

Using Intellectual Property Tools to Protect Crafts Made within the Geographical Limits of Crafts Cities

23 August 2021

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Traditional Knowledge Division

Content



Introduction to Intellectual Property



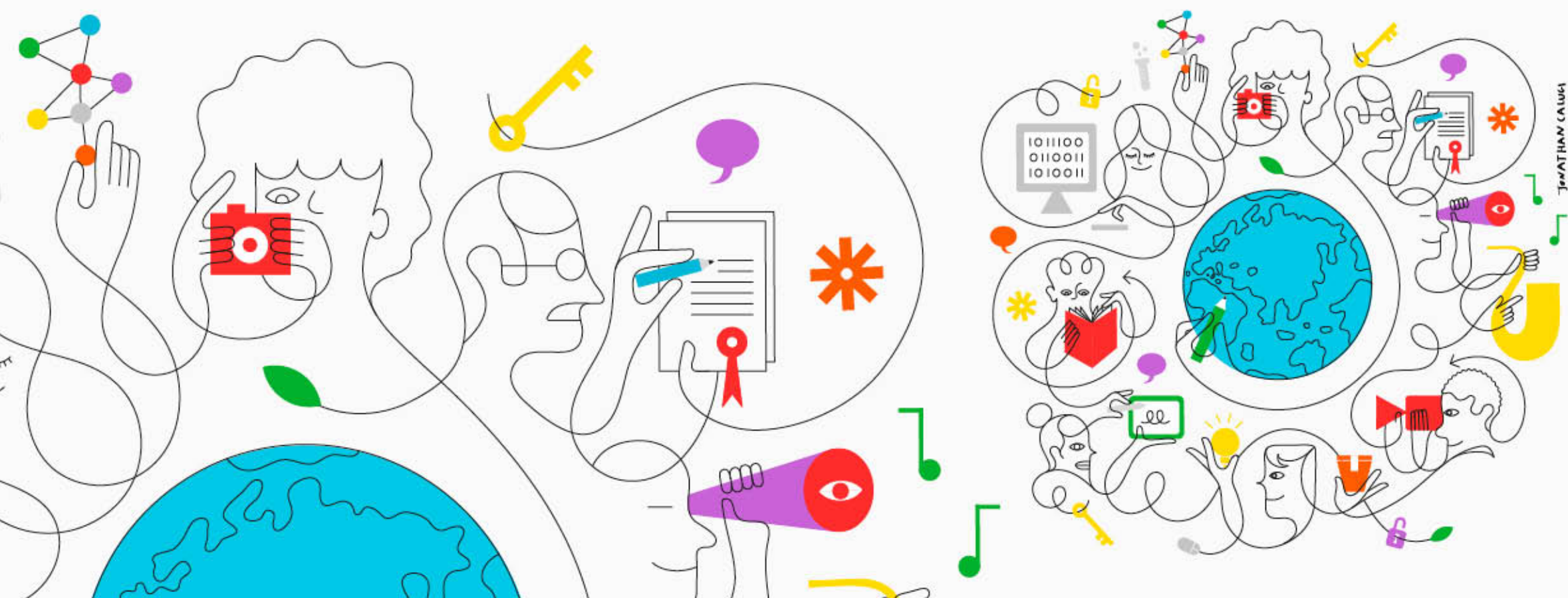
Traditional Knowledge and Traditional Cultural Expressions as Intellectual Property



