

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	v
------------------------	---

FOREWORD	vii
----------------	-----

PART ONE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE AND INTELLECTUAL PROPERTY

CONVENTION FOR THE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE

Unresolved Issues and Unanswered Questions

Toshiyuki KONO.....	3
1. Context of the ICH Convention	5
2. Issues and Questions Surrounding the Convention	21
3. Conclusion	39

PART TWO DESIGNING A MEANS FOR THE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE

INTANGIBLE CULTURAL HERITAGE IDENTIFIED

Inventories as an Essential Part of the Safeguarding Process

Steven VAN UYTSEL and Toshiyuki KONO.....	43
1. Inventory Making and Its Antecedents	44
2. Inventorying Under the ICH Convention.....	46
3. Controversies, Conceptual Dilemmas and Intellectual Property Rights... ..	47
4. Contributions.....	50

HERITAGE AS CULTURE

Limits, Uses and Implications of Intangible Cultural Heritage Inventories

Antonio A. ARANTES 51

1. Introduction 51
2. Perspectives Set by the ICH Convention 52
3. Inventories in Context 55
4. The Role of Cultural Communities 61
5. Safeguarding Cultural Practices and Protecting Intellectual Property Rights 64

Appendix. A Place for Intangible Cultural Heritage in Our Common Futures 67

MANAGING INTELLECTUAL PROPERTY OPTIONS WHEN DOCUMENTING, RECORDING AND DIGITIZING INTANGIBLE CULTURAL HERITAGE

Wend B. WENDLAND 77

1. Introduction 78
2. Some Practical Examples As Illustrations 81
3. Intellectual Property Best Practices, Protocols and Guidelines for Recording, Digitizing and Disseminating Intangible Cultural Heritage: WIPO's Creative Heritage Project 86
4. Introducing WIPO's Work on the Protection of Traditional Knowledge and Cultural Expressions 94
5. Concluding Remarks 99

INDIA'S TKDL

Definition and Classification of Intangible Cultural Heritage and Traditional Knowledge in the Context of Inventory Making

Vinod K. GUPTA 101

1. India's Traditional Knowledge Digital Library 102
2. Problem Dimensions in the Indian Scenario: Scale of Misappropriation of Disclosed Traditional Knowledge 103
3. Current Status of the TKDL 105
4. The TKDL: Tool for Active Research 106
5. Strategy for Preventing Abuse of the TKDL 108

6. Application of TKDL Technology to Intangible Cultural Heritage	109
7. Conclusions	111

INVENTORY MAKING AND FAIRY TALES

Safeguarding of Intangible Cultural Heritage in Historical Perspective

Steven VAN UYTSEL	113
-----------------------------	-----

1. Introduction	113
2. A Systematic Approach Towards Intangible Cultural Heritage.	115
3. Inventorization with Respect for Community's Interests.	119
4. The Scope of Inventorization	130
5. Inventories Embedded in a Broader Policy Framework	135
6. Conclusion	140

PART THREE CONCEPTUALIZATION OF COMMUNITY

CONCEPTUALIZATION OF COMMUNITY AS A HOLDER OF INTANGIBLE CULTURAL HERITAGE

Branislav HAZUCHA and Toshiyuki KONO	145
--	-----

1. Community and Cultural Heritage	146
2. Control over Cultural Traditions	149
3. Recognition of Communities and Their Intangible Cultural Heritage	152
4. Awareness Raising and Invention of Traditions.	154

INDIGENOUS INTANGIBLE CULTURAL HERITAGE AND OWNERSHIP OF COPYRIGHT

Terri JANKE	159
-----------------------	-----

1. Introduction	160
2. Intangible Cultural Heritage and Intellectual Property	161
3. Copyright and Traditional Cultural Expressions.	163
4. Case Studies Dealing with Copyright Forms of Traditional Cultural Expressions.	178
5. Conclusion: Redressing the Imbalance	184

WHO IS THE “HOLDER” OF INTANGIBLE CULTURAL HERITAGE?

