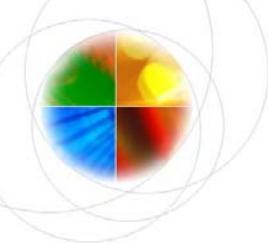


Global Knowledge and Traditional Knowledge

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Intellectual Capital for Communities in the Knowledge Economy
Nations, Regions, Cities and Emerging Communities
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Outline

1. Three examples
2. International attention to the issue
3. The role of intellectual property
4. Defensive protection
5. Traditional cultural expressions (TCEs)(folklore)
6. Traditional knowledge (outside TCEs)
7. The way forward

The Steel Pan



"... the Trinidad and Tobago traditional Steelpan ... was given birth to in the 1930s until the 1950s The rest of the world was now aware of the Steelpan. It could deconstruct the methodology of the Steelpan and come up with six patents which had been filed on methods of tuning the Steelpan, all of which Trinidad and Tobago was challenging. It viewed the Steelpan as TK *stricto sensu*, in which a community had developed a means of creating a new musical instrument. That cultural community was a custodian of, and had ownership rights over, that TK ... Different parts of the world had appropriated the Steelpan without acknowledging the source of the invention. The Delegation insisted upon the moral rights of the creators of the Steelpan."

Delegation of Trinidad and Tobago, WIPO IGC
7th session

United States Patent 6,212,772
Production of a *caribbean steel pan*

Abstract

Process for the formation of a *Caribbean steel pan* using a hydroforming press and the resulting pans.

Description

Background of the Invention

This invention relates to the *Caribbean (Calypso) steel pan*, a musical instrument typically created from a metal barrel or drum. Traditional pan production begins with a half barrel or drum, wherein the top or bottom flat panel is rendered concave by hammer-sinking the lid or bottom of the drum to form a concavity, then laying out and hand forming raised notes on the concave surface of the drum. Handmade pans typically have long delivery times and the high cost associated with hand-crafted objects. Previous attempts at mechanizing the production of steel pans have not been successful in terms of efficiency and producing a high quality musical instrument. Accordingly, a need exists for production techniques that will make this musical instrument more widely available to both students and to professional musicians.

