

Developments on Trade and Culture and the Protection of Creative Industries and Indigenous Knowledge Products, including a Draft Phase II TK Action Plan

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Outline

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- State of *Traditional Knowledge (TK)* in the Region
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- Promotion of Creative, Cultural and Innovative Industries
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Background and Mandate

- **1999 FTMM:** effective IP system enabler for secure business environment and pre-condition attracting local and off-shore investors; IP policy instrument facilitator of appropriate economic and social development;
- **2000 FEMM:** growing concerns from cultural industry across the FICs - improve IP systems: PIFS/IP Aust collaboration WIPO.
- **2001:** Forum Leaders welcomed focus on IPR recognizing need for development of appropriate national, regional and multilateral rules to protect TK and IP;
- **2008 PACPTM:** endorsed TKAP1 and launched in 2009;
- **2014 FTMM** endorsed draft TKAPII to be launched in 2015

State of Intellectual Property (IP) in the Region

- PIFS holds the mandate for developing IP norms on behalf of FICs;
- **2001 – 2004:** Regionally Focused Action Plan (RFAP) on industrial property IP norms *(patents, industrial designs and trademarks)*
  - Objective: development of strategy to maintain and strengthen Pacific cultural identity and creation of institution to advocate for and protect TK and IP; and
  - FICs/PIFS/Donors identified key areas of IP priority action – preference for TK development over IP.

RFAP Activities

Norm	International Status	Regional Mandate	Organization facilitating regional application	Status of Funding
Patents	Hard law in Patent Cooperation Treaty, Paris Convention and TRIPS	Forum Trade Ministers	WIPO and PIFS	WIPO annual allocation for bilateral support
Trademarks and Service marks	Hard Law in Madrid Treaty, Paris Convention and TRIPS	Forum Trade Ministers	WIPO and PIFS	WIPO annual allocation for bilateral support
Geographical Indication	WTO TRIPS	Forum Trade Ministers	WIPO and PIFS	WIPO annual allocation for bilateral support
Industrial Designs	WTO TRIPS	Forum Trade Ministers	WIPO and PIFS	WIPO annual allocation for bilateral support

State of Intellectual Property (IP) in the Region

Copyright Norms in the Region

- Copyright developed separately from the RFAP – not industrial property IP;
- PIFS/WIPO commissioned regional report in 2004: '*Collective Management of Copyright*';
- FICs showed initial interest in this area but too early to consider-major prerequisites such as adopting/updating national copyright legislation needed first – regional system superimposed on national regimes;
- Further consultations mandated on development of appropriate assistance to FICs on copyright activities.

State of Intellectual Property (IP) in the Region

IP and TK Developments in Creative, Cultural and Innovative Industries

- Pacific International Trade and Investment Commission (PITIC), Pacific Private Sector Organization (PIPSO), SPC and SPTO actively use Pacific products in promoting the development of creative, cultural and innovative industries in the Pacific;
- **Focus:** facilitate recognition, protection and promotion of IP and TK rights of Pacific goods and services when commercialized domestically or exported;
- E.g. *Pacific Branding Initiative* & IP protection for Pacific products entering different markets PITIC facilitates.

State of Intellectual Property (IP) in the Region

- Second development: Australasian Performers Rights Association (APRA) assisting performers in the Pacific to establish collective management organization (CMOs) to collect their royalties – largest member of CISAC;
- APRA effective in enforcing copyright breaches to its members;
- Co-manage Fiji Performers Rights Association (FPRA) and works closely with stakeholders in PNG to develop similar entity;
- Arrangement developed through private international law and entered between private organizations in the region and APRA.

