

Indigenous Women and Intellectual Property

Many indigenous women are artisans who, with knowledge passed down from generation to generation, create and produce objects, clothing and symbols that reflect the identity of their respective peoples. Guardians of traditional production techniques and knowledge, these women have long produced for their local communities. Increasingly, however, they have been selling the fruit of their labour on the market to make ends meet, send their children to school or support entire families.

Virtually every meeting of indigenous women includes an arts fair, where artisans display products characteristic of their region. The importance of these works for indigenous women, their families and the development of their communities has prompted indigenous artisans to take an interest in marketing and, therefore, the protection of intellectual property and knowledge.

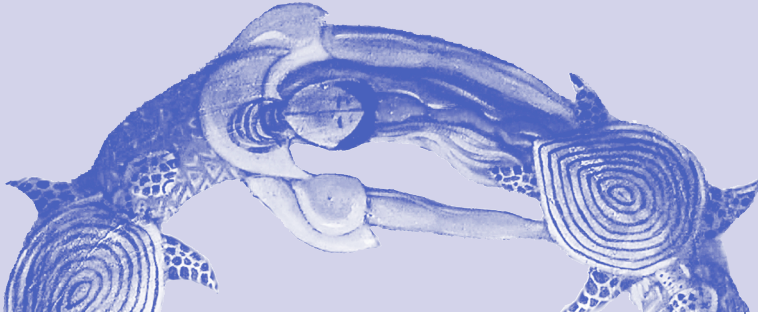


Here are the main conclusions of that workshop:

- The current system protects the rights of individuals above all, and solely from a commercial perspective. It does not take into account the fact that a people's traditional patterns and knowledge are transmitted from generation to generation. Furthermore, many of these patterns or techniques are sacred and should be protected from commercialization.
- The current system is based on innovation. Protection is limited to 50 years. Indigenous peoples need protection that respects the hereditary transmission of knowledge.
- The current system must be adapted to protect indigenous cultures, communities and knowledge.
- Elements of the current system can, nevertheless, be applied, such as certificates of origin, a standard contract with protection clauses, or the adoption of national legislative measures adapted to the reality of indigenous peoples and women. Under this customized law, a "competent authority," that is, an entity or authority (indigenous government, for example), would be responsible for overseeing the protection of intellectual property (see boxes).

The market is filled with imitations of indigenous art, often mass-produced. Indigenous women perceive these substitutes not only as illegitimate competition, but as identity theft, since the clothes and patterns these women produce are also representations of their world view.

These concerns prompted the Continental Network of Indigenous Women and Rights & Democracy to create the Commercialization and Intellectual Property Commission (composed of representatives from Canada, Panama and Peru). The first continental workshop, held in Ottawa in 1999, reviewed the system currently in place to protect intellectual property and sought to create methods to protect the designs and work of indigenous women.



Amauti in Canada

Pauktuutit Inuit Women's Association of Canada, has already studied the commercialization of the traditional garment called the *amauti*. Warm and practical, this garment allows women to nurse their children in the middle of winter without exposing them to the cold. It also identifies the region of origin of its

wearer. Made out of materials culled from Arctic biodiversity, it is a concrete representation of Inuit women's knowledge.

In 1999, well-known New York fashion designer, Donna Karan, sent a "mission" to the Canadian Arctic to collect *amautis* to inspire her winter collection. Pressure from Pauktuutit prompted the designer to drop the project. The association also moved quickly to create a mechanism to protect its heritage.

During a consultation process with women artists from the Arctic, the Inuit familiarized themselves with current intellectual property rules and discovered the importance of protecting the *amauti*. They concluded that a non-governmental body (a competent authority) controlled by women should be responsible for protecting the *amauti* and agreed to work toward this goal. In the meantime, they sought to acquire a certification mechanism to provide temporary protection.



Certificate of Origin

In Canada, Inuit sculptures are authenticated with an "igloo tag." Each sculpture is identified as the work of an Inuit artist and the tag indicates its geographic origin as well as the name of the creator. The Canadian government administers this certification, and the seal is affixed by recognized cooperatives. Buyers can thereby determine authenticity (enhancing the value of the item in relation to imitations). Inuit women hope to institute a similar type of protection for the *amauti*, but on condition that they administer the certification.