International Initiatives



Tools and Resources

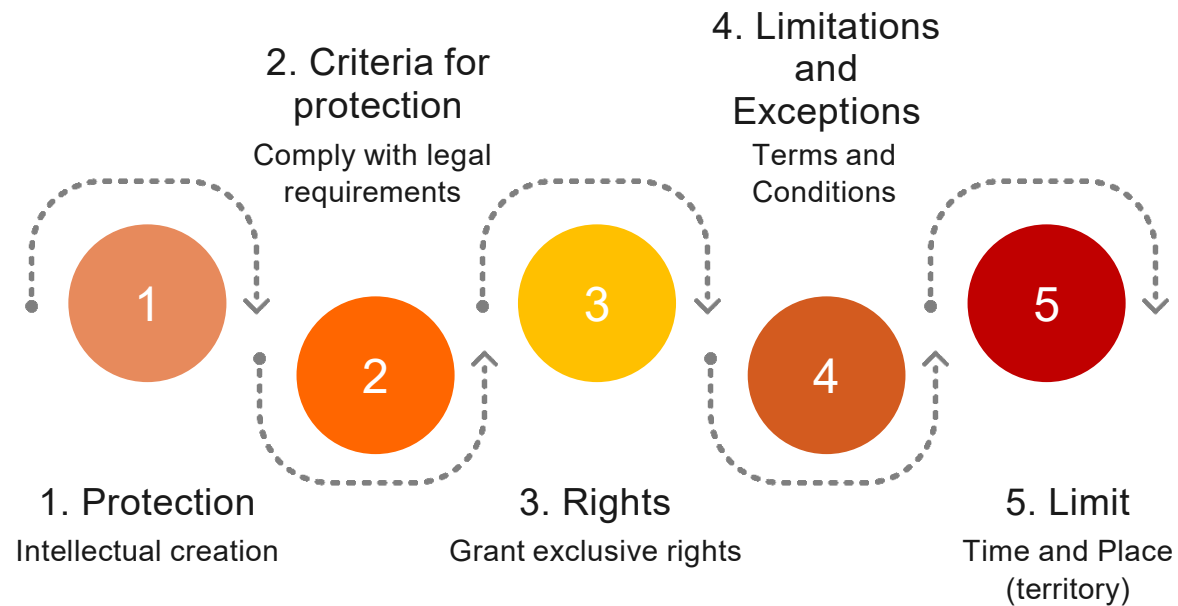


JONATHAN CALUG

INTRODUCTION TO INTELLECTUAL PROPERTY

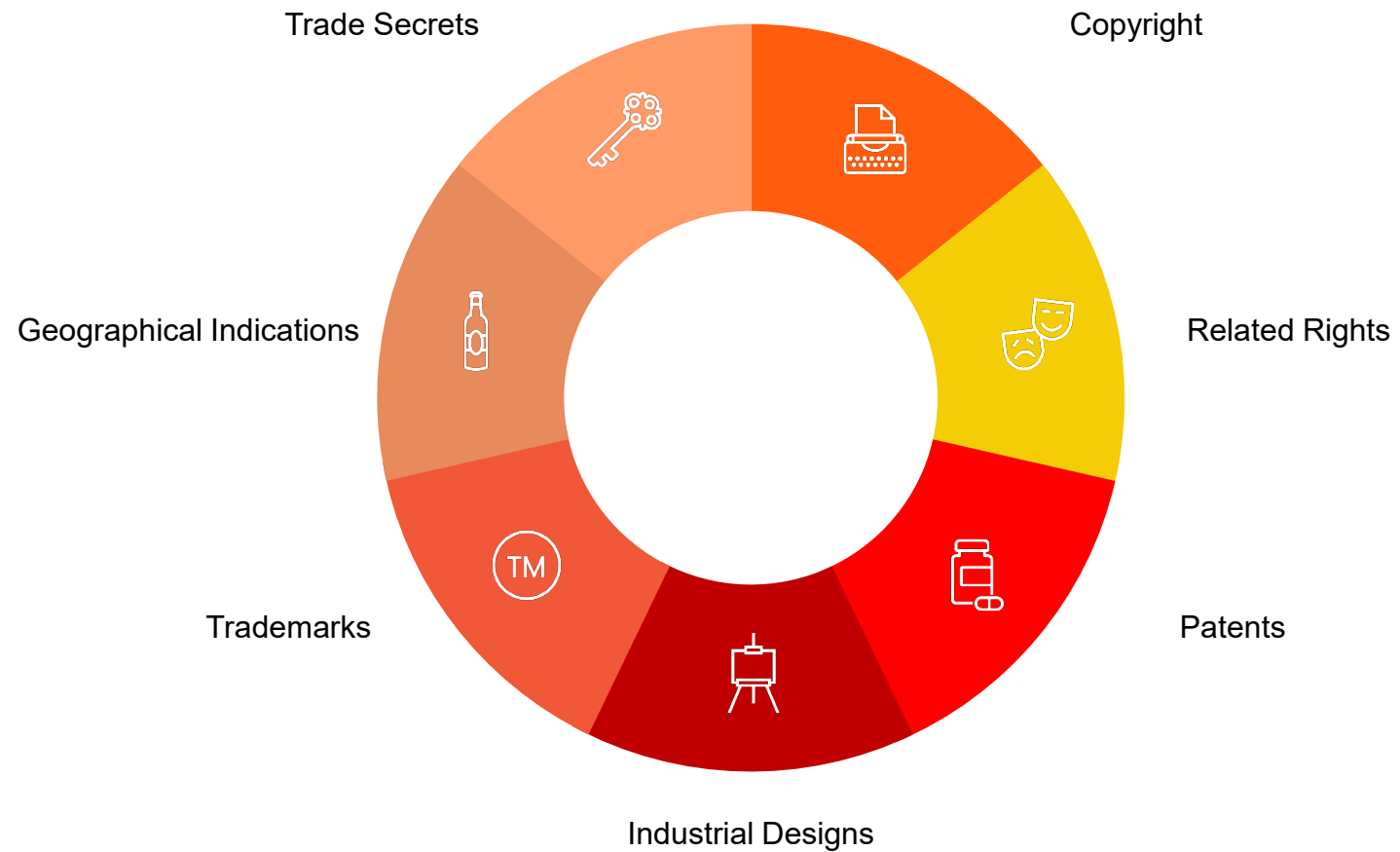
Introduction to Intellectual Property

Intellectual Property: creations of the mind

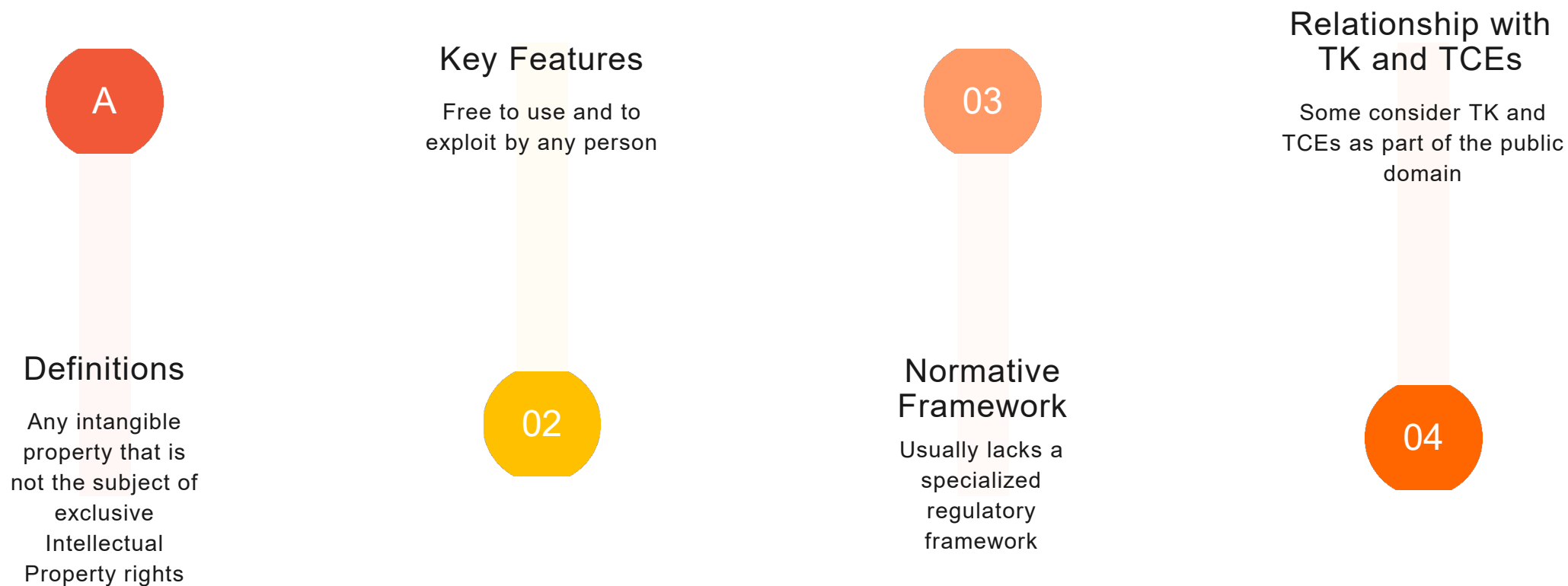


Intellectual Property

Main types



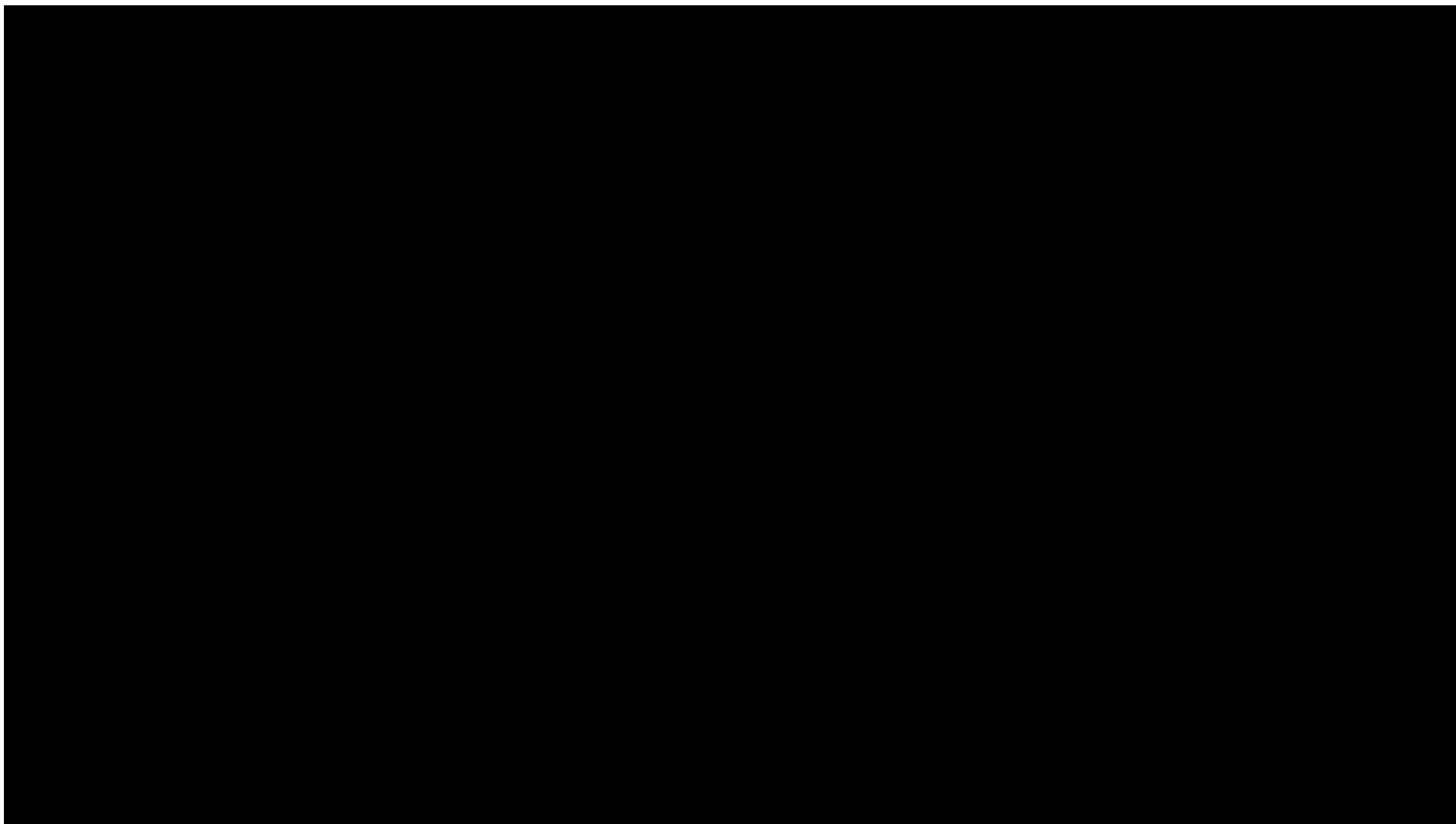
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TRADITIONAL CULTURAL EXPRESSIONS (TCEs) AS INTELLECTUAL PROPERTY

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Source: <https://youtu.be/3bim1tFE6Tg>

Traditional Knowledge (TK)



Knowledge, experience, skills, aptitudes, practices, abilities, innovations and know-how



Development, maintenance and transmission from generation to generation



Within a community and are often part of its cultural and/or spiritual identity



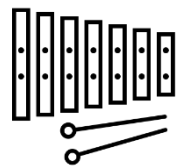