Revisiting the Concept of Community from an Intangible Cultural Heritage Perspective

Shubha CHAUDHURI 189

1. The Indian Scenario 190
2. Definition of Community: Who Is the Outsider? 191
3. “Inappropriate” Use or Change of Context 193
4. Protecting What Demands Protection 194
5. Individual and Community Ownership 195
6. Conclusion 198

ON THE SHOULDERS OF THE “OTHER’ED”

Intellectual Property Rights in Intangible Cultural Heritage and the Persistence of Indigenous Peoples’ Texts and Inter-Texts in a Contextual World

Ikechi MGBEOJI 203

1. Intangible Cultural Heritage 205
2. Intangible Cultural Heritage and the Colonial Experience 207
3. Ceremonies and Ownership of Intangible Cultural Heritage 215
4. Who Owns Intangible Cultural Heritage? 220

COMMUNITY AS A HOLDER OF INTANGIBLE CULTURAL HERITAGE

A Broader Public Policy Perspective

Branislav HAZUCHA 223

1. Defining a “Community” As a Holder of Intangible Cultural Heritage... 227
2. Search for Appropriate Regime: Identification of Costs and Benefits... 231
3. “Limited Commons” and Law..... 236
4. Conclusion 244

PART FOUR COMMUNITY'S PRIOR INFORMED CONSENT**PRIOR INFORMED CONSENT****Empowering the Bearers of Cultural Traditions**

Joël-David DALIBARD and Toshiyuki KONO 247

1. Origins and Relevance 248
2. What Constitutes Prior Informed Consent? 251
3. The Challenge of Decision-Making: Who Grants Prior Informed
Consent? 253
4. A Path Worth Following? 258

**PRIOR INFORMED CONSENT AND TRADITIONAL KNOWLEDGE
IN A MULTICULTURAL WORLD**

Graham DUTFIELD 261

1. Introduction 261
2. "Biopiracy" 263
3. The Concept of Prior Informed Consent 267
4. Recent Intergovernmental Negotiations on PIC, Traditional
Knowledge Protection and Biocultural Resources 269
5. Prior Informed Consent in Practice: Is It Workable? And What
Good Would It Do Anyway? 277
6. Conclusions 282

PRIOR INFORMED CONSENT**Experiences with Ethnomusicology Recordings**

Wim VAN ZANTEN 283

1. Between Trust and Legal Protection 284
2. Recording Music: The Role of Institutions and Commercialization 286
3. Prior Informed Consent of Baduy Minority Group 291
4. A Contract on Paper: Story of a Baduy Gamelan 299
5. A Tape Recorded Contract in Minangkabau 303
6. Conclusion: Who Benefits from the Recordings? 306

PRIOR INFORMED CONSENT

An Intellectual Property Law Perspective

Ryu KOJIMA 309

1. Introduction: The Moore Case and Intangible Cultural Heritage..... 309
2. The Role of Trust 311
3. The Meaning of “Consent” 313
4. Concluding Remark 316

**PART FIVE BENEFITS AND POTENTIAL HARMS TO COMMUNITIES
AND THEIR INTANGIBLE CULTURAL HERITAGE**

SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE

Benefits and Potential Harms

Branislav HAZUCHA and Toshiyuki KONO 319

1. Introduction 319
2. Empowerment of Communities 320
3. Regional Inventories of Intangible Cultural Heritage..... 323

FIGHTING AGAINST BIOPIRACY

Moving from the Obligation to Disclose to Effective Benefit Sharing

Jacques DE WERRA..... 325

1. Introduction 326
2. Origins and Limits of the Obligation to Disclose..... 332
3. Moving from Transparency to Benefit Sharing 337
4. Conclusion 354

**DOCUMENTATION AND DIGITIZATION OF TRADITIONAL
KNOWLEDGE AND INTANGIBLE CULTURAL HERITAGE**

Challenges and Prospects

Chidi OGUAMANAM 357

1. Introduction 358
2. Options for the Protection of Intangible Cultural Heritage: Beyond
Intellectual Property..... 362
3. Documentation and Digitization of Intangible Cultural Heritage 368

4. Intangible Cultural Heritage Documentation and the Romance of the Public Domain.	376
5. Conclusion	382
TABLE OF INTERNATIONAL TREATIES AND CONVENTIONS	385
TABLE OF DECLARATIONS, RECOMMENDATIONS AND OPERATIONAL DIRECTIVES.....	387
BIBLIOGRAPHY	389