State of Intellectual Property (IP) in the Region

Status of Copyright Assistance in the Region

Norm	International Status	Regional Mandate	Organisation Facilitating Regional Application	Status of Funding
Copyright	Hard Law, Berne Convention and WTO TRIPS	Trade Ministers	WIPO/PIFS	WIPO annual allocation to assist bilaterally
Collective Management Societies (CMOs)	CISAC and APRA arrangement. Private international law arrangements.	Trade Ministers	WIPO/PIFS	CISAC and APRA actively supporting programs in these areas. WIPO has annual allocation for work in this area

Traditional Knowledge in the Region

International Developments

- The current international system for protecting intellectual property fashioned during industrialization in the West and developed subsequently in line with the perceived needs of technologically advanced societies;
- Recent years, indigenous peoples, local communities, and governments demanded equivalent protection for traditional knowledge systems;

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- 2000, WIPO members established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC);
- 2009, WIPO agreed to develop an international legal instrument (or instruments) that would give traditional knowledge, genetic resources and traditional cultural expressions (folklore) effective protection;
- *'Traditional Knowledge'* is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

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- TK - not easily protected by current IP system, which typically grants protection for a limited period to inventions and original works by named individuals or companies. **Its living nature means that "traditional" knowledge is not easy to define;**
- Recognizing traditional forms of creativity and innovation as protectable IP - historic shift in international law - enabling indigenous, local communities and governments to have a say over use of their TK by others – example: makes it possible to protect traditional remedies and indigenous art and music against misappropriation, and enable communities to control and benefit collectively from their commercial exploitation.
- Although the negotiations underway in WIPO initiated and propelled by developing countries – discussions not neatly divided along "North-South" lines: Communities and governments do not necessarily share the same views.

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WIPO IGC Negotiation Process:

- Two types of intellectual property protection are being sought:
  - **Defensive Protection** aims to stop people outside the community from acquiring intellectual property rights over TK;
  - **Positive protection:** granting of rights that empower communities to promote TK, control its uses and benefit from its commercial exploitation;

State of Play of TK in the region

TKAP1: 2009 - 2011

- **TKAP1 objective:** assist FICs establish regional infrastructure for TK consisting of mutual recognition and enforcement regime founded on uniform national legal systems of protection on TK and IP;
- **TKAP1 TA** focus: policy and legislative frameworks developed and implemented through partnership arrangement between ACP-EU TradeCom Facility, WIPO, PIFS, SPC and SPREP.
  - **EU TradeCom facility** – recruitment of consultants to draft policies and laws;
  - **WIPO, PIFS, SPC and SPREP:** funded national consultations, development of toolkits and peer reviewing of the policy and legal frameworks.

TKAP1: 2009 – 2011….

- **First Step:** TKAPI assisted FICs:
  - Consolidated 2002 Model Law for the Protection of TK and Cultural Expression *(developed in absence of international law on TK)*
  - *F*ramework developed in response to calls from - in the face of increasing exploitation and inappropriate commercialization of their traditional knowledge and expressions of culture.
  - *Model Law* endorsed by 2002 Pacific Culture Ministers & 2003 FTMM; used to assist FICs develop policy and draft legislation + contribute to international policy-making in the WIPO IGC process;
  - Development of Traditional Biological Resources framework and the toolkit for policy guidelines.

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- The Model Law is a draft framework establishing a new range of statutory rights for traditional owners of traditional knowledge and expressions of culture.
- The Model Law provides basis for Pacific Island countries wishing to enact legislation for the protection of traditional knowledge and expressions of culture.
- If an individual country wishes to enact a model law, it is free to adopt and/or adapt the provisions as it sees fit in accordance with national needs, the wishes of its traditional communities, legal drafting traditions etc.
- Matters of detail or implementation are left to be determined by national laws and systems.