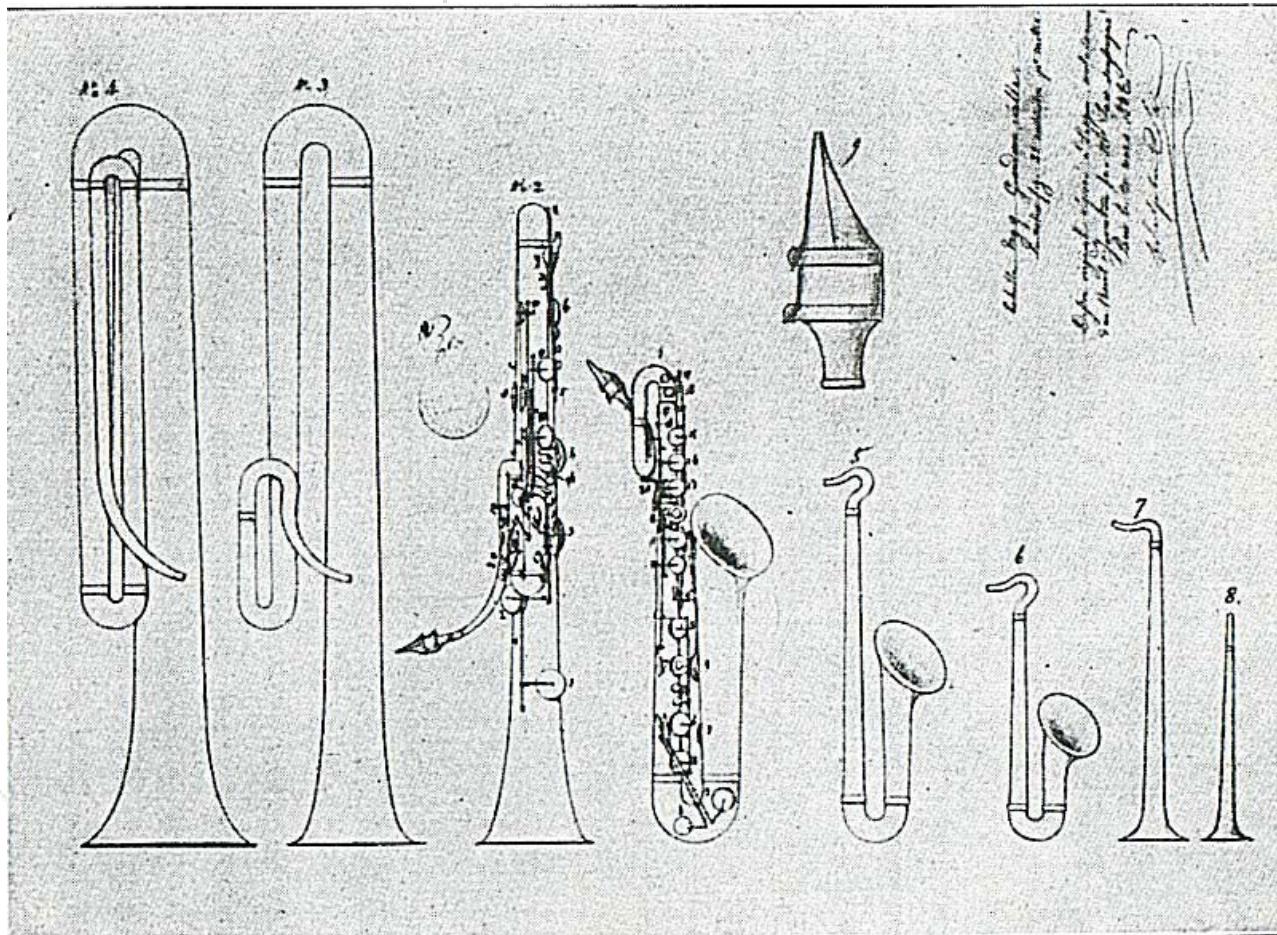
The Saxophone

French Patent #3226: Saxophone (1846)

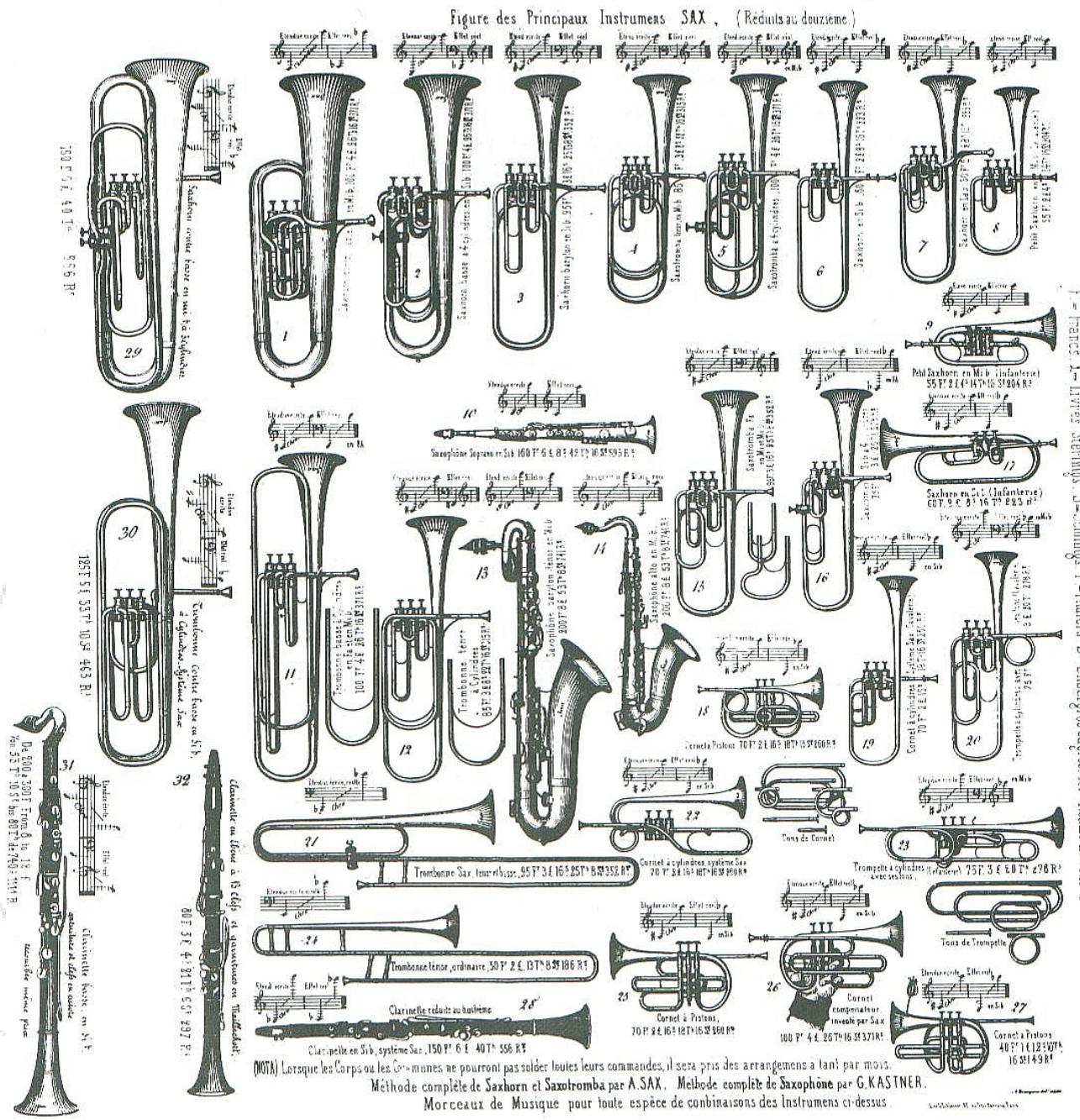
Descriptive report deposited in support of a request for a fifteen year patent of invention. Mr. Antoine-Joseph (called Adolphe) Sax, musical instrument maker residing in Paris at rue neuve Saint-Georges No. 10 has presented his patent application at the office of Mr. Perigny, patent attorney, 10 rue neuve St. Augustin, for a new System of wind instruments called Saxophones.