Not subject to a specific technical field, may include traditions in agriculture, environment, medicine, genetic resources and cultural expressions



Traditional Cultural Expressions (TCEs)

Manifestation The forms in which traditional culture manifests itself.	Format Tangible or intangible or both. In constant development.
Identity and Patrimony Part of the identity and patrimony of a traditional community or indigenous people.	Origin Passed down from generation to generation, usually from unknown authors.

Traditional Cultural Expressions (TCEs)



Music



Art



Design, sign
and symbol



Dance



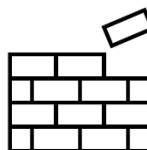
Interpretations



Narrations



Crafts Objects



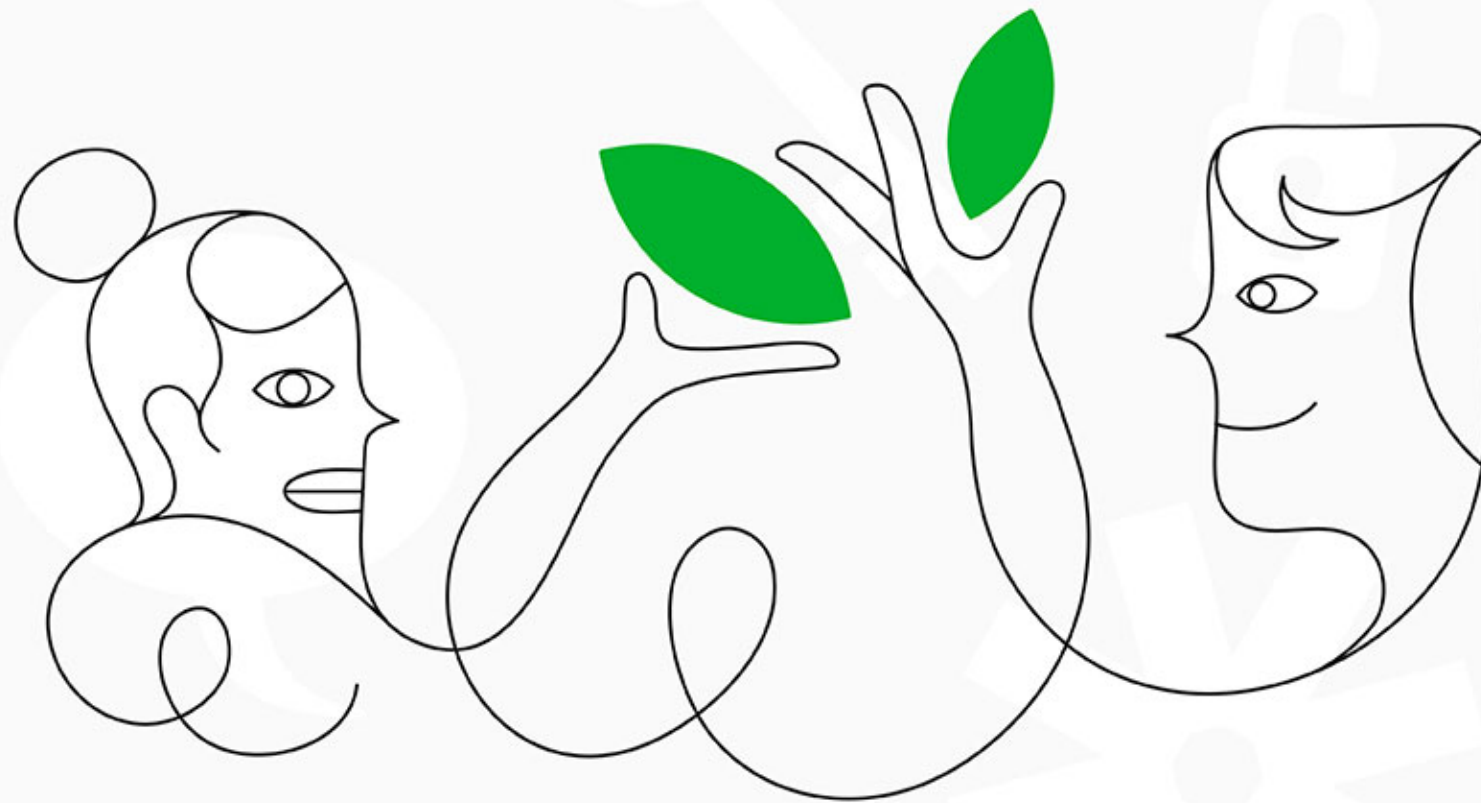
Architectural
Forms



Ceremonies



Many others



USEFULNESS OF IP FOR TCES

Key references to Traditional Cultural Expressions (TCEs)

1

Misuse

A wrong, incorrect or improper use, or misapplication. Misuse may also refer to improper or excessive use, or to acts which change the inherent purpose or function of something.

