



■ Intellectual property rights and repatriation of traditional knowledge and traditional cultural expressions

Seminar: Right to Repatriation of ceremonial objects and human remains under the UN Declaration on the Rights of Indigenous Peoples

Vancouver

4-5 March 2020

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Overview

- WIPO and intellectual property rights
- WIPO's work on traditional knowledge / traditional cultural expressions
- Intellectual property rights and repatriation of ceremonial objects and human remains

WIPO AND INTELLECTUAL PROPERTY RIGHTS

WIPO CORE VALUES



What is WIPO?

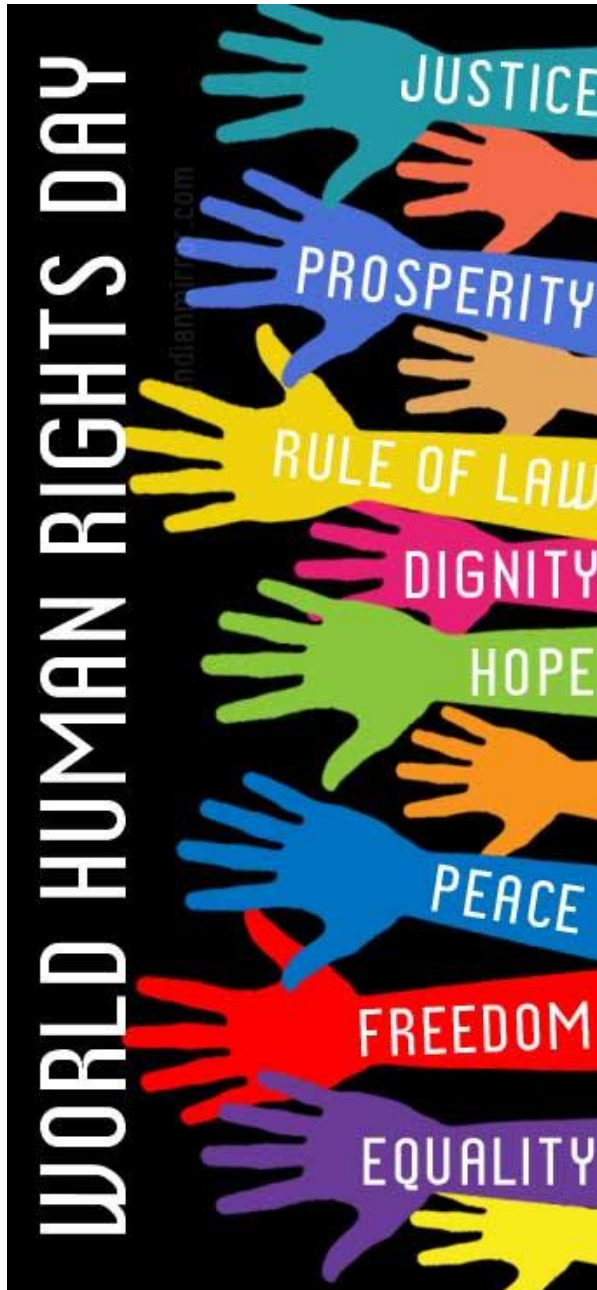
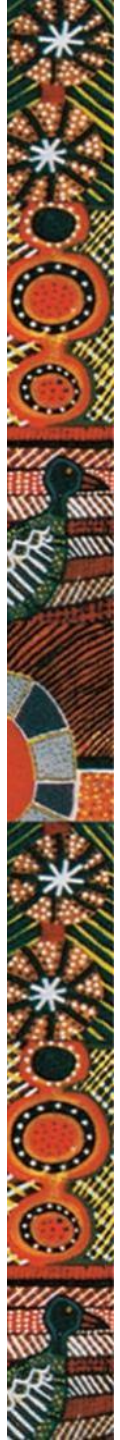
- WIPO is an agency of the United Nations, with 193 member states.
- Its mission is ‘to lead the development of a balanced and effective international intellectual property system that enables innovation and creativity for the benefit of all’ including indigenous peoples and local communities.
- By striking the right balance between the interests of innovators/creators and the wider public interest, the IP system seeks to nurture a fair environment in which creativity and innovation can flourish.



What is Intellectual Property?

- Intellectual property, very broadly, means the legal rights that can be associated with any intellectual activity in the industrial, scientific, literary and artistic fields.
- The aim of intellectual property protection is twofold:
 - to reward creators by giving them a limited monopoly over use of their creations and ensuring they are acknowledged as creators, and
 - to promote creation and innovation so as to contribute to economic and social development in society as a whole.