Explanation - We know that in general, wind instruments are either too harsh or too weak in sonority; one or the other of these faults is most especially perceptible in the basses. The Ophicleide (*a bass keyed bugle- Berlioz uses them to good effect in his Symphonie Fantastique*), for example, which reinforces the trombones, produces a sound so disagreeable that it must be kept out of resonant halls because of its inability to be played softly. The bassoon, to the contrary, has such a feeble sound that it can be used only for accompanying and filling parts; yet for specific forte effects in orchestration it is absolutely useless. One should note that the bassoon is the only instrument of this type which blends well with string instruments. Only brass wind instruments produce a satisfying effect in outside performance. Bands comprised of these instruments are the only kind of ensembles which can be used in these circumstances. Everyone knows that for outside performance the effect of stringed instruments is null. Because of the weakness of their timbre, their use is almost impossible under such conditions. Struck by these different drawbacks, I have looked for a means of remedying these situations by creating an instrument, which by the character of its voice can be reconciled with the stringed instruments, but which possesses more force and intensity than the strings. This instrument is the Saxophone. The Saxophone is able to change the volume of its sounds better than any other instrument. I have made it of brass and in the form of a parabolic cone to produce the qualities which were just mentioned and to keep a perfect quality throughout its entire range. The Saxophone embouchure uses a mouthpiece with a single reed whose interior is very wide and which becomes narrower at the part which is fitted to the body of the instrument. (*This is in contrast to almost all mouthpieces in use today, which tend to have wider tip openings and much more constricted internal dimensions than Sax specified. This results in greater projection, and a brighter, louder tone.*)

Sketch Accompanying Sax's Patent Application



Adolphe Sax Catalogue 1850



Quartet of Saxophones by Adolphe Sax



Front: Soprano saxophone in B-flat by
Adolphe Sax, Paris, ca. 1858

Left: Alto saxophone in E-flat by
Adolphe Sax, Paris, ca. 1857

Center: Tenor saxophone in B-flat by
Adolphe Sax, Paris, ca. 1861

Right: Baritone saxophone in E-flat by
Adolphe Sax, Paris, ca. 1858

The Belgian-born maker, Adolphe Sax (1814-1894), invented the saxophone about 1840 and was granted a fifteen-year patent in 1846, four years after having moved to Paris.