2

Misappropriation

Misappropriation may refer to wrongful borrowing or to the fraudulent appropriation of funds or property entrusted to someone's care but actually owned by someone else.

3

Potential

Economic potential for communities, industry and commerce.

4

Risk

Possibility of erosion in local knowledge systems.

Source:
Glossary

<https://www.wipo.int/tk/en/resources/glossary.html#33>

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Danza folclórica mexicana de Jalisco,
Seúl (República de Corea), 2009

Could Traditional Cultural Expressions (TCE) be considered Intellectual Property?

Traditional Cultural Expressions (TCE) and Intellectual Property



Intellectual Product

Subject to protection under Intellectual Property



Unfitness

Full protection is not possible under the current IP system



Adaptation

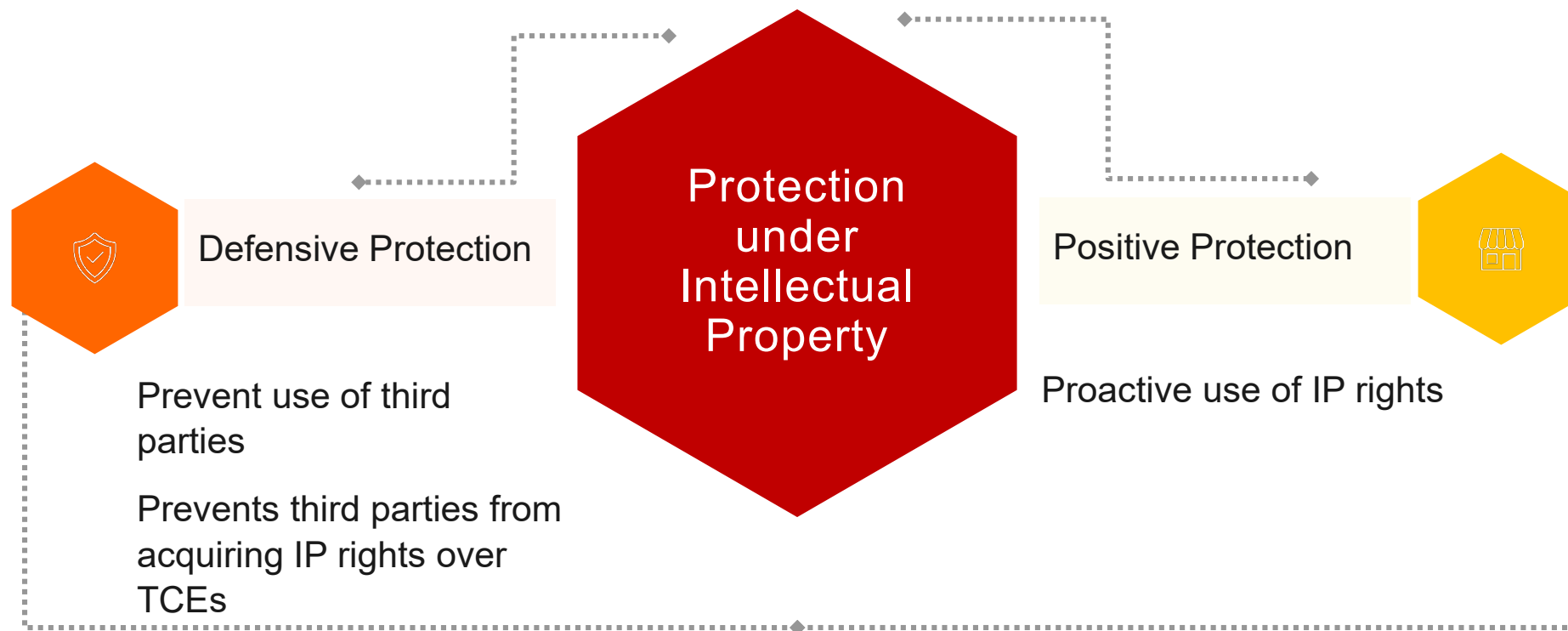
Possibility of changes to conventional or existing IP



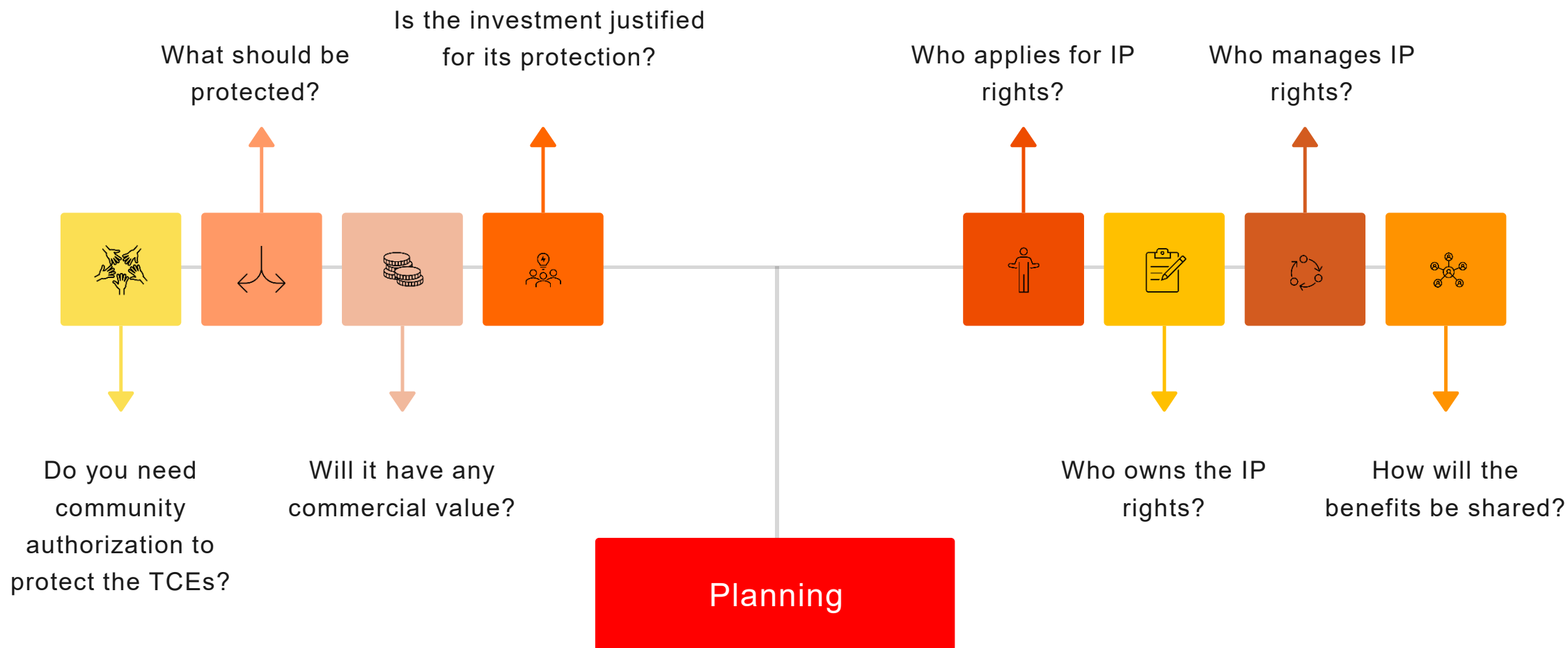
Special

Possibility of creating a new *sui generis* system of protection

Usefulness of IP for TCEs



Questions



Trademark

1



First come first served

First to register usually
secures the exclusive rights



Prevention

Preventing offensive and
deceptive marks



Distinctiveness

Use as a distinctive tool –
marketing tool



Commercialization

May be licensed

Trademark: New Zealand and Adean Community

Examples from New Zealand and from the Andean Community

In some countries, the national trademark law does not allow the registration of trademarks that include the names or expressions of the culture of indigenous peoples, unless the trademark applications are filed by the indigenous people or with their consent.