TKAP1: 2009 – 2011….[and 2013]

FIC	Policy Status	Legislative Framework Status	Peer Review Status
Cooks	Policy Document completed and approved by Cabinet.	TK Bill adopted at same time as Copyright law.	Policy document went through a peer review process, and the consultant incorporated comments in the final draft.
Fiji	TK Policy completed and is before Cabinet for consideration.	Decree completed and is before Cabinet for consideration.	Peer review completed for both documents and consultants have incorporated the comments in the final draft
Kiribati	Policy document completed and with the Cultural Ministry. There has been no indication if it has progressed to cabinet.	Did not utilize this assistance.	Peer reviewing completed and consultant has incorporated the comments in the final draft.
Palau	Did not utilize this assistance.	Did not utilize this assistance.	Peer review completed and consultant has provided the comments.
PNG	Natural Cultural Policy completed and is before Cabinet for consideration. Separate National Cultural Commission established.	Draft Protection of Traditional Knowledge and Expressions of Culture Bill 2010 available and awaiting Cabinet approval.	Peer reviewing completed on both documents and consultants have incorporated the comments in the final draft.
Vanuatu	Did not utilize this assistance.	A TK bill has been drafted following consultations with the Malvatumauri Council of Chiefs, and submitted to the Government of Vanuatu	The draft TK Bill submitted for the Peer review.
		Further Progress To-Date	
Solomon Islands	Did not utilise this assistance.	May 2013 IP Report completed and recommendations considered for drafting of its TK Bill – legislation on IP linked to legislation covering IP in the UK, except Sol Copyright Act 1988.	Ongoing

TKAP1: 2009 – 2011….

- **Second Step:**
  - development of a regional system of TK Protection
    - Regional collaboration on the development of proposed regional facilities for Industrial Property Management (Trademark and Patents) and collective management of copyright; and
  - Study conducted on possible establishment of a regional institution to advocate for and protect TK and IP

TKAPII

- **2012:** PIFS conferred with SPC and WIPO to assess status of TK policy across membership – wider approach required to address needs of all FICs;
- **2013 FTMM:** re-prioritize TK Action Plan to include TA for drafting of TK policy and legislative frameworks for FICs not supported under TKAPI; and emphasis placed on 'commercialization' of TK in the cultural industries – Phase II thus introduced.
- **Mid-2013:** Needs assessment survey for TK and IP TA circulated to all FICs and request received to-date from Palau, PNG, Samoa, Solomon Islands, Republic of the Marshall Islands and Tonga.
- **2014:** TKAPII Project Proposal drafted with WIPO assistance comprising a summary of prioritized TA activities to be addressed by donors, including WIPO either bilaterally or as part of TKAPII.

TKAPII cont….

- **Step 1:** Re-engaging with members on feedback to the Needs Assessment based on following questions:
  - Interests and needs of country on IP and TK/TCE?
  - IP and TK/TCEs already completed/initiated?
  - Types of assistance of national priority?
  - National Focal point on implementation of TKAPII?
  - Any other information related to TA request?
- Selected beneficiaries identified demonstrating readiness and potential, focal points confirmed and official, firm written commitments conveyed to PIFS;

TKAPII….cont

- **Step 2:** Development of an Action Plan comprising following activities:
  - Assessment of complementary TK activities (i) template contracts for TK users; and (ii) fiscal packages for TK users;
  - Policy and legislative advice and assistance;
  - Legal advice on IP management related to TK/TCE documentation;
  - Legal advice on IP management related to the commercialization of TK-based products; and
  - Participation in the IGC process in Geneva.
- **Step 3:** Development and implementation of MOUs (including PIFS/WIPO MOU) in early 2015 for mobilization of support for TKAPII activities; and employment of Intellectual Property Officer in PIFS to assist in implementation of prioritized activities.

TKAPII.....cont

- **Expected TKAPII Outputs/Results:**
  - Preparation and drafting of national policy addressing IP issues relevant to TK and TCEs;
  - Practical implementation of policy, either through legislative enactment, administrative measures or infrastructure means;
  - Participation in workshop on IP and commercialization of TK and TCEs
  - Participation in IGC Meetings, where possible.