(Images from the Cutler Gallery)



The Saxophone

At least 14 further patents were granted on the sax between 1860 and 1928, including

- one extension to Sax in 1860
- a new patent to Sax in 1881
- patents to competitors in 1866, 1868, 1875, 1878, 1880 and 1888

(See Frederick Hemke, *The Early History of the Saxophone*)

The Violin

“Cremona has always been considered as a city which gave birth to the greatest violin-makers of any time.

The violin appears in the first half of XVI century and Andrea Amati was the first of the Cremonensis violin-makers who gained importance in the manufacture of the bow instruments.

[T]he group of instruments commissioned to Andrea Amati by Carlo IX of France, shortly after the first half of XVI century, demonstrates that the art of the Cremonensis violin-maker was known beyond the Italian borders ...

It is quite right, therefore, to think that, without any doubts, the birth-place of the violin in the city of Cremona.

In XVII century Nicolò Amati, Andrea's nephew, made himself known; he continued his great predecessor's way. Nicolò Amati works in a period in which real instrumental trends started.

From the second half of XVII century the most famous of the violin-makers, Antonio Stradivari, began to work in Cremona. Rich in his predecessors' experience, he developed the research in the art of making stringed instruments in order to obtain instruments which could meet with the requirements of the music of his time.

The greatest masterpieces, the history of the art of making stringed instruments ever knew, were thus born.

Stradivari, making his violins, used the most refined techniques.”