New Zealand and the Andean Community provide interesting examples.

In New Zealand, the Trade Marks Act 2002 prevents a trade mark from being registered if its use or registration would be likely to offend a significant section of the community, including Māori.⁵ According to section 178, the Commissioner of Trade Marks may appoint an advisory committee to advise whether the proposed use or registration of a trade mark that is, or appears to be, derivative of a Māori sign, including text or imagery, is, or is likely to be, offensive to Māori.

Papatūānuku is a significant Māori *atua* or *tipuna* (god or spiritual ancestor) for the indigenous peoples of New Zealand. According to a guide produced by the New Zealand Intellectual Property Office, a trademark containing the word "Papatūānuku" would be offensive, and could be a basis for objection against a trademark application in New Zealand as provided for under the Trade Marks Act 2002.⁶

In the Andean Community,⁷ Decision 486 provides that signs which consist of the names of indigenous, Afro-American or local communities, or the names, words, letters, characters or signs used to distinguish their goods or services or the manner of their processing, or which constitute an expression of their culture or practice, may not be registered as marks, except where the application is filed by the community itself or with its express consent.⁸

A number of trademark applications have been rejected under Article 136(g) of Decision 486. For instance, a trademark application filed for the mark "WAYUU" was rejected in Colombia and a trademark application filed for the mark "SHUARA" was rejected in Ecuador because these are names of indigenous communities.

These examples show how trademark law can include specific provisions to better protect the interests of indigenous peoples and local communities.

New Zealand

- Trademark Act 2002
- The Act prevents trademark registration that could likely offend a significant section of the community, including Māori.

Andean Community (Bolivia, Colombia, Ecuador and Peru)

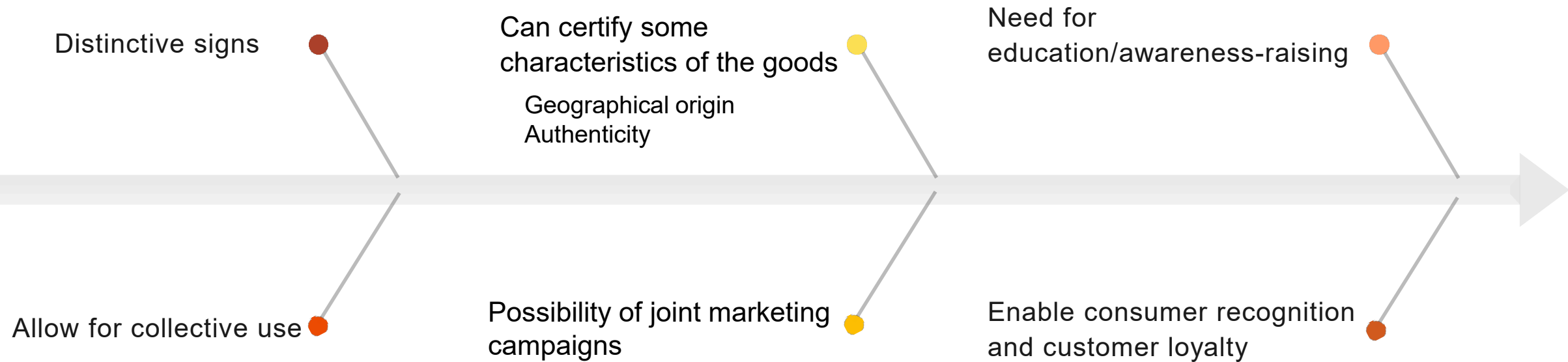
- Decision 486 prevents trademark registration if the sign constitutes an expression of indigenous, Afro-American or local communities cultures or practices

Source:

<https://www.wipo.int/publications/en/details.jsp?id=4195>

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Collective and certification marks



Certification marks: COWICHAN

COWICHAN: a certification mark from Canada

The Cowichan tribe is located in the Cowichan Valley region of Vancouver Island in British Columbia, which consists of seven traditional villages: Kw'amutsun, Qwum'yiquin', Hwulqwselu, S'amuna', L'uml'umuluts, Hinupsum and Ti'ulpalus.¹ Traditionally, the Cowichan tribe lived outdoors and they knitted clothes and blankets to withstand the climate, including what has become known as the Cowichan sweater.

In 1995, the Cowichan Band Council of British Columbia filed a trademark application with the Canadian Intellectual Property Office for "COWICHAN".² The mark was registered as a certification mark in 1996.³ The COWICHAN mark distinguishes "clothing, namely sweaters, vests, ponchos, hats, toques, mittens, scarves, socks and slippers". According to the register: "The certification mark, to be used by persons authorized by the certifier, will certify that the wares have been hand-knit in one piece in accordance with traditional tribal methods by members of the Coast Salish Nation using raw, unprocessed, undyed, hand-spun wool made and prepared in accordance with traditional tribal methods."

This example shows that indigenous peoples and local communities can use certification marks to certify that the products they market are made using traditional methods (TK).

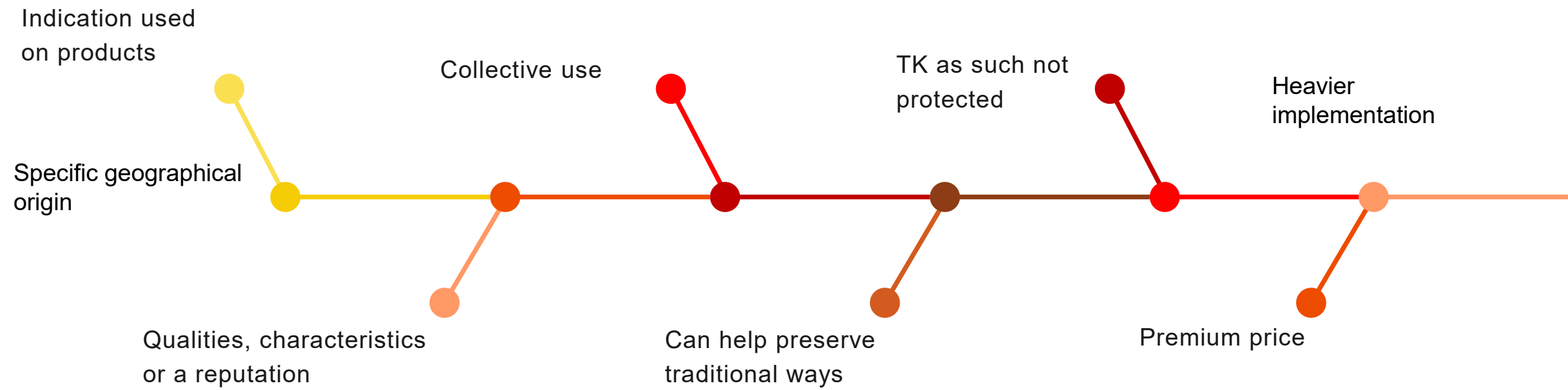
Photo: Shook/Joelias

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- Cowichan tribe from the Cowichan Valley, Vancouver, Canada
- Certification mark registered in 1996 to distinguish: clothing, namely sweaters, vest, ponchos, hats, toques, mittens, scarves, socks and slippers.
- The mark certifies: the authorization to use and the compliance with traditional tribal methods to create the items.

