

Intergovernmental Committee (IGC) on Genetic Resources (GR), traditional knowledge (TK), and TCEs. According to article 2 of the WIPO-IGC draft gap analyses for the protection of traditional cultural expressions, in the second revision of the text,¹ an alternative definition was proposed by a group of Least developed countries (LDCs) as:

the various dynamic forms which are created, expressed or manifested in traditional cultures and are integral to the collective cultural and social identities of the indigenous local communities and other beneficiaries.

Performers include actors, singers, and musicians other actors singing, delivering or playing in literary or artistic works.² Performances related to traditional cultural heritage generally extend to performing arts, social practices, rituals and festive events.³ Several studies have demonstrated the incompatibility between TCEs and IP laws, based on the fact that the requirements of novelty, creativity and authorship in terms of the patent and copyright system do not match the features of inherited cultural expressions transmitted from generation to generation.⁴ Performances received historical recognition within the conventional IP system under the Rome Convention in 1961⁵, the WIPO Performances and Phonograms Treaty in 1996 (WPPT), and the TRIPS Agreement⁶ in 1995 under a related rights regime. Those treaties enhance the protection of music performers, but still without proper identification of traditional cultural expressions related performers as subject of rights. The turnaround came in July 2012 in Beijing, when the international IP community applauded the ratification of

This paper firstly discusses the recognition of indigenous property p **Keywords** Beijing Treaty audiovisual performers

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1. INTRODUCTION

Traditional cultural expression (TCE) is a term originating from the World Intellectual Property Organization (WIPO)

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¹ WIPO/GRTKF/IC/33/4

² Art. 3(a) Rome Convention for the Protection of Performers, Producers, Phonograms and Broadcasting Organizations, 1961.

³ Art. 2(2)(b)(c) UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003.

⁴ Caroline Joelle Nwabueze, 'The Protection of Traditional Cultural Expressions in OAPI States' (LLM thesis, University of Turin WIPO 2011)

⁵ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, (1961)

⁶ Trade Related aspects of Intellectual Property Rights Agreement (1995)

coupled with the misuse and misappropriation of traditional performances.

The expansion of digital technology adds an additional impetus for the protection of performers' rights in the online environment.¹⁴

world are constantly shared via digital platforms. Multiple affordances of digital technologies have fuelled misappropriation, illegal distribution and freeriding of sacred values. The Treaty attempts to remedy this state of unfair use of audiovisual performances by recognising

cultural duty. In addition, it is not common factor having a traditional performer versed in literacy and conscious of the value of the intellectual creativity related to cultural performances. In a context where the financial ambitions of powerful producers dictate the tune of transfer of rights over intellectual creativity, abuse and unfair exploitation are common practice. To palliate to such unethical behaviors, certain countries like Australia have set councils for the management of indigenous interests.

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4.3 Existing term of protection

5. EXISTING PROTECTION MEANS WITHIN THE IP SYSTEM AND BEYOND

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity (CBD) has been ado

practice is a common cultural heritage to the Anambra, Abia, Imo, Ebonyi, and Enugu communities within the Federal Republic of Nigeria. Even though the practising of the festivities could differ in a few respects, the Masquerade Drama represents similar characteristic

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