See WIPO Intellectual Property Handbook, p.3



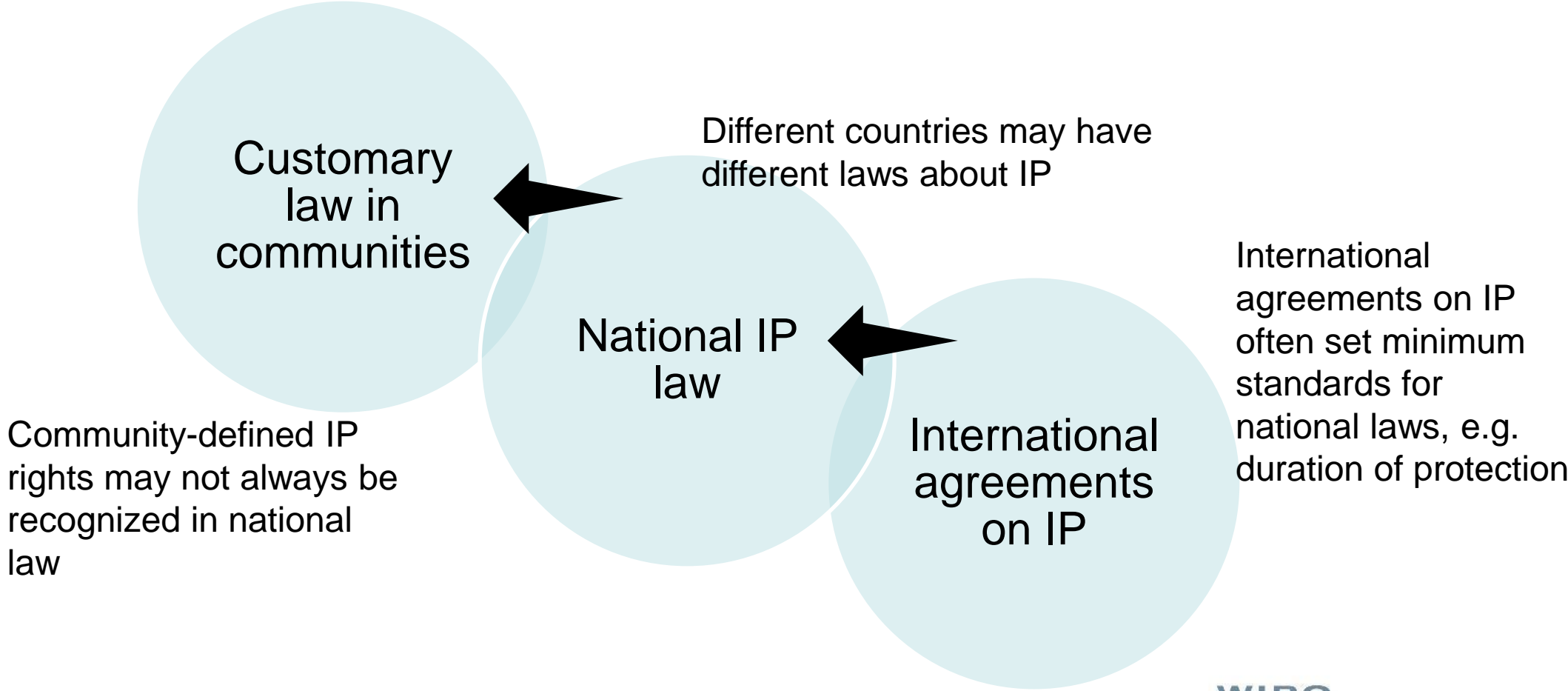
Universal Declaration of Human Rights (1948)

- Article 27.1: Everyone has the right freely to **participate in the cultural life of the community**, to enjoy the arts and to share in scientific advancement and its benefits.
- Article 27.2: Everyone has the right to the **protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.**

Some kinds of intellectual property rights

| Intellectual property rights | Tangible output / expression of creativity | Duration | Who is the original owner? |
|--|--|---|--|
| Copyrights | Literary, artistic and scientific works (e.g. books, films, paintings) | At least 50 years after the death of the author. Moral rights could last in perpetuity in some jurisdictions. | Author of the work (individual, not collective) |
| Related rights (under copyrights) | Performances of performing artists, phonograms (e.g. a recording of a song on CD) and broadcasts | At least 50 years, usually less than copyright duration | Performer Producer / Director |
| Patents | Inventions (e.g. a medical remedy) | Around 20 years | Inventor |
| Industrial designs | External appearance of functional articles (e.g. design of a chair) | Around 15 years | Designer |
| Trademarks | Signs or symbols indicating commercial source or origin (e.g. 'coca-cola') | 10 years, renewable | Entity registering the mark |
| Geographical indications (appellations of origin) | Signs or symbols indicating geographical origin (e.g. 'feta' cheese) | Perpetual protection | Producers can use the GI if their product meets the specifications |