Source: <https://www.wipo.int/publications/en/details.jsp?id=4195>

Geographical Indications



Geographical Indications: Madd de Casamance

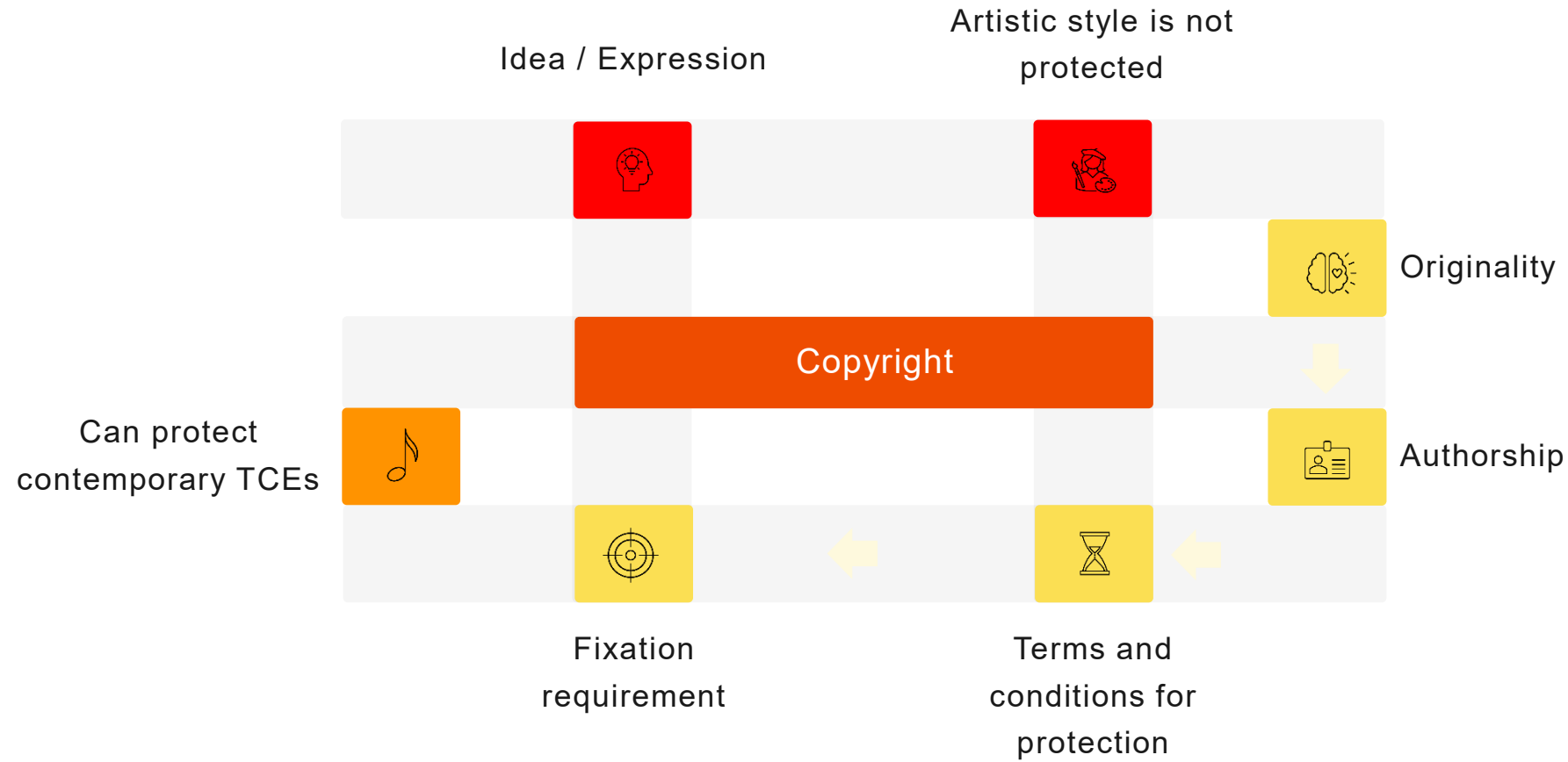


PHOTO: ECONOMIE TERRITOIRES ET DÉVELOPPEMENT SERVICES

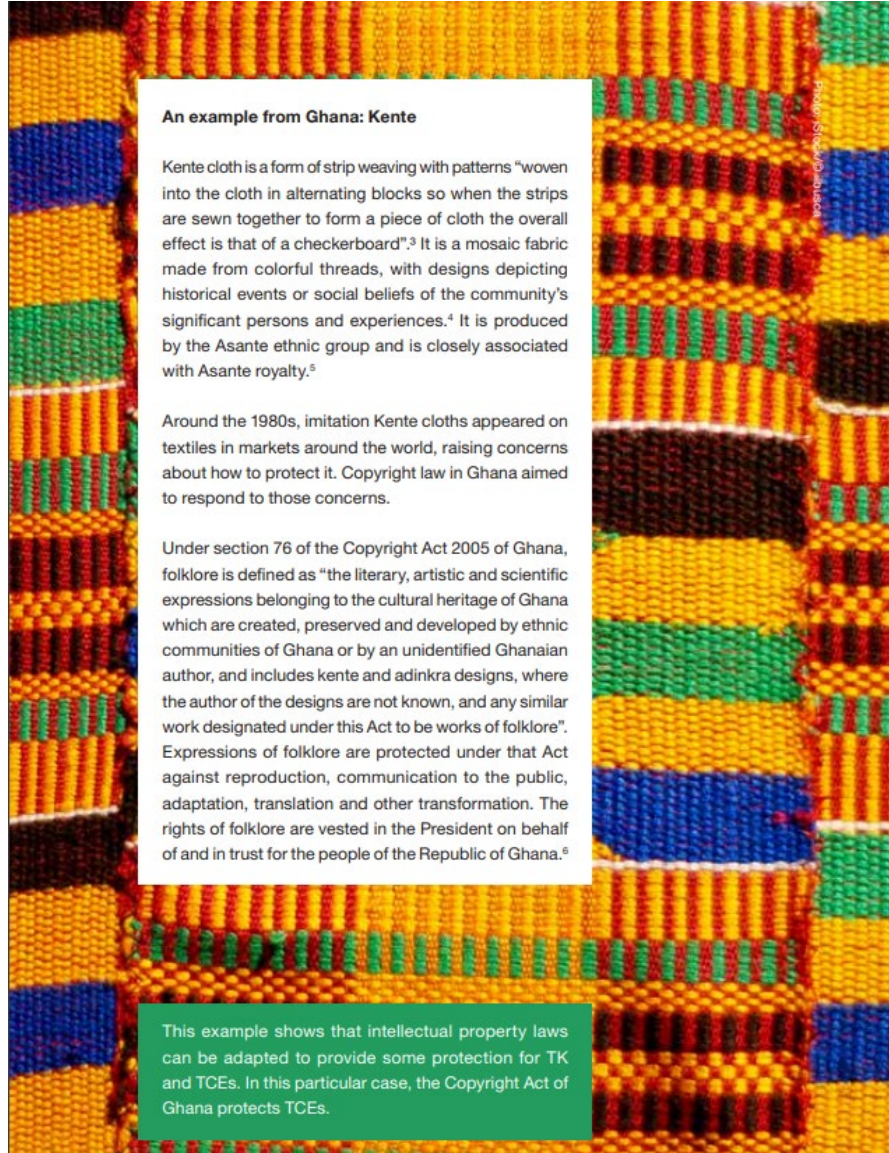
- Gathered all the stakeholders and created the *Association pour la Protection et la Promotion de l'Indication Géographique Madd de Casamance (APPIGMAC)* in Senegal.
- The purpose of this Association is to promote the Madd, protect the forest, raise awareness and provide women with market access.
- The Madd of Casamance is a Forest fruit specific of that area
- Contributes greatly to the income of rural populations
- The GI process is ongoing

