

24 January- World Day for African Culture

Strategies for the prevention of cultural appropriation through Intellectual Property



On the occasion of the **World Day for African Culture** on 24 January 2025, it is imperative to emphasize the significance of protecting and honoring cultural diversity in its myriad forms.

The day serves to underscore the inherent value of traditional cultural expressions and their important impact on other communities, which must be safeguarded from any encroachment of cultural appropriation.

Indeed, various industries, including the fashion, have evolved into arenas that promote inclusivity, necessitating a harmonious balance between creativity and respect due to cultural traditions and identities.

it is imperative to define the term 'cultural appropriation'

This practice is understood as the unauthorized use of elements of **traditional cultures without recognition or benefit to their communities of origin**, and it poses significant ethical and legal challenges.

In this regard, the field of **Intellectual Property** emerges as a pivotal domain for the **protection and preservation of traditional cultural expressions**, through the establishment of legal frameworks empowering communities to exercise effective control over their creations.

How can cultural creations be protected?

In this context, the '**Updated Gap Analysis Project on the Protection of Traditional Cultural Expressions**' (hereafter the Gap Analysis Project), promoted by the World Intellectual Property Office (WIPO), is of particular interest.

The goal of the Gap Analysis Project is to identify the legal and practical gaps in the protection of these expressions, proposing concrete solutions that will allow communities with strong traditional cultures to benefit from a more inclusive and effective legal framework to protect themselves.

The project thus seeks to foster collaboration between communities, governmental institutions and international organizations, **thus contributing to a more comprehensive approach in the defense of cultural diversity**, highlighting the importance of using tools such as the **registration of trademarks** and **industrial designs** to grant legal protection and recognition to traditional cultural expressions.

In the Spanish legal system, the **protection of traditional cultural expressions** can be addressed through various legal figures.

The protection of cultural expressions in the context of Intellectual Property Law

The Law on Intellectual Property provides a regulatory framework for the **protection of literary and artistic works**, with a provision for the extension of this protection to certain cultural expressions that meet the criteria of **originality and creativity**.

While traditional cultural expressions may not fully align with these criteria, the adoption of **collective copyrights** could represent a substantial advancement in their protection.

The **trademark and industrial design system**, regulated by the Trademark Law and the Industrial Design Law, offers additional mechanisms through which communities can **register collective trademarks** that identify products or services associated with their **culture**, thus ensuring that the use of these elements is subject to their **authorization**.

For example, a traditional textile design could be registered as an industrial design, provided it meets the requirements of **novelty and uniqueness**. **This would prevent its misuse by third parties without their consent.**

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The significance of these mechanisms lies in their dual capacity to safeguard the Intellectual Property rights of communities over their creations, while concurrently promoting the **commercial value** of these creations, thereby generating direct economic benefits for the communities concerned.

In addition, Spanish regulation facilitates the **protection of geographical indications and designations of origin**, which are instrumental in safeguarding traditional products associated with specific regions.

The aforementioned figures guarantee not only the quality and authenticity of the products, but also the **recognition of their cultural origin**. In the case of indigenous or local communities that produce handicrafts, this protection can be fundamental to preserve their traditions and generate direct economic benefits.

The development of **databases of traditional cultural expressions** could be a key step to avoid undue registrations by third parties, as is being carried out by the aforementioned WIPO project, which also promotes the creation of these databases as a tool **to document and safeguard traditional cultural elements, facilitating their legal protection**.



At the international level, Spain is committed to WIPO's efforts to develop a legal instrument that provides effective protection for traditional cultural expressions, a commitment that is in line with the United Nations Declaration on the Rights of Indigenous Peoples, which recognises the right of these peoples to control and protect their cultural manifestations.

However, to ensure effective protection, it is essential **to encourage collaboration** between national and international intellectual property offices and companies.

Fashion brands wishing to incorporate traditional cultural elements in their designs should do so under a framework of **respect and prior authorization**. This would ensure not only a respectful interpretation of cultures, but also a contribution to the economic development of communities, who could benefit directly from the exploitation of their creations.

It is also essential to promote awareness and education on the importance of cultural diversity, so that designers, brands and consumers understand the **intrinsic value of traditional cultural expressions and the consequences of their misuse.**

Therefore, **the fight against cultural appropriation in different sectors**, and in particular in the fashion sector, does not aim to restrict creativity, but to ensure that it develops within a framework of respect, fairness and collaboration.

The Intellectual and Industrial Property framework provides the necessary tools to achieve this objective; however, its effective enforcement necessitates a concerted effort by legislators, communities, businesses and consumers.

It is only through such action that we can establish a fairer system that protects and celebrates the cultural richness that defines our global society.

At **UNGRIA**, we are committed to defending traditional cultural expressions through the utilisation of Intellectual and Industrial Property legal tools and mechanisms.

We invite you to discover how the registration of trademarks, industrial designs, designations of origin and geographical indications can assist you in safeguarding your creations or inventions.

Should you require further information, we invite you to contact our team of **experts in Intellectual Property.**

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