Local, national and international frameworks



WIPO'S WORK ON TRADITIONAL KNOWLEDGE / TRADITIONAL CULTURAL EXPRESSIONS



Traditional knowledge and traditional cultural expressions

- Traditional knowledge (TK) is generally understood to mean the know-how, skills, innovations and practices developed by indigenous peoples and local communities (IPLCs), e.g. **knowledge about medicinal plants**
- Traditional cultural expressions (TCEs) are generally understood as the tangible and intangible forms in which traditional knowledge and cultures are expressed, e.g. **traditional dances, songs and designs**



United Nations Declaration on the Rights of Indigenous Peoples

- Article 31.1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, They also have the **right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.**
- 31.2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Options for protecting TK and TCEs with intellectual property law

- Protection with ‘conventional’ or existing IP systems
- *Adaptation* of ‘conventional’ or existing IP systems
- *Sui generis* protection
- Can be *positive* or *defensive* protection



A woman from the Ndebele tribe carries a traditional beer container (UN Photo/P Mugubane)



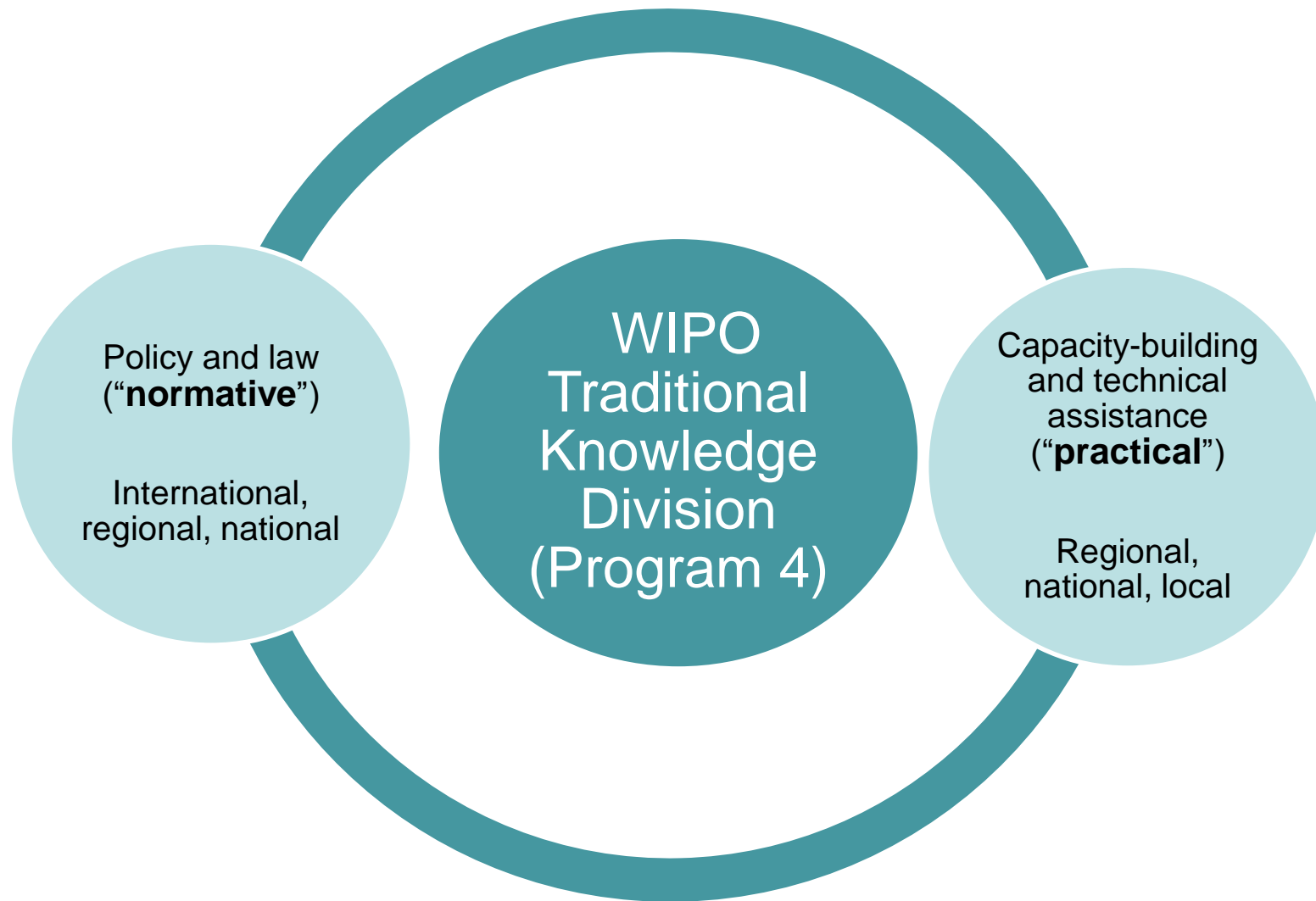
Facilitate



Inform



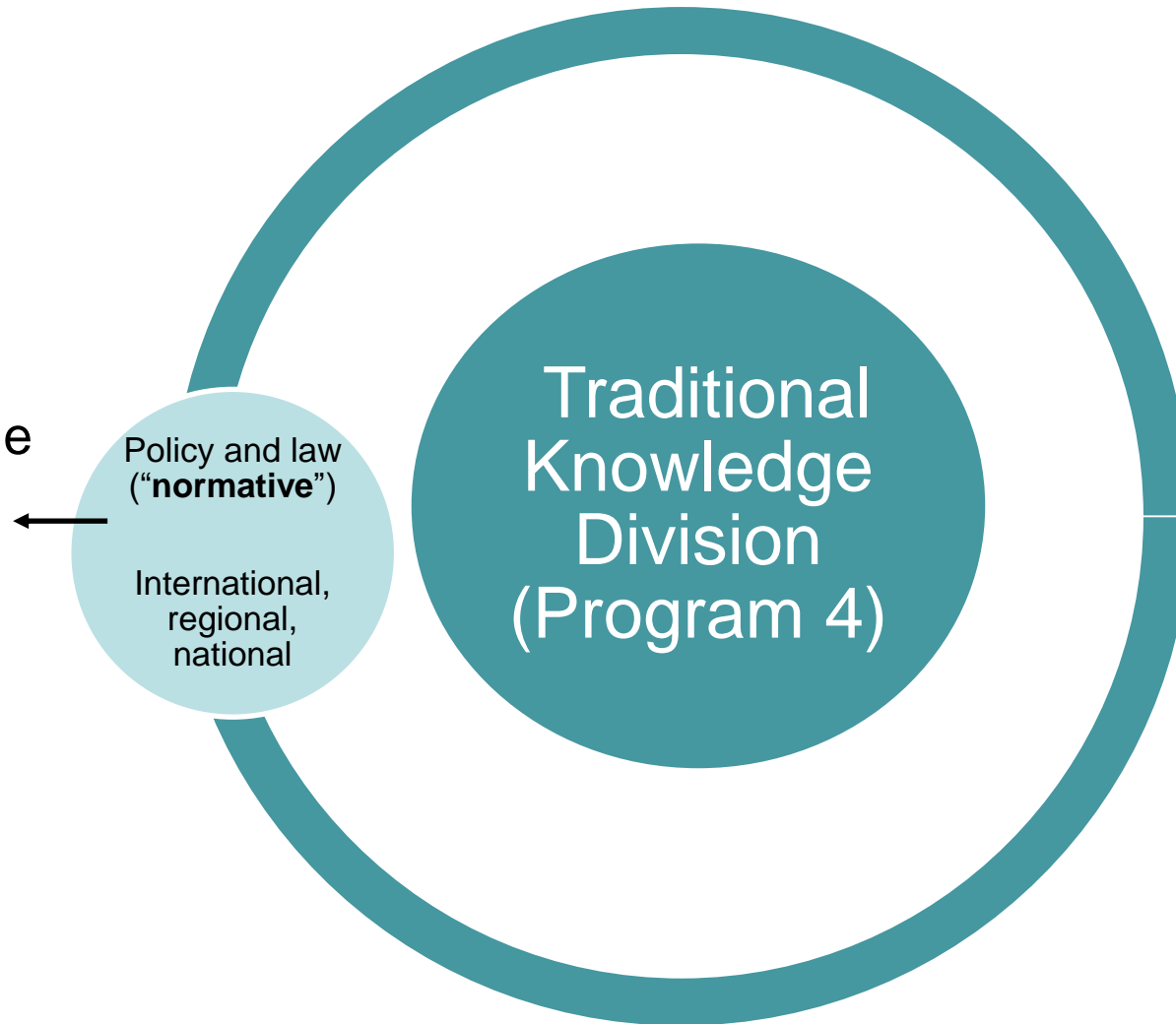
Train





1. Facilitate negotiations in the IGC

2. Help countries and regional bodies develop national policies, strategies, laws



International negotiations on IPR in TK/TCEs



- Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) negotiating ‘an agreement on an international legal instrument(s) ... relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs).’



