

Protection of Folklore & Traditional Knowledge



NLIPW Copyright Law Volume 1 Number 3

eDigest

(Protection of Folklore & Traditional Knowledge)

March 27, 2013

Content Sources

1. Social Science Research Network (SSRN)
2. American University Washington College of Law
3. Southern African Legal Information Institute
4. Journal of Black and African Arts and Civilization
5. Journal of Intellectual Property Rights Vol 17, November 2012

Protection and Administration of Folklore in Nigeria by Adebambo Anthony Adewopo, Social Science Research Network, March 1, 2006

Discussions on intellectual Property rights recently extended to traditional Knowledge issues and the protection of folklore. Generally, globalisation and the information Technology revolution have pushed the demand for intellectual property protection beyond the borders of sovereign nations. In the same trend, liberalization, international treaties, tourism, the media and the steady shift to free market economies enables greater movements of goods across the world and the need for better intellectual property protections. Complaints by American and European companies about rampant intellectual property piracy and counterfeiting in developing countries are an indication of the extent to which the world famous brands and Hollywood cinema and music has penetrated foreign lands, supplanting and in some cases even obliterating the traditional culture and custom of different people in the process – particularly in the cities.

Protecting Folklore Under Modern Intellectual Property Regimes: A Reappraisal of the Tensions Between Individual and Communal Rights in Africa and the United States by Paul Kuruk, American University Washington College of Law

This paper explores the adequacy of the current legal framework for protecting African folklore both inside and outside the African continent. Part I describes the nature of folklore and its significance in traditional communities and explains how rights in folklore are created and enforced according to a society of customary law. Part II examines the protection of folklore under national laws, distinguishing between laws that contain specific references to folklore and those that do not and assesses the extent to which folklore can be protected, if at all, under general intellectual property laws, or under current African law. Part III discusses the relevance of two African regional arrangements to the protection of folklore i.e. the ESARIPO and OAPI. Part IV describes various international initiatives, including attempts to provide model national laws on folklore. As the United States is a lucrative market for African folklore, Part V analyzes the protection of folklore under U.S. laws and explores some current issues in the quest for greater recognition of intellectual property rights in the cultural property of indigenous peoples. The paper concludes in Part V, that it is inherently difficult to protect folklore under modern intellectual property laws which tend to be prompted by concerns irrelevant to folklore.

Protecting Expressions of Folklore Within the Right to Culture in Africa by E.S. Nwauche, Revised Presentation for Conference on Traditional Knowledge in Legal Context 17 –18 March 2010

This paper examines the protection of expressions of folklore within the right to culture in Africa and demonstrates how a human rights regime may assist in overcoming some of the deficiencies in the national protection of expressions of folklore in Africa. The paper considers three issues: the increased understanding of the right to culture in national constitutions and the recognition that customary law is a manifestation of the right to culture; an expanded understanding of the substantive content of Article 15(1) of the International Covenant for Economic, Social and Cultural Rights as part of the right to culture; and the recognition of the rights of indigenous peoples marked significantly by the 2007 United Nations Declaration of the Rights of Indigenous People.

Copyright Law and the Recognition of Folklore Creations and Folk Medicine in Africa by Ayoyemi Lawal Arowolo, Journal of Black and African Arts and Civilization, January 1, 2011

This paper examines the invaluable role of folklore in African societies and the deficiencies in protecting creative works within traditional parameters to encourage intellectual

creations. The paper is divided into five parts. Part I explores the existence and protection of traditional knowledge in precolonial Africa. Part II examines the nexus between traditional knowledge and the use of intellectual property rights. Part III focuses on the protection of folklore under copyright law in African countries including Benin, Ghana, Congo, Guinea, Kenya and Senegal amongst others. Part IV looks at the use of the term expressions of folklore under the Nigerian Copyright Act and the extent of its protection. The paper concludes in Part V and makes recommendations for protection of folklore in Africa.

Striking a Balance between Intellectual Property Protection of Traditional Knowledge, Cultural Preservation and Access to Knowledge by Pamela Andanda, November 2012

This paper looks at how the current the intellectual property regime that seeks to prevent third parties from using traditional knowledge inappropriately is often inaccessible to most holders of traditional knowledge. The paper further considers potential avenues that can be used, particularly at policy making level, to strike a balance between protecting traditional knowledge through the intellectual property regime and ensuring cultural preservation and access to knowledge and highlights some of the main challenges that are involved in striking this balance. Apart from utilizing available literature on these challenges, the main suggestions from the World Intellectual Property Organization, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) are analysed with a view to proposing directions that can help improve the manner in which traditional knowledge is protected through intellectual property.

This article was published on Nigerian Law Intellectual Property Watch (NLIPW), now Nooktoria Legal Resource.