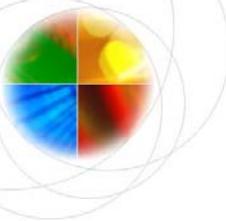
The Violin

Antonio Stradivari

Violino 1715

Il Cremonese ex Joachim

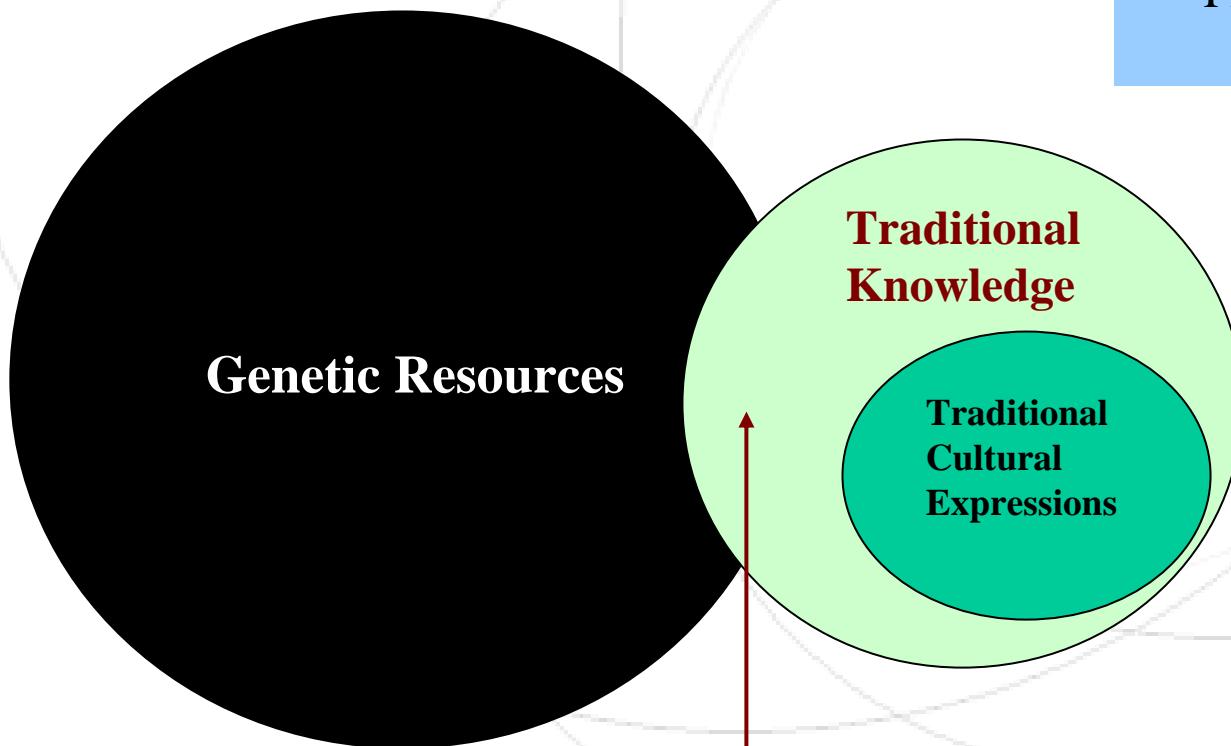




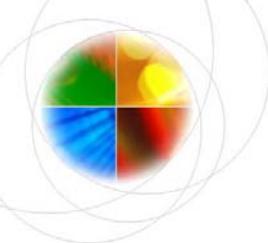
Genetic Resources and Traditional Knowledge