Indigenous Panel

IGC
Indigenous participation

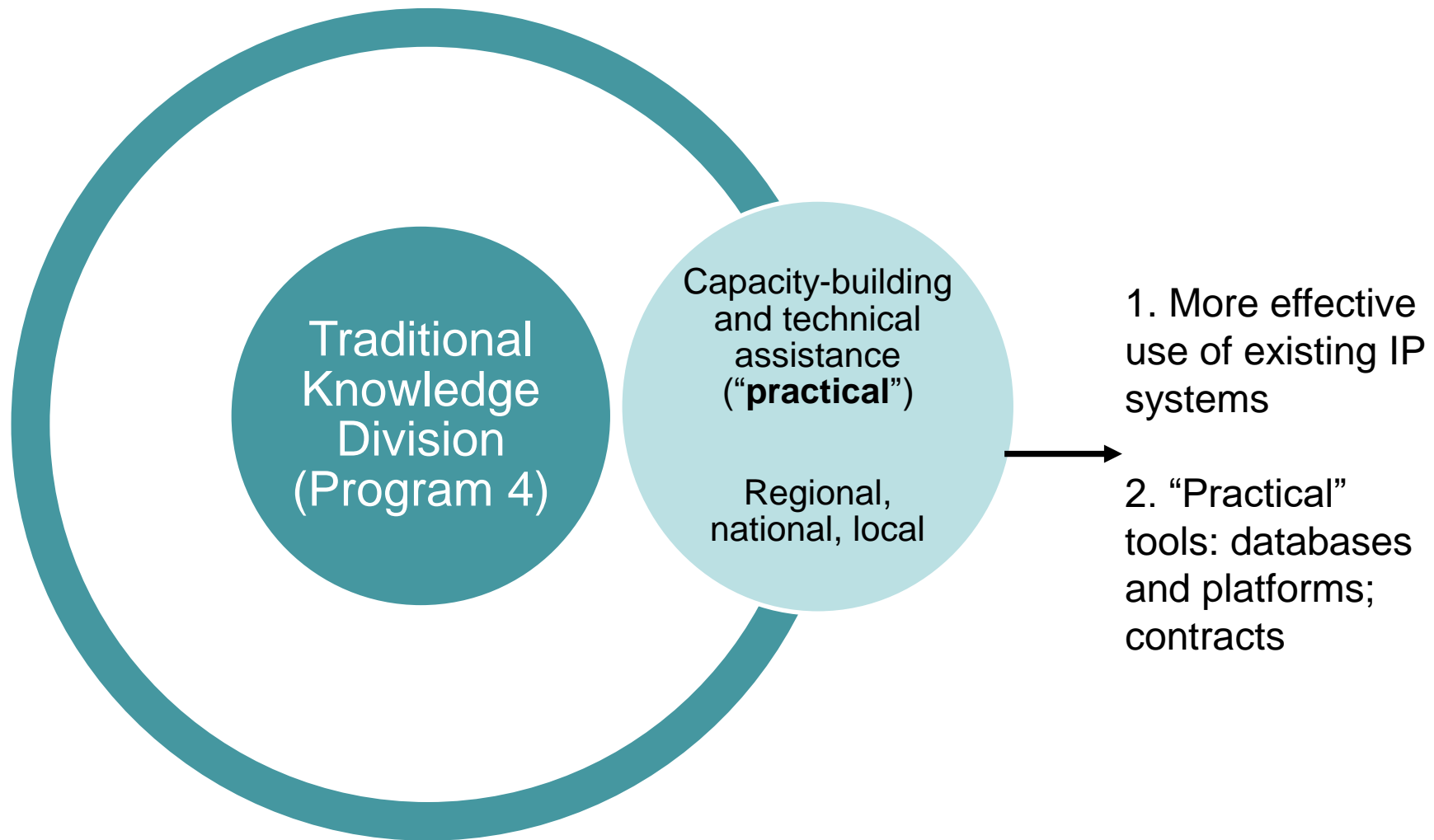
Indigenous caucus

Voluntary Fund



Facilitating national policy development





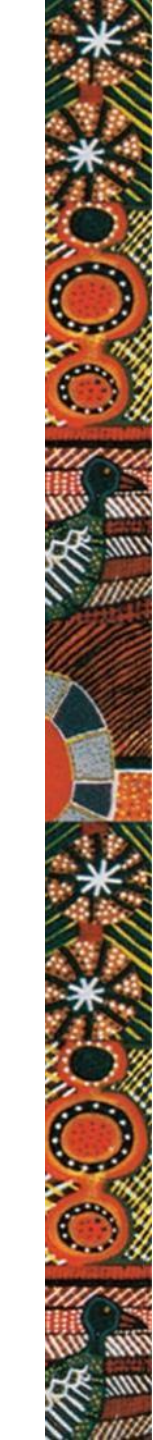
Traditional Knowledge Division (Program 4)

