocalypse on Horseback: Biodiversity Loss and the Law. In: MCMANIS, Charles (ed.), *Biodiversity and the Law Intellectual Property, Biotechnology and Traditional Knowledge*. London: Earthscan, 2007, p. 48.

All of the above demands for legal protection of traditional knowledge were confirmed at the Indigenous Peoples Summit held in Kimberley in 2002.⁴⁴

The legal protection of indigenous peoples' intellectual property was codified in the 2003 Convention, which recognised traditional knowledge as part of intangible heritage, and later in the 2007 Declaration.⁴⁵ The last one emphasises that indigenous peoples have the right to enjoy human rights and fundamental freedoms recognised in the UDHR and international human rights law (Article 1). It highlights the right of indigenous peoples to self-determination, including determination of their own political status and the freedom to choose their own path of economic, social and cultural development (Article 3). It also states, in Article 8, that member states should

provide preventive and remedial mechanisms for acts aimed at the deprivation of the rights of members of indigenous peoples, their dispossession or deprivation of their lands, territories, or resources, as well as forced assimilation or integration in any form, and propaganda designed to promote or incite racial or ethnic discrimination against them.

In Article 11, the declaration also recognises the right to

practice and revitalize traditions and customs, including the right to preserve, protect, and develop past, present, and future expressions of indigenous cultures, such as archaeological and historical sites, objects, designs, ceremonies, technologies, visual and performing arts, and literature.

Article 31 further notes that

indigenous peoples have the right to preserve, control, protect, and develop their cultural heritage, traditional knowledge, and cultural and traditional expressions, as well as the expressions of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, sports, traditional games, and the performing and plastic arts, as well as the right to control, protect, and develop their intellectual property related to this heritage, traditional knowledge, and cultural and traditional expressions.

However, the declaration concludes with a statement that somewhat diminishes its groundbreaking significance. Article 46 states that

nothing in this declaration shall be interpreted as implying that any State, people, group or individual has the right to perform any act or to engage in any action that would be inconsistent with the provisions of the Charter of the United Nations or be construed as encouraging or authorizing any action, and which would divide or impair, in whole or in part, the territorial integrity or political unity of sovereign and independent states. In the exercise of the rights proclaimed in the declaration, the human rights and fundamental

⁴⁴ Kimberley Declaration (2002), http://www.ipcb.org/resolutions/htmls/kim_dec.html, (accessed 20 October 2025).

⁴⁵ UN Declaration on the Rights of Indigenous Peoples, 2007, No. 61/295.

freedoms of all shall be respected. Restrictions on their exercise shall be permitted only when provided for by law and consistent with international human rights law. Any restriction should be non-discriminatory and necessary only for the purpose of ensuring that the rights and freedoms of others are recognized and respected and for meeting the essential requirements of a democratic society. The provisions contained in the Declaration should be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good government, and good faith.

This demonstrates that traditional knowledge can be legally protected both as cultural heritage (intangible) and as intellectual property.

Shortly after the 2007 Convention entered into force, an effort was made to further elaborate on the provisions of the Declaration on Biodiversity. The Convention on Biological Diversity's Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization was adopted at the tenth meeting of the Conference of the Parties on 29 October 2010, in Nagoya.⁴⁶ Article 7 of mentioned Protocol indicates that:

in accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.

Article 12 states that:

in implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of: (a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge; (b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and (c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.

⁴⁶ <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf> (accessed 15 July 2026).

Intellectual property law has developed in parallel with the development of international law protecting indigenous cultural rights. Although its historical origins are slightly older, the early 1990s saw the implementation of sustainable development principles, particularly in relation to the benefits arising from so-called Western cultures leveraging the achievements and innovations of indigenous cultures. This is confirmed by an analysis of the 1994 TRIPS Agreement,⁴⁷ which does not include any reference to the rights of indigenous peoples or their participation in benefits from industrial property registration.

It was not until 2000 that the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC) was established. This committee is responsible for developing international legal principles that protect the heritage of indigenous peoples and local communities from unauthorised use and biopiracy in three main areas: the conservation of genetic resources, the protection of traditional knowledge, and traditional cultural expressions.⁴⁸ The IGC's work resulted in the development of the so-called Geneva Agreement, the 24 May 2024 Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge.⁴⁹ The treaty aims to increase the effectiveness, transparency and quality of the patent system for genetic resources and traditional knowledge associated with genetic resources, and to prevent the granting of patents for inventions that are not new or innovative in relation to genetic resources and traditional knowledge associated with genetic resources (Article 1).