Independent but overlapping and linked subjects

Linkage recognised variously in:
CBD
FAO International Treaty

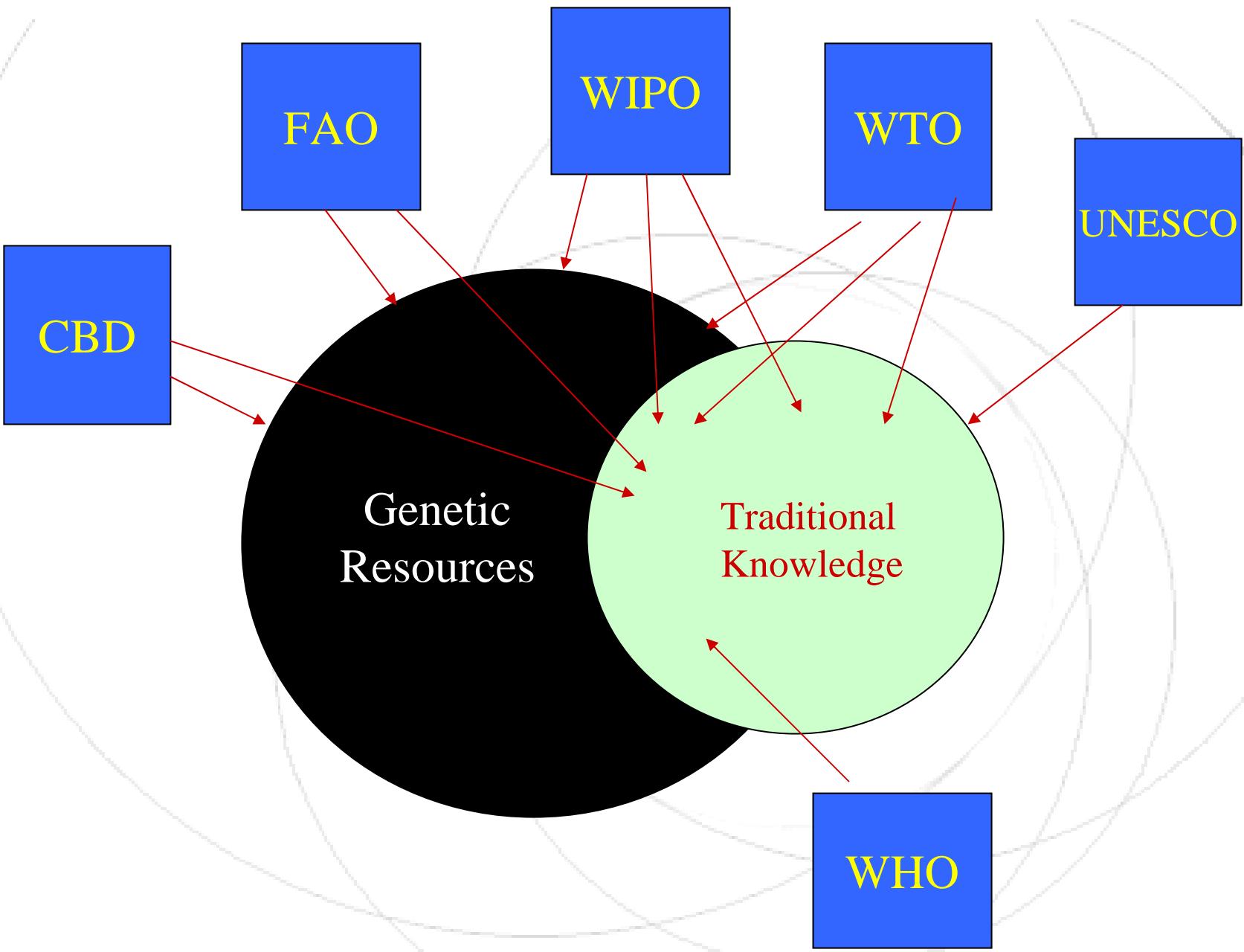


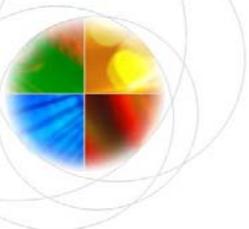
TK related to genetic resources



International Dimensions and Perspectives

- United Nations Environment Program (UNEP)
 - environment
- Convention on Biological Diversity (CBD)
 - biological diversity
- Food and Agriculture Organisation (FAO)
 - plant genetic resources for food and agriculture
 - food security
- World Health Organisation (WHO)
 - traditional medicine
- United Nations Educational Scientific and Cultural Organisation (UNESCO)
 - preservation of cultural heritage and diversity
- WIPO
 - intellectual property
- World Trade Organisation (WTO) (TRIPs Council)
 - intellectual property

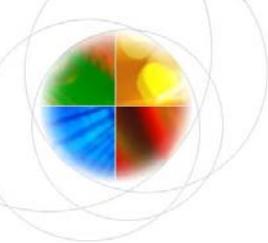




World Trade Organisation (WTO)

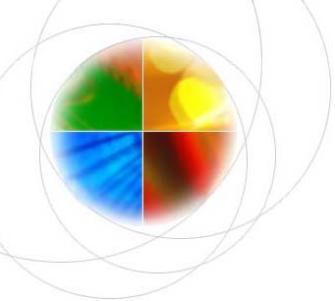
DOHA Ministerial declaration, adopted 14 November 2001:

19. **We instruct the Council for TRIPS**, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this declaration, **to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore**, and other relevant new developments raised by members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension



WIPO

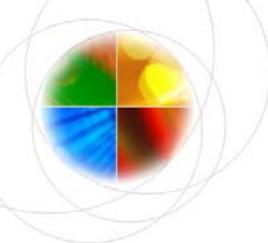
- Exploratory and preparatory work (1997-2001)
 - fact-finding and review of adequacy of conventional IP protection
 - Report
- Establishment of Intergovernmental Committee (IGC)
 - WIPO General Assembly 2000
 - consensus to address the issues
 - recognition of contribution of traditional knowledge
 - WIPO General Assembly 2003 and 2005
 - expedite work
 - all issues to be considered
 - international dimension
 - no outcome excluded
- Relationship with other international instances
 - CBD, FAO, WHO, UNESCO, WTO



The Role of Intellectual Property

What are the Objectives of Intellectual Property Protection?

- A commercial right
 - moral rights
- Innovation and creativity
 - reward
 - Incentive
- Market order
 - avoidance of consumer deception
 - proper functioning of the market
- What is the objective of the protection of traditional knowledge?
 - prevention of "unfair competition"
 - marketable right in commerce
 - recognition of contribution
 - preservation of sacred status
 - preservation of the originating environment



Main Approaches

- Practical assistance
 - application of conventional IP rights
- Defensive protection
 - prevention of the unfair acquisition of IP rights over traditional knowledge by unauthorised third parties ("biopiracy")
- Positive protection
 - Sui generis IP rights over traditional knowledge
- International dimension



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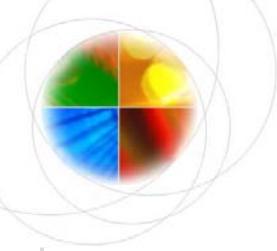
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Featured Artist

Jean Bosco Mwenda





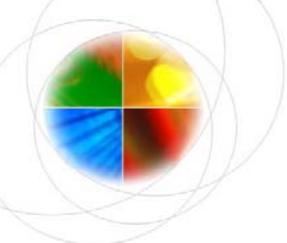
Defensive Protection

1. Quality

- 355,527 applications in USA in 2004
- 3,800 examiners in USPTO, with 1,800 to be recruited in the next 2 years; 4,000 examiners in EPO
- duplication of work
- proposed substantive patent law treaty (SPLT)