Capacity-building and technical assistance ("practical")

Regional, national, local

1. More effective use of existing IP systems

2. "Practical" tools: databases and platforms; contracts



DL203E – DL-203 Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions

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This course aims to provide technical information on key concepts and international, regional and national experiences, policy options and legal mechanisms available or under consideration for the intellectual property protection of traditional knowledge and traditional cultural expressions. It is hoped that the course will strengthen capacity and stimulate consideration of these issues, share experiences and advance understanding of the range of issues and possible options in this area, in which legal and policy developments are still evolving at national, regional and international levels.

Curriculum

The course consists of 4 substantive modules and a final exam.

- Module 1: Overview and Key Concepts
- Module 2: Options for the IP Protection of TK and TCEs
- Module 3: Protecting TK and TCEs with Existing and Adapted IP Rights
- Module 4: Protecting TK and TCEs with a Sui Generis System of Protection
- Final Exam

Academic support is provided throughout each module by experienced tutors who are expert practitioners in the field of intellectual property.

Final Exam and Certificate

There is a written final exam at the end of this course for which participants are required to compose written responses to a series of questions within a specified timeframe and submit their responses, via the e-learning platform, to their tutors for marking. Participants are individually contacted regarding modalities for accessing the final exam approximately one week prior to the deadline for completion of the DL-203 course.

Participants who pass the DL-203 final exam are awarded a certificate of completion for the course.

Eligibility

This course is addressed to officials of IP Offices, government officials from other departments, policy makers, diplomats, members of indigenous and local communities, employees of non-governmental organizations and intergovernmental organizations, lawyers, academics, researchers, students and individuals who already possess a working knowledge of the IP system. As the course covers the relationship between IP, TK and traditional cultural expressions, participants who are already familiar with the IP system, may be able to benefit the most from it. For those who are not, it is recommended that they complete the WIPO Academy's "Primer on Intellectual Property" DL-001 or the "General Course on Intellectual Property" DL-101.

Basic Information

- **Venue** : Online
- **Language** : English
- **Duration** : 70 hours
- **Tutored** : Yes
- **Certificate** : Yes
- **Cost** : [Fee list](#)
- **Course administrator** : DL203e.academy@wipo.int

Next session

DL203E18S1

- **Registration** : 15-Jan-2018 - 25-Mar-2018
- **Course** : 10-Apr-2018 - 14-Jul-2018
- **Next Exam** : 06-Jul-2018 - 14-Jul-2018

Training for Women Entrepreneurs from Indigenous Peoples and Local Communities



WIPO Training and Mentoring Program on IP for Women Entrepreneurs from Indigenous Peoples and Local Communities

November 2019

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Protect and Promote Your Culture

A Practical Guide to Intellectual Property for
Indigenous Peoples and Local Communities

A guide for Indigenous Peoples and local communities on strategic use of IP rights

Available on the WIPO website under an
open access policy



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INTELLECTUAL PROPERTY RIGHTS AND REPATRIATION



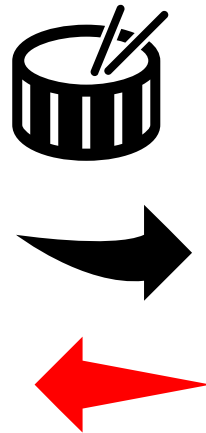
IP rights, cultural objects and human remains

- Conventional IP rights do not cover all items of cultural significance
- IP rights **do not always 'travel' with objects**: a person or institution can own an object, but not the copyright related to its creation.
- If an object is repatriated, the IP rights are not necessarily repatriated with the object.