However, the regulations developed are merely ostensible protection, as evidenced by Article 3 of the Treaty. According to this provision, when utilising genetic resources or traditional knowledge, parties are obligated to disclose them, if known. If not, a declaration that the applicant seeking industrial property registration is not aware of any information in this regard is sufficient. This is confirmed by Articles 5.3 and 5.4.5.3, which state that “no Party may invalidate, revoke, or render unenforceable a patent grant solely by reason of the applicant's failure to disclose specified information” (5.3), provided that “each Party [provides] in its national law post-grant sanctions or remedies where there was fraudulent intent in requiring disclosure of specified information” (5.4.5.3).

Protection of cultural industrial heritage in national laws

Industrial property law encompasses the protection of inventions, industrial and utility models, trademarks, geographical indications and the topographies of integrated circuits. In relation to the protection of cultural heritage, the protection of industrial property is reflected in the protection of traditional knowledge and in the protection of ornaments or designs used by cultural groups (trademarks or commercial marks). Due to the fact that the latter are generally related to the use of folklore, which is more connected with protection by copyright, in this article these issues are discussed in a limited scope, namely, in relation to regulations containing restrictions on the use of folklore as trademarks or commercial designations, if any.

⁴⁷ <https://eur-lex.europa.eu/PL/legal-content/summary/wto-agreement-on-trade-related-aspects-of-intellectual-property.html> (accessed 15 July 2026).

⁴⁸ <https://www.wipo.int/en/web/igc> (accessed 15 July 2026).

⁴⁹ World Intellectual Property Organization (WIPO) (2024). WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge. <https://www.wipo.int/wipolex/en/text/592504> (accessed 15 July 2026).

Under Polish law, it is inadmissible, in accordance with Article 129 (1) item 8 of the Industrial Property Law,⁵⁰ to grant a right of protection for a trademark containing an element of high symbolic value, in particular of a religious, patriotic or cultural nature, the use of which would offend religious sentiment, patriotic feelings or national tradition. However, there are no detailed references to the protection of traditional knowledge.

A similar regulation regarding trademarks was introduced in Article 23 of the Lao Act on Intellectual Property,⁵¹ according to which “A mark consisting of or containing, without authorisation, images of cultural symbols or historical monuments, or the name, image or likeness of a national hero or leader, or a mark that is offensive or contrary to the noble traditions of the nation, may not be registered”.

Panamanian legislation also provides, in Articles 91 and 146 of the Intellectual Property Law,⁵² that words, letters, signs or symbols used by indigenous or religious communities or non-profit associations to determine how products are processed or to distinguish finished products or services, or those that constitute an expression of their cult, custom, originality or religious practice, are not subject to registration as a trademark (Article 91) or commercial designation (Article 146), unless the application is filed for the personal benefit of one of the communities or associations to which this Article applies.

For many years, European and American producers have been “patenting” solutions used for centuries in folk medicine. This practice is called biopiracy.⁵³ The problem of this phenomenon stems from the lack of awareness among indigenous peoples of the wealth of knowledge they possess.

One example is Indian regulation, which explicitly states that designs that essentially constitute traditional knowledge, or involve the combination or duplication of known properties of a traditionally known ingredient or ingredients, are not considered inventions (Article 3 of the Indian Patent Law).⁵⁴ This regulation has resulted in cases where patents based on traditional Indian knowledge have been challenged. One such case is the patent filed by W.R. Grace and the US Department of Agriculture at the European Patent Office in 1997 for an invention involving the use of neem oil as a method for combating fungal infections in plants.⁵⁵ The use of neem oil against plant fungi has been known in Indian culture since antiquity. Nevertheless, the US patent was upheld because it covered novel methods for extending the shelf life of azadirachtin, the active ingredient in neem oil.⁵⁶ Another example of infringement of India's intangible heritage was the 1995 patent issued by the University of Mississippi Medical Center for the use of turmeric in wound healing. India opposed this patent, arguing that the medicinal properties of turmeric had been known in India since ancient times. The patent was invalidated in 1997.⁵⁷

⁵⁰ Act of June 30, 2000, Industrial Property Law, Journal of Laws 2023, item 1170, consolidated text.