Source: https://www.wipo.int/meetings/fr/doc_details.jsp?doc_id=540358

Copyright



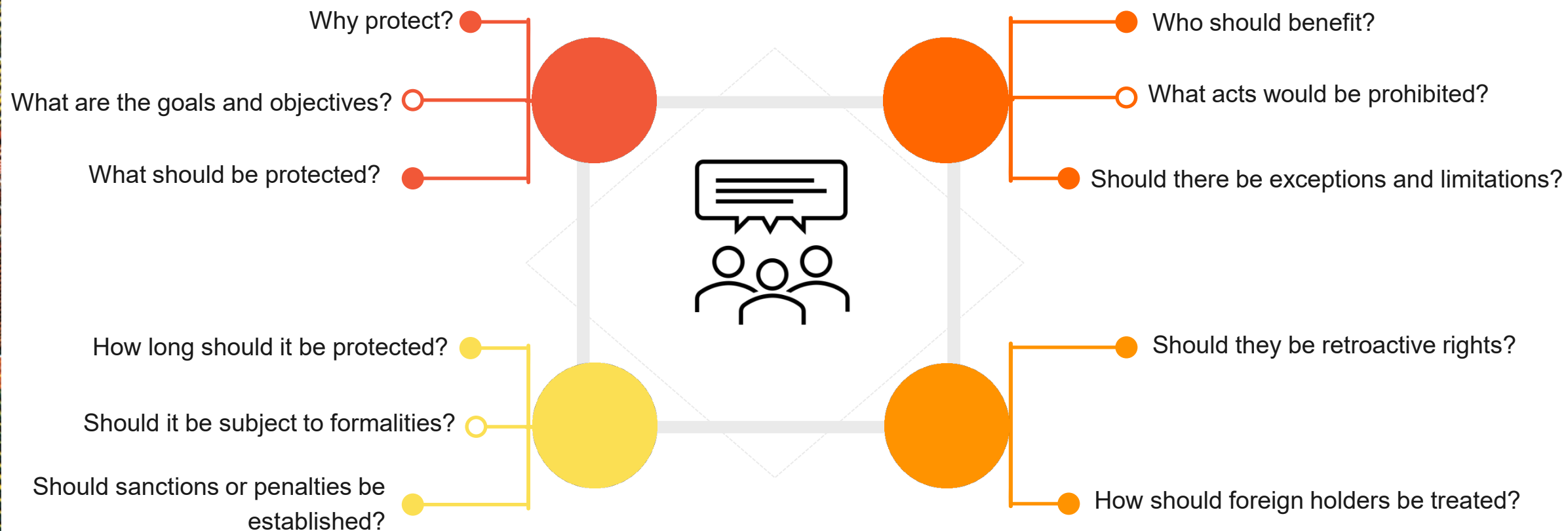
Copyright: Kente



- Kente cloth produced by the Asante ethnic group in Ghana
- Copyright Act 2005 introduced protection to expressions belonging to the cultural heritage of Ghana which are created, preserved and developed by ethnic communities of Ghana or unidentified Ghanaian author
- Protection against reproduction, communication to the public, adaptation, translation and other transformation

Source: <https://www.wipo.int/publications/en/details.jsp?id=4195>

Questions before considering a **sui generis** system





INTERNATIONAL INITIATIVES

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WIPO Indigenous and Local Community Women Entrepreneurship Program

Call for applications

Intellectual Property for Women Entrepreneurs
from Indigenous Peoples and Local Communities

2021-2022 Training, Mentoring and
Matchmaking Program



The WIPO Training, Mentoring and Match-Making Program on Intellectual Property for Women Entrepreneurs from Indigenous Peoples and Local Communities (the Program) aims to encourage women entrepreneurship, innovation and creativity related to traditional knowledge and traditional cultural expressions by strengthening the capacity of indigenous and local community women entrepreneurs to make strategic and effective use of intellectual property tools in support of their entrepreneurial activities.

Candidates should submit a duly filed application form by **September 6, 2021**.

Apply: <https://surveys.wipo.int/s3/en-women-entrepreneurs>



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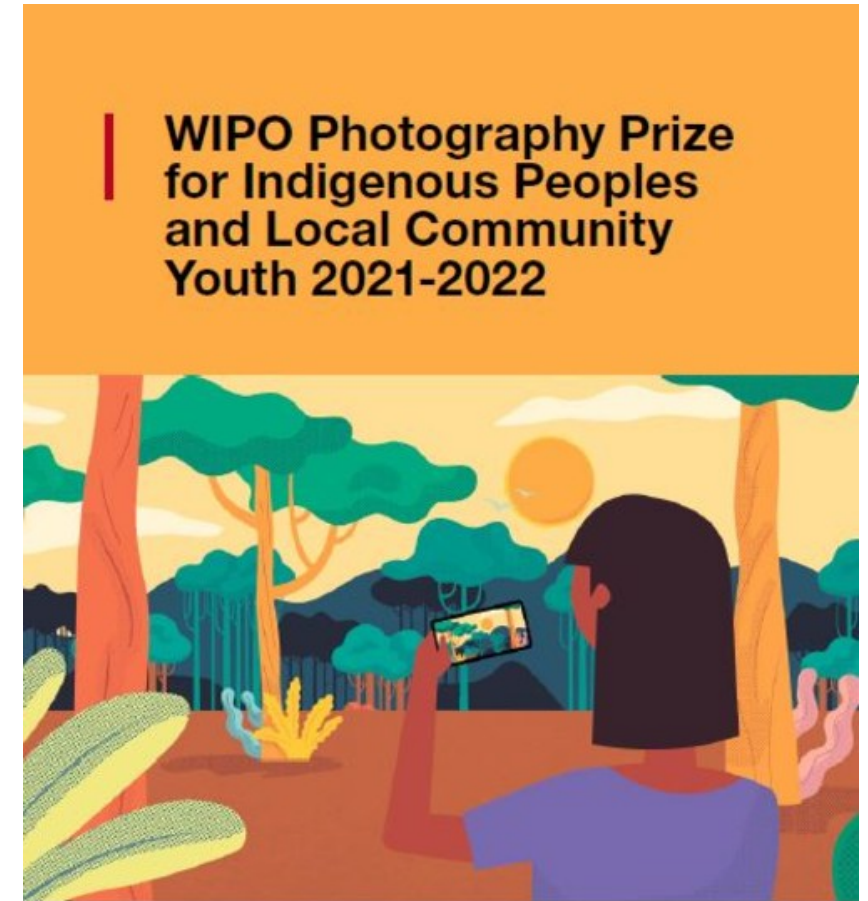


