



Protecting Indigenous Art: Challenges in Protecting Traditional Cultural Expressions in the Philippines¹

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Abstract: It cannot be denied that indigenous people have traditional knowledge which is the source of rich cultural expressions in the form of writings, songs, designs and other literary or artistic works. These are works handed down from generation to generation through the passage of time. However, when the "outside world" visits the indigenous people there is a risk that these indigenous works may be appropriated by the and used for commercial purposes without permission. Worse, once it is exposed to the outside world, it may be prone to abuse by unauthorized sale, copying or distribution. How can indigenous art be protected and the cultural heritage of the indigenous people be preserved? The aim of this paper is to show that the indigenous people produce rich artistic cultural expression that should be protected because they should be preserved for future generations to come . To protect indigenous art, there is a need to (1) identify them, (2) survey the legal environment to determine if there are sufficient laws that protect them, and if current laws are lacking; (3) Propose ways on how to sufficiently protect them.

The paper will show that (1) the current legal protection afforded to indigenous art is lacking as there is no specific process and substantial provision in the law about protecting indigenous art as an intellectual property; (2) The traditional means of protecting indigenous art through the intellectual property code and relevant laws and regulations are insufficient; and (3) There is a need to increase awareness of the existence of indigenous art and the need to protect them to expose the benefits and risks in

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1. INTRODUCTION

The Philippines is home to many indigenous peoples and communities. Away from the megacities of Manila, Cebu and Davao, there exists indigenous communities living in far-flung areas and mountainous regions in the Philippines mostly untouched by the technological advancements of



The traditional knowledge composed of TCE and TGR are supposedly owned by the indigenous people and can be considered as part of their patrimony, history and cultural identity. Considering that traditional knowledge is a very broad topic, this paper shall limit its discussion on Traditional Cultural Expressions which are in the form of songs, dances, designs and other forms of cultural expressions. These expressions which have been handed down from generation to generation can also be considered as intellectual property in using the conventional system of protection. Considering, however, that traditional knowledge has a different nature and objective from that of the conventional subjects of intellectual property, can the traditional knowledge in the form of traditional cultural expressions still be protected under intellectual property regime of the state in the form of copyright, trademark of industrial designs? If yes, how can this be implemented? What types of intellectual property (patents, trademark, copyright or trade secret etc.) can be used to protect traditional cultural expressions? Can there be another way of protecting traditional cultural expressions aside from using the conventional intellectual property system?

The objective of this paper is to determine how traditional cultural expressions in the form of indigenous art can be protected in the Philippines and whether there are other alternative ways of protecting indigenous art. It will show that the indigenous people produce rich artistic cultural expression that should be protected because they should be preserved for future generations to come. Also, indigenous art should be protected because it is prone to abuse from the outside world. To protect indigenous art, there is a need to identify them, survey the legal environment to determine if there are sufficient laws that protect them, and if current laws are lacking; (3) Propose ways on how to sufficiently protect them.

In order to protect indigenous art, the paper will discuss the concept of traditional knowledge, specifically traditional cultural expressions, and how they can result to indigenous art. The resulting indigenous art will then be classified to determine if they fall into the traditional forms of intellectual property under the law. The paper will proceed with a survey of the

current modes of protection, both legal and extra-legal, in the protection of indigenous art. This will be done by looking at the existing legislation and the enforcement programs by the government in ensuring protection of indigenous art. It will then make an analysis and evaluation of the state of protection of indigenous art in the Philippines and the ways on how these works of art may be exploited to the prejudice of the indigenous people. It will cite specific instances when indigenous art can be exploited and abused by the outside world and how these can be minimized, if not eliminated. The paper will show that (1) the current legal protection afforded to indigenous art is lacking as



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e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral





leader can seek industrial design protection over the design of baskets made by the community. The design can then be licensed to third parties who may want to use the basket design. The indigenous community will acquire industrial design protection that it can use to prevent exploitation and abuse of others. Licensing the design can also result to economic benefits to the community.

Legal protection under the Intellectual Property Code of the Philippines (R.A. 8293) may be the first resort to protect the rights of the indigenous communities. If this is not sufficient, other alternative modes of protection are available. For example, the mandate of the Indigenous Peoples Rights Act (R.A. 8371) and relevant laws to protect their TCEs give them elbow room to enter into contracts or agreements to protect their interest. These include provisions for informed prior consent and benefit sharing agreements. However, it is admitted that the present conventional system does not fully protect TCEs under all possible situations. As stated in my previous article²⁶ involving a similar topic mentioned above, while there is an existing legal framework for the protection of TCEs, there is still room for improvement for the following reasons: "(1) The Intellectual Property Code of the Philippines (R.A. 8293) does not include traditional knowledge as one of the intellectual property rights protected under the code; (2) The Indigenous Peoples Right Act does not provide the legal mechanism for the protection to traditional knowledge in the same way as conventional intellectual property like patents, trademark and copyright; (3) The Indigenous People's Right Act (R.A. 8371) pertaining to traditional knowledge does not address the lack of legal protection afforded to traditional knowledge as they address only specific issues and are, therefore, not comprehensive; and (4) The requirements of legal protection under the conventional intellectual property system (R.A. 8293) are for the most part not consistent with the nature of traditional knowledge."

While the legal protection is not complete, the Philippines should be commended for it has already made great strides in the protection of traditional knowledge, which includes traditional cultural expressions (TCEs). The next step is to make a

customized knowledge system for indigenous communities to address the gaps of the current system of intellectual property protection.

²⁶ See Footnote 1.