⁵¹ Law No. 01/NA of December 20, 2011, on Intellectual Property (as amended).

⁵² Law No. 35 of May 10, 1996, on Industrial Property.

⁵³ UDGAONKAR Sangeeta. The recording of traditional knowledge. Will it prevent ‘bio-piracy’? In: *Current Science*, 82(4), 2002, p. 413.

⁵⁴ The Patents (Amendment) Act, 2005 (Act No. 15 of 2005).

⁵⁵ SHIVA, Vandana. Biodiversity, intellectual property rights, and globalization. In: DE SOUSA SANTOS, Boaventura (ed.), *Another knowledge is possible: Beyond northern epistemologies*. London: Verso 2007, pp. 280–283.

⁵⁶ SINGH, Ompal, KHANAM, Zakia, AHMAD, Jamal. Neem (*Azadirachta indica*) in Context of Intellectual Property Rights (IPR). In: *Recent Research in Science and Technology*, 3(6), 2011, pp. 82–83.

⁵⁷ KUMAR, Sanjay, India wins battle with USA over turmeric patent. In: *The Lancet*, 350(9079), 1997, p. 724.

Part of the legal regulations for registration requires consent to the use of traditional knowledge if the invention is based on it. An example is Section 30(3A) and (3B) of the South African Patents Act,⁵⁸ which provides that any applicant filing a patent application with a complete specification must, before the application is accepted, file with the registrar a declaration in the prescribed manner stating whether the claimed invention is based on or derived from indigenous biological resources, genetic resources, or traditional knowledge or uses. The registrar requests the applicant to provide evidence in the required manner of their title or entitlement to use indigenous biological resources, genetic resources, or traditional knowledge or use if the applicant files a declaration acknowledging that the invention for which protection is sought is based on or derived from indigenous biological resources, genetic resources, or traditional knowledge or use.

A similar provision has been adopted in Egyptian legislation. Section 3(3) of Article 3 of the Council of Ministers Resolution No. 1366 of 2003⁵⁹ states that if the application concerns an invention or utility model covering plant or animal biological material; traditional medicinal, agricultural, industrial, or handicraft knowledge; or cultural or environmental heritage, the application must be accompanied by documentation confirming the creator's use of the source from which the material was lawfully obtained, in accordance with the legislation in force in the Arab Republic of Egypt.

A slightly different approach to the protection of traditional knowledge under patent law is provided by Chile in Article 3 of its Industrial Property Law,⁶⁰ which guarantees that the protection provided by the industrial property rights it regulates will be granted, while preserving and respecting the biological and genetic heritage and traditional national knowledge. The granting of industrial property rights constituting protectable elements developed based on material derived from this heritage or knowledge is subject to the acquisition of this material in accordance with applicable law.

Similarly, in the Philippines, Section 35 of the Indigenous Peoples' Rights Act⁶¹ stipulates that the use of traditional knowledge is subject to the free and prior informed consent of such communities, obtained in accordance with the customary law of the community.

In other regulations, the protection of traditional knowledge is based on the legal obligation to indicate the source of the invention, provided it is traditional knowledge and the patent is directly based on it. In Switzerland, Article 49a(b) of the Innovation Patent Act⁶² stipulates that a patent application must include information on the source of traditional knowledge of indigenous or local communities of genetic resources to which the inventor or patent applicant had access, provided that the invention is directly based on this knowledge or genetic resource. A similar solution was adopted in Germany (Section 34a of the Patent Act⁶³), Spain (Article 23 Section 2 of the Patent Act⁶⁴) and Sweden (Article 5a of the Patent Decree⁶⁵); however,

⁵⁸ Patents Amendment Act 2005 (Act No. 20 of 2005).

⁵⁹ Prime Minister's Decree No. 1366 of 2003, issuing Executive Regulations of Books One, Two, and Four of Law No. 82 of 2002 on the Protection of Intellectual Property Rights.

⁶⁰ Law No. 19.039 on Industrial Property (Consolidated Law approved by Decree-Law No. 3).

⁶¹ The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371).

⁶² Federal Law of 25 June 1954 on Patents for Inventions (SR 232.14).

⁶³ Patent Act (as amended up to Act of 4 April 2016), Federal Law Gazette 1981 I p. 1.

⁶⁴ Law No. 24/2015 of 24 July 2015, on Patents.

