Copyright, Cultural Diversity and Collective Management – A view from ARIPO

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Outline

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About ARIPO

- ARIPO: African Regional Intellectual Property Organization
- Established: December 9, 1976 (as ESARIPO)
- Instrument of creation: Lusaka Agreement (in Zambia)
- Headquarters: Harare, Zimbabwe
- Member States (18): Botswana, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, The Gambia, Uganda, United Republic of Tanzania, Zambia and Zimbabwe
Member States of ARIPO

- Botswana
- Gambia
- Ghana
- Kenya
- Liberia
- Lesotho
- Malawi
- Mozambique
- Namibia
- Rwanda
- Sierra Leone
- Somalia
- Sudan
- Swaziland
- Tanzania
- Uganda
- Zambia
- Zimbabwe

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ARIPO Mandate

- Patents and Utility Models
- Industrial Designs
- Trademarks
- TK and folklore
- Banjul Protocol (1993)
- Swakopmund Protocol (2010)
- Copyright
- Access and Benefit Sharing
- Geographical Indications
- Plant Variety Protection
- Council Min (2002)
- Draft Regional Framework
- Regional Framework National Frameworks
- Draft Regional Framework
ARIPO Mandate on Copyright

- **2002** – Council of Ministers approved mandate on Copyright

- **2010** – Adoption of the *Swakopmund Protocol* on the Protection of Traditional Knowledge and *Traditional Cultural Expressions* (*adopted on 9th August 2010, in Swakopmund, Namibia*)

- Establishment of the Copyright Directorate

- Recruitment of a Copyright Officer

- **2013** – In preparation the *ARIPO Copyright Strategy* (to be adopted November 2013)

- **2014** – Meeting of CMOs of the Member States at ARIPO
Africa is not a country – is a continent constituted by 54 States

Africa is not a small continent - world's second-largest continent – 30.2 million km²

Second-most-populous continent – 1 033 000 000 (2013)

Most multilingual – More than 2000 languages

Tribes/ Ethnic groups almost correspondent to languages

Culture varies from tribe to tribe

Cultural heritage follows specific populations in specific geographic locations

Cultural diversity is one of defining factors of the African continent
Preservation of cultural heritage

Mechanisms:

- Continued practice by owners;
- Documentation of the cultural practices;
- Preservation of collections that have cultural content, by libraries or dedicated institutions;
- Creation of derivative works from cultural heritage;

Importance of preservation

- Keep memory/history of people
- Facilitate access and use
- Allow exploitation
- Platform for creation of new products
- Tool for cultural and economic development
Protection of cultural heritage

➢ Leading role of UNESCO:
  • Convention for Safeguarding of Intangible Cultural Heritage, 2003 *(ratified by all ARIPO Member States except Sudan)*
  • Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 *(ratified by 10 ARIPO Member States: Gambia, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Namibia, Rwanda, Sudan, Swaziland, United Republic of Tanzania, Zimbabwe)*

➢ ARIPO: Swakopmund, Protocol on the Protection of Traditional Knowledge and Traditional Cultural Expressions, 2010
  • Provides for the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs)
  • Ratifications/accessions: Botswana, Malawi, Namibia, Zimbabwe and Rwanda
  • Protocol enter into force after 6 ratifications/accessions
Swakopmund Protocol – Key elements

- Provides legal protection for TK and TCEs
- Empowers knowledge holders to exercise their legal rights
- Enables owners of TK and TCEs to exploit their knowledge
- Allows for the documentation of both national and trans-boundary TK
- Calls for the establishment or designation of a national competent authorities by contracting parties
- Recognises customary laws
- Provides for dispute resolution
- ARIPO Office will concern itself with trans-boundary TK and TCEs

- Section 16 - Protection Criteria: Be “products of creative and cumulative intellectual activity, such as collective creativity or individual creativity where the identity of the individual is unknown”

  Be “characteristic of a community’s cultural identity and traditional heritage and maintained, used or developed by such community in accordance with the customary laws and practices of that community”

- Section 17 – No formalities for protection

- Section 20 - Acknowledge the relevant community as source of folklore

- Section 21 - Protection guaranteed as long as protection criteria is met
Collective Management Organizations (1)

- Copyright system, plays an integral part in the preservation and promotion of access to cultural heritage

- Individual exercise of rights is impractical

- Access to a vast mass of works is only possible with collective management

- CMOs therefore play important role, both for authors/creators and for users
  - CMOs play a double role by promoting access:
    - to cultural heritage
    - to works addressing cultural heritage issues
Collective Management Organizations (2)

- **Benefits:**
  - Compensation:
    - to owners of cultural heritage ➞ incentive to license cultural heritage
    - of authors of works dealing with cultural heritage ➞ Incentive to research and provide information
  - Preservation of cultural heritage and promotion of access to it

- **Basic requirements**
  - Identification and documentation of cultural expressions
  - Identification of the owners
  - Recognition and compensation of the owners (*no free use of cultural heritage*)

- **Challenge/Opportunity to CMOs**
  Efficient CMOs may be empowered:
  - to license out traditional cultural expressions to users
  - to negotiate access to works managed by other entities
Collective Management Organizations (3)

Important steps to be undertaken:

- Create public awareness on the value of cultural heritage among policy makers, owners and custodians of cultural heritage
- Create a conducive environment for exploitation and beneficiation from cultural heritage
  - Documentation of cultural heritage
  - Research, development and innovation activities around cultural heritage
  - Appropriate legal framework for protection and use of cultural heritage
  - Adequate institutional framework for management of cultural heritage
  - Efficient mechanisms for collection of royalties and their distribution to the owners of rights
Wrong belief: No tradition of writing on African societies

Many ancient manuscripts found in Africa:
- Timbuktu manuscripts – korans, khorani exegesis, writings in sufism, theology, law, etc.;
- 250 000 old manuscripts in Ethiopia
- Thousands of documents of medieval empire of Makuria in Sudan

Modern Libraries in existence since XIX century:
- 1818 – National Library of South Africa (Cape Town)
- 1845 - National Library of Tunisia (Tunis)
- 1851 – Monrovia University Library, Liberia (Monrovia)

Libraries are party to African culture and play a role on its preservation
Current Challenges on Libraries in Africa

- Maintainance of titles and infrastructure
- Location: usually in big cities, far from the local population
- Funding for refurbishment
- No use of TRIPs flexibilities for the benefit of libraries
- No enforcement of rules of compulsory deposit of publications
- Digital environment threat (students relying more on digital sources for research)
Conclusion

- Copyright system plays a role in the promotion and preservation of culture and cultural diversity.

- Protection of cultural diversity is as equally important as the protection of copyright protected works.

- Protection of cultural heritage through copyright system need to be developed and implemented to facilitate access and use for mutual benefit.

- No use of TRIPs flexibilities for the benefit of libraries.

- No enforcement of rules of compulsory deposit of publications.

- Digital threat (students relying more on digital sources)
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