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Heritage Matters: Celebrating Heritage Month 2023

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In this Heritage Month, as we celebrate the richness of Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs), we also recognise the ongoing efforts to protect, promote and preserve them for generations to come and the role that intellectual property systems and principles can play:

- in protecting TK and TCEs from being misappropriated; and
- in the commercialisation thereof with equitable benefit-sharing for all parties.

What is Traditional Knowledge? While there is no specific definition for TK, it is a living body of knowledge which has been developed, sustained and passed on from generation to generation within a community, examples of which are agricultural, environmental or medicinal knowledge, including knowledge regarding traditional medicines.

During the month of September, we will focus on Traditional Cultural Expressions (TCEs) which are understood to be the forms in which the traditional culture is expressed including stories, riddles, musical expressions (such as songs and instrumental music), drawings, paintings, carvings, jewellery, textiles and dancing. Developed and preserved by indigenous communities, TCEs are characteristic of the cultural essence of these communities.

The very nature of TCEs present challenges when attempting to harmonise them with conventional intellectual property ("IP") frameworks. In the area of copyright law, for example, the first owner is usually the author or creator of the work. As an inherent aspect of TCEs is their inter generational transmission within indigenous communities, the conundrum which is created is that TCEs are owned collectively by the community rather than by an individual identifiable author. A further challenge is the time-based protection in conventional IP regimes.

In South Africa, although not yet in force, the following two pieces of legislation have been passed which contemplates protection and commercialisation for TK –

- The Intellectual Property Laws Amendment Act 2013 (IPLAA); and
- The Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act 2019 (IKSA).

The legislation adopts different approaches in the protection of TK – while IPLAA aims to protect TK by amending existing IP legislation, IKSA seeks to provide *sui generis* or special protection, treating TK as deserving of protection in its own right, rather than fitting it into the conventional IP regimes. Calls have been made for the IPLAA to be repealed and to rather provide for special protection. We will provide updates in this regard as they occur.

The issue of how best to preserve the cultural heritage of indigenous communities is not unique to South Africa. Various countries and organisations across the world continue to grapple with this issue. What is clear is that the protection of TCEs defies a one-size-fits-all and that a balance is to be achieved.

Look out for our next #HeritageMatters post in celebration of Heritage month.

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