Regional Trademarks Application System (RTMAS)

- **2007** Regional Meeting of IP Officials recommended establishment of RTMAS;
- **2009 FTOM** endorsed draft MOU;
- **2012 FTMM** endorsed utilization of PNG's IP Office as an examination body under the MOU; Ministers urged members to sign the MOU so that TA secured for implementation of MOU;
- Little progress since 2011…..
- **2014 FTMM:** members to identify which FICs to be supported on national awareness raising consultations on utilization of body and TA provided to those that immediately sign.

Regional Culture Strategy (RCS): Investing in Pacific Cultures 2010-2020

- Scope of TKAPII guided by parallel work carried out by SPC and PIFS; Culture an important contributor to sustainable and economic development
- **July 2012:** RCS endorsed at 2nd Pacific Ministers for Culture Meeting in Solomon Islands.
- **RSC focus:**
  - provide framework for cultural policy formulation and development;
  - provides direction for future investment, devt and growth of culture sector to enable strengthening of Pacific cultural identity; and
  - 7 Goals for investing in Pacific Cultures & 3 regional goals.

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- SPC developed implementation table to monitor implementation;
- TKAPII includes coordination in following activities:
  - Assessments: *'Development and Marketing Strategies for Pacific Cultural Industries'* – balancing commercialization of and protection of TK;
  - 2011 – 2012: Sub-Regional Workshops;
  - Ongoing work on enhancement of value chain systems;
  - Development of template contracts for TK users;
  - TA for market product development and formation of cultural policy frameworks;
  - Fiscal packages (access to finance) tailored for the cultural industry;
  - Exploring international export market opportunities for high end cultural products in the collectors market

continuation……

- **June 2014; ACP-EU Support Program** (Euro650,000 over 30 months)**, SPC, PIFS, 3 FICs funds -** project initiated for Enhancing the Cultural Industry – piloting in Fiji, Samoa and Solomon Islands;
- Project implements strategies focused on contemporary and traditional creators, artists, artisans, designers' custodians of traditional knowledge and cultural expressions to become entrepreneurs;

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- Support government efforts to establish a policy and regulatory framework in Sol, Fiji & Cook Islands for promotion of cultural industries; and building capacity of target groups for commercialization of goods and services;
- Target Groups – custodians of intangible cultural heritage, cultural expressions, art and crafts; small business holders in the informal sectors, retail sector, tourism industry – hotels and cruise ship operators as markets for local artists; and relevant government departments.

Regional Culture Strategy (RCS): Activities

- **Joint PIFS/SPC Cultural Industry Activities**

  2011 – 2013

  – Capacity Development Sub-Regional Workshop for Cultural Producers;

  – SPC/UNESCO/PIFS joint Cultural Statistics Meeting;

  – Studies commissioned on (i) marketing strategy of Cultural industries & (ii) Situation Analysis of Cultural Industry in the Pacific.

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2014

- SPC/PIFS joint International Conference on Cultural Economics: New Opportunities and Challenges for the Pacific, 20 – 21 March 2014;
- New work program rolled out on Enhancement of Cultural Industries in Fiji, Samoa and Sol targeting fashion and art & culture sectors;
- Working with Fiji Fashion Council to design and deliver workshop for model strategic plan
- Working with PIFS PT&I networks in ANZ, Beijing and Geneva to promote cultural expression through dance troupes and performing artists in cultural exchange programmes;
- Working with PIFS PT&I network to explore international export market opportunities for high-end pacific art in the collectors' market.



Way Forward

- Implementation of TKAPII framework, including coordination of donor support in this regard;
- **Continue** on-going collaborative efforts with SPC and other technical partners to enhance the cultural industry as a key driver of FIC economies;
- **Liaise with members on identification of** technical assistance programme to assist the FICs on the MOU on the RTMAS;
- FICs urged to sign the MOU on the RTMAS so that its implementation can commence;
- Continue to liaise with PNG on hosting the regional trademarks examination body under the RTMAS mobilisation of technical assistance required to assist FICs, including the PNG IP Office; and
- **Continue to work closely with** WIPO for the assistance expected to be provided to the FICs on TK policy and law, and other related-matters.