WIPO Photography Prize for Indigenous Peoples and Local Community Youth 2021-2022

Through this activity, WIPO aims to celebrate and make widely known the creativity of Indigenous and local community youth, as well as raise their awareness on how copyright can be used to protect their creativity expressed in the photographs. The theme of the WIPO Photography Prize is Climate Change and Climate Action: Mother Earth through our Lenses. Participation is meant to encourage Indigenous and local community youth to express themselves on this issue of immense global significance.

Submission deadline: **January 22, 2022**

Apply: https://www.wipo.int/tk/en/youth_prize.html





TOOLS AND RESOURCES

PROTECTING AND PROMOTING GENETIC RESOURCES AND INDIGENOUS AND LOCAL COMMUNITY INNOVATION AND CREATIVITY FOR THE GOOD OF EVERYONE



FACILITATION OF
INTERNATIONAL
NEGOTIATIONS



POLICY AND LEGISLATIVE
ASSISTANCE TO
REGIONAL AND NATIONAL
AUTHORITIES



INDIGENOUS PEOPLES
AND
LOCAL COMMUNITIES
ENGAGEMENT

7 SERVICE AREAS OF WIPO'S

TRADITIONAL KNOWLEDGE DIVISION



GLOBAL REFERENCE ON
IP AND GRs, TK AND TCEs

INDIGENOUS
ENTREPRENEURSHIP
PROGRAM



DOCUMENTATION
OF
TK AND TCEs



IP RIGHTS MANAGEMENT
IN GENETIC RESOURCES
AND DATA



SHAPING THE FUTURE OF THE
GLOBAL IP ECOSYSTEM

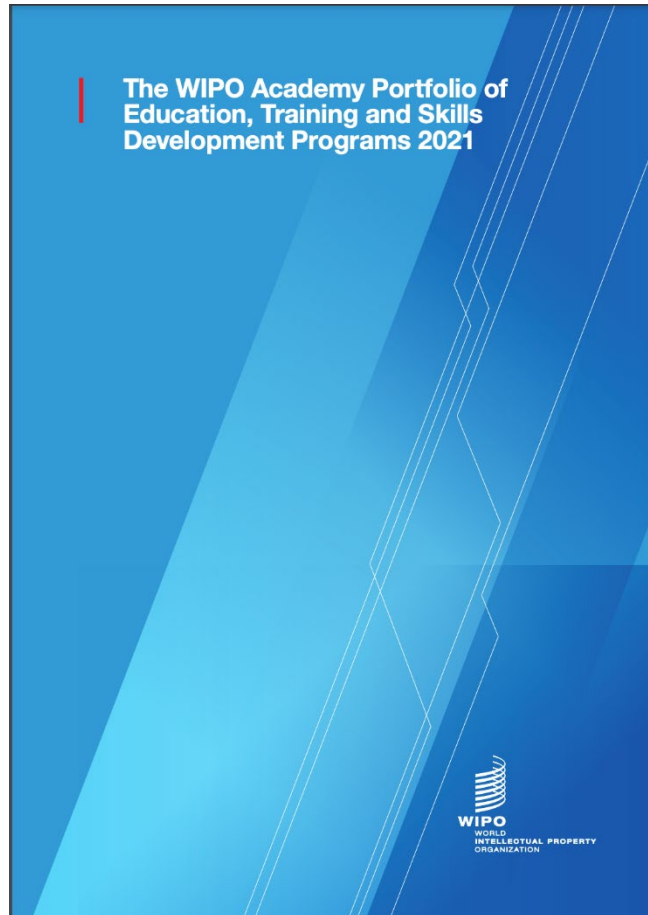


REACHING OUT WORLDWIDE
AND PROVIDING HIGH QUALITY
KNOWLEDGE



SUPPORTING USE OF IP AS A
TOOL FOR GROWTH AND
SUSTAINABLE DEVELOPMENT

DL203 – Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions

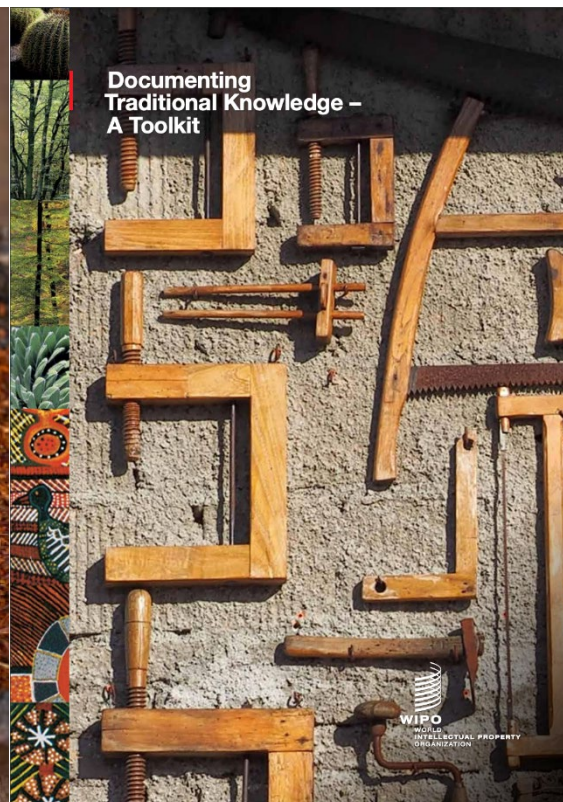


- This course aims to provide technical information on key concepts and international, regional and national experiences, policy options and legal mechanisms available or under consideration for the intellectual property protection of traditional knowledge and traditional cultural expressions. It is hoped that the course will strengthen capacity and stimulate consideration of these issues, share experiences and advance understanding of the range of issues and possible options in this area, in which legal and policy developments are still evolving at national, regional and international levels.

Click here:

https://welc.wipo.int/acc/index.jsf?page=courseCatalog.xhtml&lang=en&c=DL203E#plus_DL203E

Publications



Click here:

<https://www.wipo.int/tk/en/resources/publications.html>

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Email updates

Traditional Knowledge Updates –

Regular news and resources about IP and TK; and IGC updates.

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Thank You

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