⁶⁵ Patents Decree (1967: 838).

it is limited to the applicant's obligation to indicate the geographical origin of the biological material on which the invention or utility model is based.

Some regulations recognise traditional knowledge as the property of the people who possess it. For example, Article 117 of the Botswana Industrial Property Act⁶⁶ stipulates that:

ownership and other rights to traditional knowledge belong to the owner of traditional knowledge. If traditional knowledge is collectively owned, rights to it will be exercised and enjoyed collectively, in accordance with cultural practices. Notwithstanding the foregoing, local communities that have individually registered similar or identical elements of traditional knowledge have the opportunity to individually exercise and enjoy their rights to traditional knowledge. The applicant community, comprising persons of various nationalities, including those from Botswana, will have the right to register and acquire rights to traditional knowledge in Botswana and other countries.

Article 121 of the said Act grants the owner the following exclusive rights:

- (a) where the subject of protection is a product, the right to prevent third parties from manufacturing, using, storing, offering for sale, selling, commercialising, importing or exporting the product or any element thereof without consent;
- (b) where the subject of protection is a domesticated animal, a cultivated plant or any microorganism, the right to prohibit third parties from reproducing, propagating or preparing for reproduction without consent by offering for sale, selling, importing, exporting or any form of commercialisation;
- (c) where the subject of protection is a design or an object of a functional or aesthetic nature containing any element of handicraft, the right to prohibit third parties from making or reproducing an object with a similar configuration in terms of shape, colour, material, technique and the general style or visual impression of handicraft that is characteristic of it;
- (d) where the subject of protection is a name, symbol, emblem or any distinctive sign of a religious, spiritual, cultural or economic nature, the right to prohibit third parties from making or reproducing any element of handicraft without consent using, whether in a maternal context, language, or any other language, consisting of an identical or similar mark on a product or product related to services, labelling, packaging, or other materials reproducing or incorporating the marks for commercial or other purposes.

No one is permitted to distort registered traditional knowledge in any way, in particular to distort the spiritual or cultural identity of the community possessing the traditional knowledge, or to perform any act that implies the direct or indirect use of the knowledge for any purpose, including scientific or academic research, without the owner's consent. Notwithstanding the foregoing, if the subject of protection is a product placed on the market in Botswana by the owner or by a third party with the owner's consent, commercial activities in relation to the product cannot be considered to distort or in any way contribute to the cultural identity of the community. If, after registering the traditional knowledge, the owner takes reasonable steps to

⁶⁶ Industrial Property Act, 2010, Act No. 8 of 2010.

keep some elements of the traditional knowledge secret, no one shall disclose or acquire the undisclosed knowledge in any way contrary to honest commercial practices.

The use of traditional knowledge requires the Minister's consent only if it is in the public interest and only if the use does not distort or insult the cultural identity of the local community, and the local community receives a fair share of any benefits arising from such use (Article 124).

A similar solution was adopted in Kenya, where Article 10 of the Protection of Traditional Knowledge and Cultural Expressions Act⁶⁷ states that:

each community has the exclusive right to permit the use of its traditional knowledge and to prevent any person from using its traditional knowledge without its prior informed consent. In addition to all other available rights, remedies and actions, owners will have the right to initiate legal proceedings against any person who uses traditional knowledge without the owner's consent. Each community will establish and adopt its own community rules specifying the procedures for granting permits to use its traditional knowledge. The rules will be submitted to the district authorities during the registration of traditional knowledge.

However, the scope of protection is more limited than in the Botswana regulation. Section 19 of the Kenya Act stipulates that:

the protection of traditional knowledge or cultural expressions shall not restrict or hinder the normal use, development, exchange, dissemination and transmission of traditional knowledge or cultural expressions by members of a particular community within the framework of and in accordance with the customary law and practices of that community; and shall extend only to uses of traditional knowledge or cultural expressions whether or not for commercial gain; and shall be subject to such other exceptions as may be necessary to meet the needs of non-commercial uses, including teaching and research for educational purposes, personal or private use, criticism or review, reporting of current events, use in legal proceedings, making recordings and reproducing traditional knowledge or cultural expressions for the purpose of inclusion in an archive or inventory solely for the purpose of protecting the knowledge or cultural heritage, and incidental uses.

