

**THE INTELLECTUAL  
PROPERTY SYSTEM  
AS A TOOL TO  
PROTECT AND  
PROMOTE  
TRADITIONAL  
KNOWLEDGE**

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\*some parts of this presentation were directly lifted from Ms. Aguirre's presentation; used with permission



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# Presentation Outline

- I. Intellectual Property (IP) as Tool to Protect and Promote Traditional Knowledge (TK)
  - A. The IP system and TK
  - B. IP relevant to TK
    1. Copyright
    2. Patent
    3. Trademarks, including special trademarks



# Presentation Outline

## II. Documenting Traditional Knowledge

A. Pros and Cons of TK Documentation

B. The Why's and How's of Documentation Project

C. Key Issues

## III. Summary



# **INTELLECTUAL PROPERTY (IP) AS TOOL TO PROTECT AND PROMOTE TRADITIONAL KNOWLEDGE (TK)**



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- “This is not to suggest that intellectual property law meets all the needs of indigenous peoples and local communities.”

But, if used strategically, you may be able:

- to maximize the economic value of your TK-related products and services
- to prevent others from exploiting your TK without your permission



# If you understand the basics of intellectual property ...

You would be better placed to:

- protect your TK;
- promote products and services based on your TK – if you wish to do so;
- stop others from using the intellectual property system to claim ownership of creations or inventions that are based on or have been developed using TK without complying with the relevant legal requirements;
- reduce the risk of free-riding by others on the successful use of TK in marketable products in national and international markets.



# Intellectual property: Different tools and different rules

Patents	Copyright	Trademarks	Geographical indications	Industrial designs	Trade secrets
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# Intellectual Property – What for?

Provides recognition for and commercial reward from creations and inventions:

- Patents
- Industrial designs
- Copyright

Helps to differentiate goods and services and to make them more attractive to consumers:

- Trademarks
- Geographical indications



# The standard IP system and TK

- The intellectual property system was not designed to protect TK.
- Nonetheless, real life examples show that it has been used to protect TK.



# Intellectual property relevant for TK

- **Copyright**
- **Patents:** Novel analgesic compounds + Anti-inflammatory compounds
- **Trademarks:** Taita baskets + T'nalak Lake Sebu
- **Geographical indications:** Montecristi straw hat
- **Trade secrets:** The Pitjantjatjara Council's sacred secret



# Copyright

- Protects the expression of ideas, not the ideas
- Protects original works
- Right to prevent others from copying
- No need to register works: Automatic protection
- Economic rights + Moral rights
- Economic rights have limited duration: 50 years after the death of the creator



# TK issues related to copyright

- Whoever writes down TK-related information may be entitled to copyright in the way that TK has been put into words.
- TK is not protected
- But the way it has been expressed is
- What rights do TK holders have?



# TK issues related to copyright

- Whoever films someone explaining how to use a plant for medicinal purposes (TK) may be entitled to rights in the recording.
- TK is not protected
- The recording is protected
- What rights do TK holders have?



# Patents

- Protect inventions (products or processes) that are:
  - New (novelty)
  - Inventive (inventive step)
  - Useful or industrially applicable (utility or industrial applicability)
  - Adequately disclosed
- Grant the exclusive right to make or use the protected invention commercially
  - In a certain territory
  - For a limited period (generally 20 years)



# Patents: Can TK be Patented?

## An example from Australia: the crocodile hunter

The Jarlmadangah Burru Aboriginal community resides in Kimberley in North West Australia. The marjala plant (scientific name: *Barringtonia acutangula*) is well known to the Jarlmadangah Burru community for its healing properties, including pain relief. It is associated with the creation story of the Fitzroy River.<sup>5</sup>

Mr. John Watson, an elder from the Jarlmadangah Burru community, had his finger bitten off while hunting crocodiles. To stop the pain, he chewed the bark from the marjala plant and put it on his wound. The marjala plant stopped the pain until he was able to get to a hospital. This made his local community think about its commercial potential.<sup>6</sup>

Subsequently, the Jarlmadangah Burru community explored the commercial benefits of the marjala plant and reached a partnership agreement with Griffith University. In 2004, Griffith University and the Jarlmadangah Burru Aboriginal Corporation filed a patent application in Australia for an invention entitled "Novel analgesic compounds, extracts containing same and methods of preparation". As indicated in the patent application, the invention relates to new compounds having analgesic properties and extracts containing them. Such compounds are obtained from plants of the *Barringtonia* species.<sup>7</sup> A patent was granted to Griffith University and the Jarlmandangah Burru Aboriginal Corporation for this invention.





# Trademarks

- Distinguish goods or services of one provider from the goods or services of other providers
- Trademarks
  - Must be distinctive
  - Cannot be generic, descriptive or deceptive
  - Should not be identical or confusingly similar to other marks
- Needs to be registered to be protected
- Registration lasts for 10 years. It is **renewable**
- Prevent others from using confusingly similar marks for identical or similar goods or services ... in a certain territory



# Special trademarks

- A **collective mark** is owned by an association or cooperative representing a group of people or businesses
- Can be used by members of the association or cooperative for goods or services that comply with established criteria.
- A **certification mark** can be used by anyone provided its goods or services meet certain prescribed standards.