Example



Drum acquired by museum

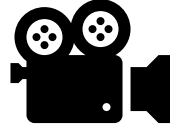


Drum repatriated by museum

Indigenous cultural practice with songs, rituals, drumming, dancing, communally authored over generations



Researcher owns the copyright in research publications



Researcher owns the copyright in photographs and video



Traditional songs and dances not covered by IP rights, but performers may have some rights



Museum owns the copyright in cataloguing data

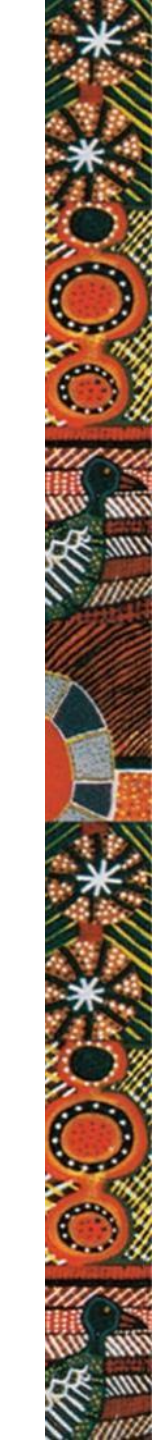


Museum owns database rights in database of images / thin copyright in digitised copies



IP and repatriation

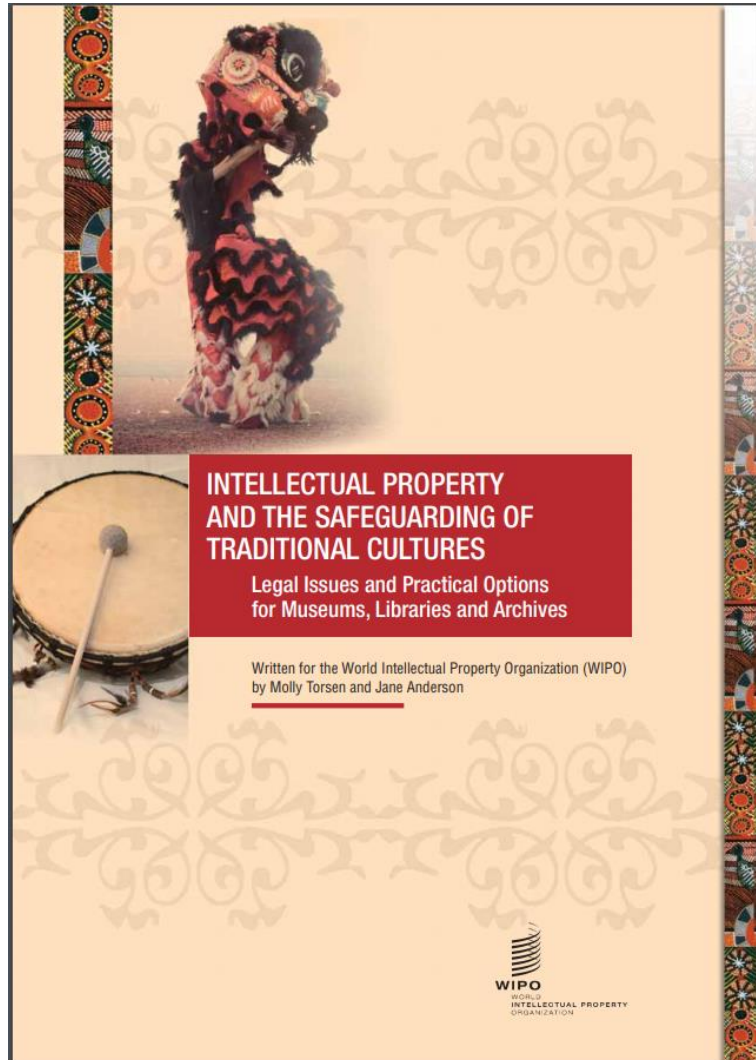
- IP issues need to be considered in (digital) repatriation negotiations.
- Repatriation is mentioned as a possible restorative justice measure in the draft articles on TCEs under negotiation at the IGC (art.10).
- IPLCs can record, digitize and make available their own TCEs, thus becoming owners and managers of the copyright and related rights in the recordings. This can help IPLCs exercise control and make informed decisions on access and use by third parties.



What can WIPO contribute in the context of the current discussions on international repatriation of indigenous peoples' sacred items and human remains?

- Provide technical assistance regarding intellectual property issues in the report

Legal issues and practical options for GLAMs



Legal information and practical experiences on the management of intellectual property for cultural institutions whose collections include traditional cultural expressions.

Responding to the needs of cultural institutions and indigenous and traditional communities.