The Ethiopian legislator also emphasises, in Article 6 of the Law on Access to Genetic Resources and Community Knowledge and the Proclamation of Community Rights,⁶⁸ that:

local communities have the following rights to their genetic resources and community knowledge: the right to regulate access to their traditional knowledge; the inalienable right to use their genetic resources and traditional knowledge; and the right to enjoy the benefits arising from the utilisation of their genetic resources and traditional knowledge.

Local communities have the right to benefits arising from the utilisation of their traditional knowledge, in particular to obtain a 50% state share in monetary form from the benefits from

⁶⁷ The Protection of Traditional Knowledge and Cultural Expressions Act, Act No. 33 of 2016.

⁶⁸ Access to Genetic Resources and Community Knowledge, and Community Rights Proclamation No. 482/2006, <https://www.wipo.int/wipolex/en/text/179080> (accessed 20 October 2025).

utilisation their genetic resources. A law granting ownership of traditional knowledge to local communities was also adopted in the Brazilian regulation, which in Article 9 of the Provisional Law No. 2.186-16 of 23 August 2001⁶⁹ states that:

indigenous and local communities that create, develop, store or cultivate traditional knowledge associated with genetic heritage shall be guaranteed the right to: recognition of the origin of access to traditional knowledge in all publications, applications, exploitation and dissemination, and the right to prevent unauthorized third parties from using, testing, researching or exploiting the associated traditional knowledge; and from disseminating, transmitting or transferring data or information constituting the associated traditional knowledge or part thereof. They shall also have the right to receive benefits from the economic exploitation by third parties, directly or indirectly, of the associated traditional knowledge to which they hold rights, in accordance with this Provisional Law. Any traditional knowledge associated with genetic heritage may be recognized as belonging to the community, even if only one member of that community possesses that knowledge.

A similar solution was also adopted in Peru in a law introducing a system for protecting indigenous peoples' collective knowledge derived from biological resources.⁷⁰ This law distinguishes between traditional knowledge that is protected and that is in the public domain. Article 42 of the law stipulates that:

indigenous peoples possessing collective knowledge shall be protected from disclosure, acquisition, or use of this collective knowledge without their consent or inappropriately, provided that the collective knowledge is not in the public domain. It is also protected from unauthorized disclosure if a third party has legally obtained access to the collective knowledge covered by the protective clause.

The issue is treated similarly in Kyrgyz regulation in the Law of the Kyrgyz Republic on the Protection of Traditional Knowledge.⁷¹ Article 2 stipulates that:

the holders of traditional knowledge are local communities, natural and legal persons of any legal structure and ownership, who are holders of traditional knowledge. A local community means the population permanently residing in the territory of a village, commune or city, and other specific territories of the Kyrgyz Republic, possessing its own national and cultural traditions, way of life, and traditional knowledge in various fields of human activity that can improve the standard of living.

According to Article 7:

Legal protection is granted to traditional knowledge that has practical application in the relevant field of human activity and that has positive effects in that field. It does not include

⁶⁹ Provisional Act No. 2.186-16, dated 23 August 2001.

⁷⁰ Law No. 27811 of 24 July 2002, introducing a Protection Regime for the Collective Knowledge of Indigenous Peoples derived from Biological Resources.

⁷¹ Law of the Kyrgyz Republic "On the Protection of Traditional Knowledge" of 31 July 2007. N 116 (Закон КР "Об охране традиционных знаний" г. от 31 июля 2007 года N 116).

traditional knowledge that causes or may cause harm to human life and health or to the environment.

And Article 17 states:

The production, use, import, distribution, offering for sale, sale and other commercial introduction of traditional knowledge in items containing and created from it for production or commercial purposes is considered an illegal use of traditional knowledge if it occurs without concluding an agreement with the holders of traditional knowledge. In the event of non-use or insufficient use of the registered Traditional Knowledge by the holder of the certificates within three years from the date of issue of the certificates, any person wishing to use the protected Traditional Knowledge, if the holder of the certificate refuses to conclude an agreement for the use of Traditional Knowledge with such person, subject to conditions consistent with common practice, shall be entitled to apply to the court for such permission to use the Traditional Knowledge in question.

The role of museums in implementing legal means of protection of traditional knowledge

Alongside the importance and specificity of traditional knowledge as part of cultural heritage, it is also important to note the specific obligations that are placed on cultural institutions in implementing the legal protection of traditional knowledge. As mentioned, the role of museums in protecting intangible heritage is specific and distinctly different from the protection of material culture. While the latter focuses on the conservation and preservation of cultural assets in their preserved form, in the case of traditional knowledge, particular attention should be paid to the dynamic nature of culture. Cultural norms are not fixed axioms but evolve in the course of civilisational development. Preserving traditional knowledge must not, therefore, lead to it being “frozen” in time or being practiced merely as a tourist attraction. Rather, approaches to preserving such knowledge should strive to ensure its continued practice in society.