# Collective mark from Philippines



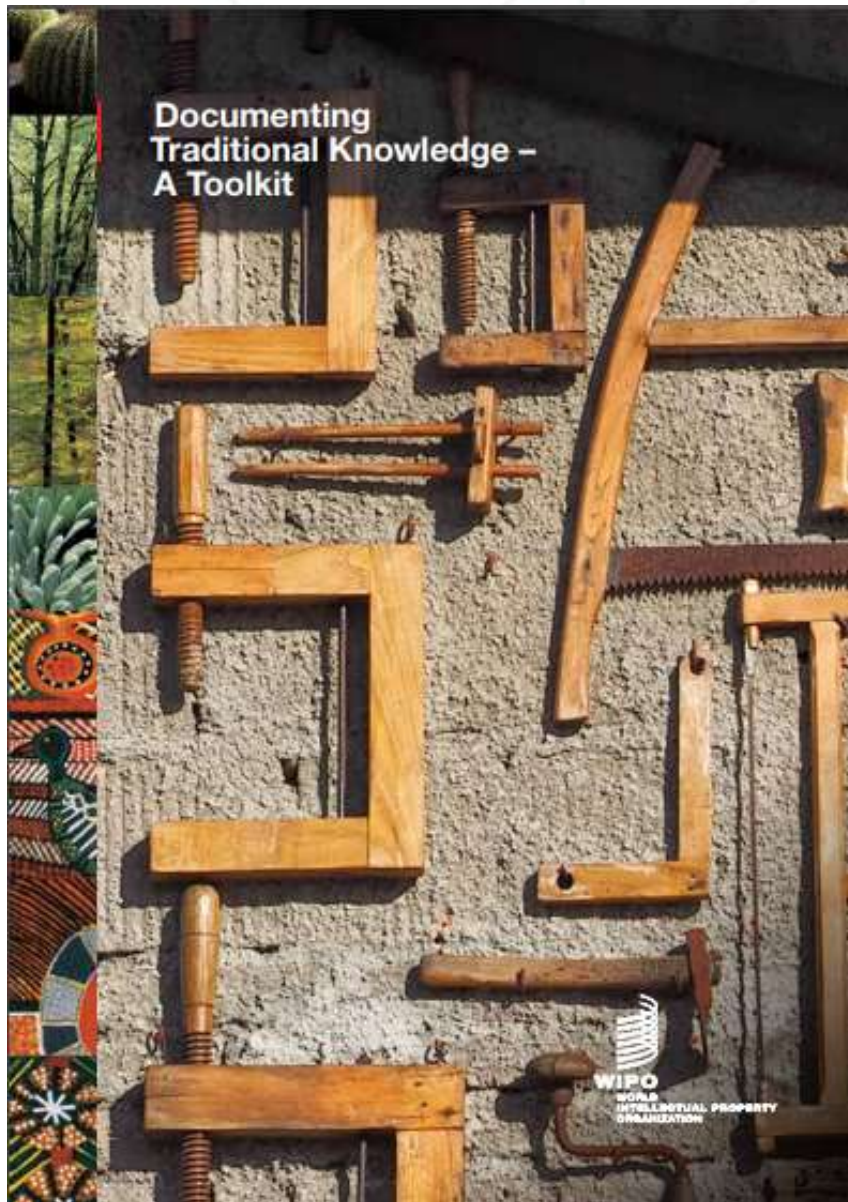
- T'nalak Tau Sebu or Lake Sebu T'nalak
  - Refers to handwoven fabrics crafted by mostly T'boli women based on their dreams, and interpreted with spiritual meanings
- Registration of collective trademark was awarded to 9 member organizations of the TTS in 2017
- Code of Practice was developed to ensure excellent quality and authenticity of each fabric sold



# DOCUMENTING TRADITIONAL KNOWLEDGE



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This Toolkit aims to provide useful practical guidance on how to undertake a TK documentation project and how to address critical issues relating to intellectual property as they arise during the documentation process.

It does not promote the documentation of TK as such.

It does not suggest that TK should be made publicly or widely available.



# Pros and cons of TK Documentation

## Pros

- Monetary or in kind benefits
- Preservation of TK for future generations
- Partnerships
- Social recognition
- Capacity-building
- Defensive IP protection
- Positive IP protection

## Cons

- No monetary or in-kind benefits
- Disenfranchisement and loss of control of indigenous peoples and local communities (IPLCs)
- No respect of relevant principles, such as prior and informed consent
- Could facilitate misappropriation or misuse of TK



# Interests and concerns of IPLCs

- Prior to designing any TK documentation project, an open and transparent interaction between its proponents and IPLCs is necessary, in order to understand each others' specific interests and needs.
- Reflecting and consulting on the interests and concerns of IPLCs is essential to define the objectives of the project and the tools to be used.



# Objectives of the documentation project

Documentation involves a planned, conscious and informed process of knowledge gathering and organization which may serve many purposes, including:

- establishing positive rights in relation to TK
- preventing the erroneous granting of intellectual property rights over TK-related innovations (defensive protection)
- making TK available in a more systematized manner to a wider audience (researchers, students, entrepreneurs, etc.)
- creating new intellectual property rights through the scientific validation of TK and collaborative research and development





# Needs of potential clients or users

The definition of the potential clients or users and their needs have an impact on:

- the nature of the information to be selected
- the level of detail needed
- the language to be used



# An IP Assessment Template

- Will be required to organize and think through the documentation process and evaluate the appropriateness of intellectual property instruments.
- 6 broad areas of reflection:
  - Objectives
  - Subject matter
  - Actors
  - Potential clients or users
  - Applicable intellectual property legislation
  - Other related legal regimes



# Documentation standards

- To maximize the effectiveness of documentation, it may be useful to apply existing data standards to the documentation and compilation of TK.
- The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has recommended a Data Specification for Technical Aspects of Databases and Registries of Traditional Knowledge and Genetic/Biological Resources.



# Final considerations

- It is essential to bear in mind that TK Documentation, especially when it involves secret or confidential TK or when it might lead to the dissemination of TK, should only take place within the context of an intellectual property strategy.





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