

III. IP Issues in the Institute

1. Related Meeting

The NCCA sponsored an **Experts Meeting on the Recognition and Protection of ASEAN Communal Intellectual Property Rights**, in October 2009, in Roxas City, Philippines.

The project was implemented by the International Desk of the NCCA on the occasion of the celebration of the Dayaw Festival held during the same dates, implemented by the Sub-Commission for Culture and Traditional Arts (SCCTA) also of NCCA.

This was an experts meeting involving participants from the Association of Asian Nations (ASEAN) to discuss the recognition and protection of intellectual property rights (IPR) of indigenous peoples and their cultural heritage (CH). Southeast Asian Nations (ASEAN) countries to discuss the recognition and protection of intellectual property rights (IPR) of indigenous people and their rights over creations of the mind, both autistic and commercial. Cultural heritage, on the other hand refers to traditions, practices, and customs; these include stories, community events and gatherings, languages, songs, and crafts, healing traditions, foods, holidays, beliefs' and cultural practices.

Selected participants from all ASEAN countries were invited to present position papers on the current IPR-CH situation in their respective countries and to participate in round IpFk.CH (development, protection, and promotion. The conference was also an opportunity for ASEAN member countries to focus on a unified and coordinated approach to the IPR-CH issues.

Problem to be addressed

Globalization and the free flow of information across geographic boundaries have led to numerous developments that are bridging cultures and creating better international friendship and understanding. However, these have also

resulted in cases where various elements of the countries' CH have been used and adopted without proper authorization, at times even misrepresented, and without credit, financial or otherwise, to the CH community owners.

There was a perceived need to protect IPR of CH-owner communities. Unfortunately, this has been a long neglected area in the realm of international culture. While cross border conventions for the physical protection of movable and immovable tangible heritage have been operational for several decades there is still very little regulation governing IPR-Ch. Perhaps, more importantly, there is a need to thoroughly and clearly define the issues from an ASEAN perspective. These include but are not limited to the following: IPR-CH and viable mechanisms for its protection; holders of IPR-Ch; duties and obligations of ASEAN states, stakeholders, and the international community

The ASEAN Declaration on Cultural Heritage adopted by the ASEAN Foreign Ministers at the Ministerial Meeting on 25 July 2000 in Bangkok, called for the ASEAN Committee on Culture and Information (COCI) to draw up a work program for the protection and preservation of ASEAN CH. The Philippines was tasked to develop and Experts Meeting on the Recognition and Protection of ASEAN Communal Intellectual Property Rights.

The meeting was a two-day conference, held from October 3-6, in 2009. ASEAN Experts on IPR-Ch topics were invited to attend and to read papers.. The Meeting was held in Roxas City, Philippines. The lead agency was the National Commission for Culture and the Arts. Both foreign and local experts were invited. Observers from government cultural agencies, the academe, diplomatic corps, media, non-government organizations, concerned groups, ASEAN affiliated agencies, indigenous peoples groups and other stakeholders were also invited to participate.

The outcome was the bringing together of different culture and policy-making officials and stakeholders from the ASEAN region with the goal of producing a joint resolution detailing more clearly a defined and unified approach to the problem of IP-CH; and to develop a core group of IPR-CH experts in the ASEAN that will lead to promoting IPR-CH protection and development in their respective countries

2. Related Person

There is no specific and neither formally defined position nor department at the NCCA that is structured within the agency to which issues of intellectual property is assigned. Function is being carried out largely by the NCCA Consultant, Dr. Jesus T. Peralta. There are two other individuals assigned to

participate in a newly formed tri-party Technical Working Group (TWG) formed by the NCCA, the Intellectual Property Office (IPO) and the National Commission for the Indigenous People (NCIP). Dr. Peralta who was a member of the group requested to be released from participating in the group since he found that the TWG was not developing towards the objective.

Contact Information

Dr. Peralta is contracted NCCA Consultant and is given tasks including ICH and IP that cannot be assigned to specific divisions since the functions of the latter are well defined.

Contact address

National Commission for Culture and the Arts, 633 General Luna St., Intramuros, 1002 Manila,, Philippines; Tel: (632) 527-5531; Cell phone: 0915-4555771; E-mail: drjperalta@yahoo.com/ info@ncca.gov.ph.

3. Related Principle

The NCCA has not adopted a formally defined principle except for the fact that IP aspects of ICH needs protection as a national interest, primarily since, there is no defined structure yet at the NCCA that is assigned this function.

However, broad principles have been laid out by the Philippine government, specifically the Intellectual Property Office (IPO) which are contained in “An IP System that Protects & Nurtures Traditional Knowledge – An IP Philippine Challenge” by Atty. Andrew Ong of the IPO; and “Briefing Paper on the Protection of Traditional Knowledge in the Philippines”, which is not the position of the Philippines, but rather that of a policy group made specifically for the 2009 Roxas City meeting of ASEAN experts.

A third paper is a discussion paper on the issued involved in the protection of IP in the Philippines, “Issues in the Protection of Intellectual Property” by Dr. Peralta.

A more definitive action was done by the NCCA towards this with the drafting by Dr. Peralta of a legislative bill sponsored by Senator Loren Legarda, now adopted as Senate Bill 2831, “An Act Safeguarding the Traditional Property Rights of Indigenous Peoples” (Annex 1-3); a Lower House version in the House of Representatives, which hopefully will be enacted soon. The main issues treated by the bill is the problem where because of copyright laws, all forms of creation, including intellectual property, lapses into public domain

after 50 years, in the case of the Philippines, after the death of the creator. Since all forms of traditional cultural heritage are more than 50 years old, these are all now in public domain, which can be exploited by anyone. This creates a ridiculous situation where even ethno-linguistic groups cannot legally claim that their cultural heritage is their own. They cannot demonstrate that they inherited their culture since even the original owner/creator cannot be established. Copyright laws actually created this anomalous situation. The bill seeks to remove from public domain all forms of traditional cultural heritage, including intellectual property. In effect, this law when approved, will prevent the exploitation of cultural heritage, including intellectual property.

Secondly, free, prior and informed consent when secured must always be accompanied by a memorandum agreement which will define the rights of the indigenous peoples. Further, that the defined authority to give the consent should be the elected municipal/provincial officials who represent the concerned ethnic group.

The National Commission for Culture and the Arts supports this bill crafted by Dr. Peralta.

This, of course, is not the end of the issue since it is only the first step in protecting intellectual property rights. The second stage will be the delineation of property ownership. This will take the form of inventory and the registration of the properties to defined and legally recognized owners—the traditionally identified indigenous populations. This stage is that addressed by the Philippine Registry of Cultural Property that is a provision of RA 10066, the Cultural Heritage Act of 2009, that requires the inventory and registration of all cultural property, both tangible and intangible, to be administered by the NCCA.

With this some aspects of copyright laws may be brought into play to protect intellectual property.