The stated goal of protecting traditional knowledge imposes on cultural institutions, including museums, the obligation to seek out and promote regional traditional knowledge within their jurisdiction. Just as tangible goods are undiscovered (e.g., archaeologists can find them hidden underground), solutions that meet the requirements of traditional knowledge should also be sought, particularly when their innovative nature can generate economic benefits, for example, as a basis for patent protection.

Furthermore, museums should recognise their obligation to archive and preserve traditional knowledge. This process will enable museums not only to understand the origins of practices but also to predict their potential evolution. It is important to emphasise that archiving traditional knowledge does not aim to embed it, as is the case with cultural tourism, where practices have lost their axiological foundation and have adapted to be as attractive as possible to visitors.

The educational role of cultural institutions in protecting traditional knowledge is also crucial. This involves, in particular, raising awareness of the importance of traditional knowledge within local communities, as well as globally. Instilling in people’s minds the importance of cultural diversity – and contrasting it with a mercantilist and utilitarian understanding of reality that

promotes economic values above all else – is crucial. That educational role also manifests itself in raising awareness of the relationship between traditional knowledge and the development of innovation. Awareness of the importance of practices perceived as commonplace in certain communities but unknown in other regions leads to abuses, as exemplified by cases such as the attempted patenting of neem oil or turmeric. Perceiving one's own traditional knowledge as a source of further development fosters the diversification of development paths, as pursued by the concept of sustainable development.

The final element of museums' activities in preserving traditional knowledge is organising activities aimed at disseminating traditional knowledge. As indicated, traditional knowledge is a living cultural heritage. It is subject to change and modification. Disseminating it promotes its cultivation and thus prevents its disappearance. Lesser-known practices can be implemented by a larger number of individuals in their daily lives.

Conclusions

Protection of cultural rights in industrial property law can take various forms. It may not cover traditional knowledge at all, treating it as part of the public domain, or it may grant ownership to indigenous communities directly, on statutory grounds, or implicitly, making the granting of protection dependent on obtaining the consent of the holder of traditional knowledge.

Another solution is protection that, although not recognising traditional knowledge as the property of local peoples, obliges the applicant for protection to provide information about the source of the material or solution used in the invention. Some of the analysed legislation distinguishes traditional knowledge into knowledge protected under industrial property law and knowledge that is in the public domain. It should be emphasised that the obligation to indicate the sources of traditional knowledge to the local (state) patent office protects indigenous peoples, as well as residents of the country of origin of traditional knowledge, from being burdened with the costs associated with patenting solutions based on this knowledge, as well as from the loss of income opportunities associated with the commercial use of traditional production or treatment methods.

This simultaneously creates uncertainty when patenting solutions based on so-called traditional medicine, herbal medicine and environmental management systems. Solutions that protect traditional knowledge are fundamental to eliminating income inequalities between countries that are able to allocate significant financial resources for research and development involving biological material found in developing countries, and countries that cannot afford to do so, even if they are aware of the wealth of resources they possess. It is noticeable that most legal regulations that recognise the rights of local communities to traditional knowledge apply to countries in the so-called South, i.e., the poorer part of the globe.⁷²

With regard to the right to culture under industrial property law, there are significant discrepancies in the protection of the right to culture, understood as the right to self-determination. On the one hand, traditional knowledge is universal, but this universality is limited to a certain group. This group therefore has the right to the benefits resulting from its dissemination and commercialisation, a right not universally respected. The postulate of treating traditional knowledge as an achievement of all humanity is dictated by mercantilist considerations. Profiting from ideas cultivated for centuries is piracy and does not deserve

⁷² TODARO, Michael, SMITH, Stephen. *Economic Development*. Boston: Pearson Addison Wesley, 2009, p. 4.

legal protection. The exploitation of indigenous resources, both tangible and intangible, in Western countries has led to an increase in the costs of creating innovative solutions. One way to minimise these costs is to use ready-made solutions, including traditional knowledge. This reveals the perception of development as a superior value over the protection of cultural diversity.

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