Producers of Alpaca Clothing and the Standard Contract in Peru

The members of the CONACAMI association are Peruvian Aymara artisans who work with alpaca wool (the alpaca is a member of the camel family related to the llama). These producers are organized into cooperatives and sell their products through the Peruvian artisans' association. This association has adapted the standard contract developed by Rights & Democracy in an effort to prevent imitations of their designs. It requires purchasers to recognize that the patterns remain the property of the producers' collective and establishes that

A standard contract adapted in Peru that:

- establishes the collective ownership of design;
- includes protection clauses for these designs and patterns;
- determines the conditions under which designs can be used (price, quantities, period);
- includes provisions for sanctions in cases of non-conformity.



the terms of their use must be negotiated. While this tool offers limited protection to the signatories of the contract, it is effective in raising awareness among all parties of the value of these designs and patterns.

The situation of Aymara artisans in Peru is very different from that of the Inuit in the Canadian Arctic. In Peru, the same designs and patterns are sometimes shared among several indigenous peoples and a multitude of artisans and merchants crowd the market. Competition is fierce and income from the sale of these items tends to be meagre. In contrast, the Inuit live in a remote and sparsely populated territory with little competition.

The Protection of Knowledge in Panama: Law 20

Indigenous women in Panama, and particularly the Kuna, derive their subsistence from the sale of crafts. They have long called for protection against copies of their work, primarily from Asia, that often flood the market. In June 2000, major strides were made with the adoption of a new law (*sui generis*, that is, specific to that country), that recognizes that the creations of indigenous peoples are collective and their protection falls

Law 20 protects clothing, instruments, music, dances, production techniques and oral and written expressions of the indigenous peoples of Panama. It recognizes:

- the collective rights of their creations;
- that traditional authorities must oversee protection;
- that collective rights do not have a fixed duration;
- that the State must implement protection mechanisms such as the department of collective rights and the register of these rights;
- that a regulation must guide the use of the rights recorded in the register.

World Intellectual Property Organization

This organization is a United Nations agency that monitors the establishment of standards of protection for intellectual property.

An intergovernmental committee was established to discuss and propose new tools to protect genetic resources, traditional knowledge and folklore. (www.wipo.int)

under the jurisdiction of indigenous authorities. The indigenous peoples of Panama are governed by General Congresses and their authorities are recognized by the State.

In the case of Kuna women, the mola, their specific form of clothing and craft, is recognized by Law 20 as part of the collective heritage of the Kuna people and is thus protected by an alliance between the State (the Department of Collective Rights) and Kuna authorities (Kuna General Congress). All Kuna women have the right to manufacture and use *molos* (included in the register of collective rights) and their organizations are registered with the General Congress. A seal (certification) is affixed to the products, attesting their authenticity. Non-Kuna must obtain a license to manufacture *molos*. The indigenous authority issues this authorization after



Kuna artists from Panama in front of *molos*.



Free and Informed Consent...

- means that the community has been informed of the possible impacts of the decision (development project, use of knowledge or a design);
- means that the community can say yes or no to the use of knowledge, a design or the implementation of a development project.

having consulted the women. *Molas* manufactured in this way must be accompanied by a statement that they were produced under license of the Kuna people but not by Kuna hands.



This new legislative framework has not been completely implemented and time will tell what kind of effect it will have on the living conditions of women in indigenous communities. CONAMUIP (National Coordinator of Indigenous Women of Panama) is helping to implement it by providing women artisans with the necessary information, after having petitioned the authorities to include the *mola*, *chaquira* (traditional beads worn by Kuna women) and *Nahua* (the traditional dress of Ngobe-Buglé women) in the register. This is an important initiative worth following.

Cultural identity and the development of indigenous peoples, and women in particular, depend on these peoples' ability to protect their heritage, their environment and biodiversity.

This capacity, however, is largely dependent on the existence of legitimate indigenous authorities recognized by States on the territories inhabited by these peoples. With respect to the protection of intellectual property, they are referred to as the competent authority. It is up to the peoples themselves to determine who can play this role. Indigenous peoples must decide if they wish to authorize the use of their heritage, which also raises the issue of **free and informed consent**.



Discussion Questions

- Does a legitimate “competent indigenous authority” that everyone trusts exist in your community? If not, how can one be created?
- How can sacred knowledge be protected in a prevailing context of privatization and commercialization?
- How can the examples from Canada, Peru and Panama help you protect your cultural heritage?

TO FIND OUT MORE ...

- For Panama's Law 20, see the regulation and decree on our Web site: www.dd-rd.ca.
- To obtain the standard contract, please contact Chirapaq *Centro de Culturas Indias* (ayllu@chirapaq.org.pe) or Rights & Democracy (dd-rd@dd-rd.ca).
- To obtain a copy of the *Community Guide* on the main terms of intellectual property and a presentation in simple terms of Law 20 and the standard contract, contact Pauktuutit: pauktuut@comnet.ca. (Available in English and Spanish)