HUMAN DEVELOPMENT REPORT 2004

Cultural liberty in today's diverse world

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BOX 5.4

Using intellectual property rights to protect traditional knowledge

Respecting traditional knowledge does not mean keeping it from the world. It means using it in ways that benefit the communities from which it is drawn.

Australia's intellectual property rights laws do not cover traditional knowledge, but certification trademarks are used to identify and authenticate products or services provided by indigenous people. In the 1995 *Milpurrurru* case—Aboriginal designs were reproduced on carpets without prior consent—an Australian court judged that "cultural harm" had been caused due to trademark violation and awarded compensation of A$70,000 (WIPO 2003c). In the 1998 *Bulun Bulun* case a court judgement found that an indigenous person owed fiduciary obligations to his community and could not exploit indigenous art contrary to the community's customary law.

In Canada trademarks are used to protect traditional symbols, including food products, clothing and tourist services run by First Nations. The Copyright Act protects tradition-based creations like woodcarvings, songs and sculptures. In 1999 the Snuneymuxw First Nation used the Trademarks Act to protect 10 religious petroglyphs (ancient rock paintings) from unauthorized reproduction and to stop the sale of goods bearing these images.

Other countries have explicitly recognized traditional knowledge and customary legal systems. Greenland retains its Inuit legal tradition within its Home Rule Government. Over the past 150 years written Inuit literature has documented cultural heritage. Cultural heritage is treated as dynamic and not restricted to traditional aspects alone. Both traditional and modern cultural expressions are respected and enjoy equal protection under law.

A more celebrated case involves the San Bushmen of southern Africa. An anthropologist noticed in 1937 that the San ate the Hoodia cactus to stave off hunger and thirst. Based on this knowledge the South African Council for Scientific and Industrial Research (CSIR) in 1995 patented the Hoodia cactus's appetite-suppressing element (P57). By 1998 revenues from

the licensing fee for developing and marketing P57 as a slimming drug had risen to $32 million (Commission on Intellectual Property Rights 2002). When the San alleged biopiracy and threatened legal action in 2002, the CSIR agreed to share future royalties with the San.

Recognition of traditional culture can occur at the regional level as well. Article 136(g) of Decision 486 of the Commission of the Andean Community states that signs may not be registered as marks if they consist of the names of indigenous, Afro-American or local communities. The Colombian government used Article 136(g) to reject an application for registration of the term “Tairona”, citing it as an invaluable heritage of the country—the Taironas inhabited Colombian territory in the pre-Hispanic period.

Source: Commission on Intellectual Property Rights 2002; WIPO 2003c.