Tools available online:

- [Surveys of Existing Practices, Protocols and Policies](#)
- [Codes, guidelines and practices relating to the recording, digitization and dissemination of TCEs](#)

Available on the WIPO website under an open access policy

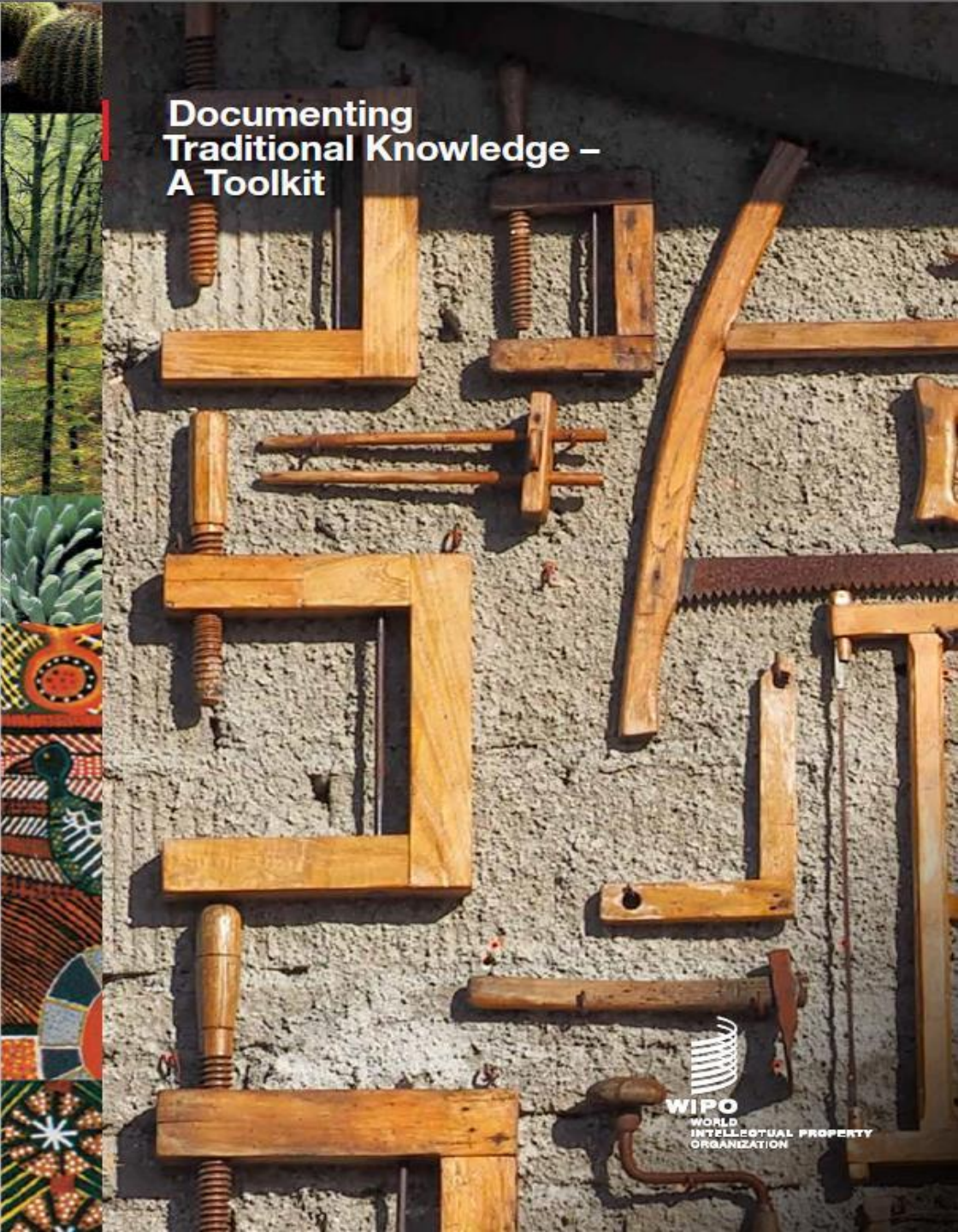
Helping the Maasai preserve their cultural heritage



Photo credits: WIPO/Maasai Culture Heritage Foundation (top) American Folklife Center (bottom)

- WIPO "Cultural Documentation and IP Management Training Program" 2008
- Working with Maasai community (Kenya) and other stakeholders
- Practical skills and technical knowledge in cultural documentation, archiving and IP management
- Helping Maasai to record, archive and manage access to their own cultural heritage, developing their own IP policies, protocols and using technology-based tools

https://www.wipo.int/tk/en/folklore/digitizing_traditional_culture.html



**Documenting
Traditional Knowledge –
A Toolkit**



Intellectual property do's and don't's of documenting traditional knowledge

Available on the WIPO website under an
open access policy



Thank you

The views expressed in this presentation do not necessarily represent the views of the Secretariat of WIPO or any of its Member States.

Contact email: gtrkf@wipo.int