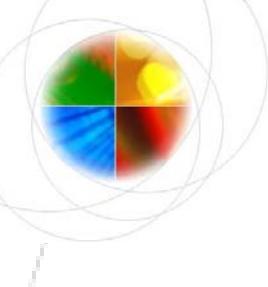
2. Creation of better interface between Western knowledge system (patent system) and traditional knowledge systems

- International Patent Classification 8th ed.
- Prior art
- SPLT
- PCT minimum documentation
- Databases



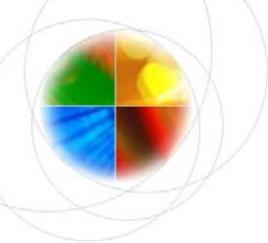
Defensive Protection

3. Obligation to disclose source/origin of genetic resources used in an invention and [associated] TK
 - TRIPs Council and WIPO (and CBD)
 - is the patent system the appropriate vehicle for CBD or TK policies?
 - biological materials/genetic resources
 - proximate source or country of origin
 - existence of national authority
 - conflicts of laws
 - consequences of non-compliance or false declaration
 - benefit-sharing
 - WIPO Technical Study



Traditional Cultural Expressions (Folklore)

- Long pedigree
 - WIPO-UNESCO Model Provisions 1982
 - WIPO Performances and Phonograms Treaty (WPPT), Article 2
- Analytical work
 - questionnaires and compilation of national approaches
- The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised Objectives and Principles (*document WIPO/GRTKF/IC/9/4*)



TCEs: Proposed Substantive Principles (document WIPO/GRTKF/IC/9/4)

- Subject matter
- Criteria for protection
- Beneficiaries
- Management of rights
- Scope of protection
- Term
- Relationship to other intellectual property rights



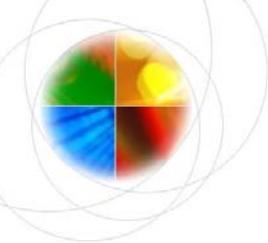
Crazy Horse

USA

- Traditional Name of Sioux warrior and spiritual leader
- 1992 malt liquor introduced in USA under the brand "Crazy Horse"
- Treasury Department Bill amendment in 1992 to rescind use of name Crazy Horse on alcoholic beverages

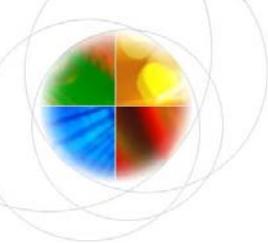
France

- Name of Spectacle/Revue in Paris
 - www.crazy-horse.fr
- www.crazyhorse.com
 - ("The Second Adult Site Established on the Internet")



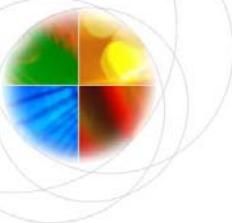
Traditional Knowledge Positive Protection

- Analytical work
 - questionnaires and compilation of national approaches
- Sui generis rights?
- The Protection of Traditional Knowledge: Revised Objectives and Principles (*document WIPO/GRTKF/IC/9/5*)
- Copyright and unfair competition model



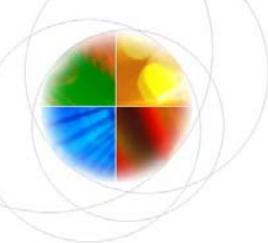
TK: Substantive Principles (document WIPO/GRTKF/IC/9/5)

- Subject matter
- Suppression of misappropriation
- Protection against unfair competition
- Freedom for Contracting Party to choose legal form
- Eligibility for protection
- Beneficiaries
- Prior informed consent
- Duration



The International Dimension

- Recognition of foreign rights holders
 - non-registration rights (*cf.* copyright)
 - principle of universality?
 - Art. 7bis(3), Paris Convention on collective marks
- Standard of treatment of foreign rights holders
 - minimum standards in instrument
 - level of benefit to foreigners at least at same level as benefits to locals (national treatment)



URL

<http://www.wipo.int/tk/en/>