

Insulating Indigenous Innovation

**Indigenous communities are custodians of
creativity and innovation, but brands
wishing to benefit from their knowledge
must first cultivate their trust, finds
Muireann Bolger.**

“The Sámi’s greater awareness of their rights is a step forward, as illustrated by their insistence on a collaboration with Disney on *Frozen II*.”

**Kathrine Myhre, Norwegian Industrial Property Office
(Norway)**



A long time ago, The Walt Disney Company (US) sought to depict Danish author Hans Christian Andersen's eerie Nordic fairy tale, *The Snow Queen*, on the silver screen.

First suggested in the 1930s, the project's path encountered several twists and turns over the decades. But a happy ending seemed to be in sight with the release of the blockbuster *Frozen* in 2013, which reimagined the story as a testament to the redemptive power of love.

But there was a dark side to this winding tale: the film's wholesale appropriation of traditional Sámi culture without any formal consultation with the Indigenous community.

With a presence in Finland, Norway, and Sweden as well as the Kola Peninsula of Russia, the Sámi have been historically subject to state-sponsored discrimination and racism.

Imaginative Power

Frozen's distinctive use of elements of Scandi and Sámi culture was integral to the production's imaginative power, particularly in its use of Sámi traditional music (joik)—once banned by governments throughout Scandinavia.

Emboldened by their knowledge of their rights, the Sámi flagged their concerns to the entertainment company about the selective appropriation of their culture—for example, the character Kristoff Bjorgman is depicted as a Sámi ice harvester but looks typically Scandinavian.

In 2019, Disney signed an agreement with Sámi leaders affirming ownership of their culture, promising to consult the Sámi on the film's sequel, fund training programs for the community, and produce a Sámi-language version of the film.

In comments provided to the Arctic Council shortly after the negotiation, Christina Henriksen, president of the Norwegian Sámi Council, welcomed the benefits that transpired.

“This is a wonderful opportunity for our creative talents. Also, the Sámi film environment experienced growth after the cooperation. We have learned that it is possible to establish a respectful and constructive dialogue with large commercial corporations,” she said in the interview.

This is a rare example of a satisfactory conclusion to what could have been yet another murky story of cultural misappropriation, according to Wend Wendland, director of the Traditional Knowledge Division at the World Intellectual Property Organization (WIPO) (Switzerland).

“Unfortunately, if communities know anything about the IP system, they are aware of it as allowing the misappropriation of their creativity and innovation by third parties,” he said.

The most common issue faced by Indigenous communities is the cultural expropriation of which they are victims, agreed Vera Albino, legal manager at Inventa (Portugal).

In her view, this is largely because it is a profitable enterprise.

“Incorporating verbal and visual elements of Indigenous communities into brands, designs, or models, or using traditional knowledge and genetic resources in inventions has proved to be an effective way to make the products more attractive, more distinctive, more innovative, and of more economic value,” Ms. Albino said.

However, not only is this use of cultural property unfair because traditional knowledge forms the fabric of Indigenous communities’ economic life, it may also offend Indigenous communities who traditionally attribute a spiritual and cultural meaning to certain words, images, patterns, and knowledge.

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Wend Wendland, WIPO (Switzerland)



Trust and Cooperation

Norwegian Industrial Property Office (NIPO) Director General Kathrine Myhre is acutely aware of the problematic history between the Scandinavian states and the Sámi.

She believes that cultivating an awareness of intellectual property (IP) rights within the community is key to ensuring that the Sámi are compensated for the use of their cultural traditions and traditional knowledge.

“It is high on the agenda of the Norwegian government, which hasn’t always been the case,” Ms. Myhre observed. “Like all IP offices, we would love to have more resources to create more awareness: it’s about getting as much out of the resources that are available.”

To achieve this goal, the IP Office offers the Sámi webinars and workshops to boost their IP knowledge and has undertaken roadshows to Karasjok, the locale of the Sámi Parliament and many of the Sámi’s businesses.

Ms. Myhre added: “The Sámi’s greater awareness of their rights is a step forward, as illustrated by their insistence on a collaboration with Disney on *Frozen II*.”

Jostein Sandvik, NIPO’s director, Legal and International Affairs, is keen to underscore the autonomy of the Sámi when it comes to their IP rights, including their own parliament and setting their own priorities.

“But our Office representatives have cooperated in building knowledge, and we have learned from them,” he emphasized. “There is now a good relationship between the Sámi people and the state, and it is vital to maintain and foster this trust and cooperation.”

But the challenges for Indigenous communities worldwide loom large, as the IP system poses challenges and obstacles. For one, globally, there still needs to be greater awareness of IP rights.

Mr. Wendland noted that creators and innovators within these local communities are, in principle, able to benefit from the IP system. For example, they can obtain copyright protection for their literary and artistic works, and can register trademarks to brand their goods and services.

“But this is the theory,” he said. “In practice, the IP system is unknown to them, and they do not have the legal and financial resources to make effective and strategic use of it.”

Weaving Success

To address these issues, WIPO has created several programs where entrepreneurs from Indigenous peoples around the world share experiences, to further develop their projects and businesses.

While some of an entrepreneur's IP rights can be collectively owned, communities can also benefit under customary laws and/or through contracts and protocols between the community and the individual.

WIPO's educational initiatives include the Training, Mentoring and Matchmaking Program on Intellectual Property for Women Entrepreneurs from Indigenous Peoples and Local Communities. The organization selects entrepreneurs for the program based on the strength of their business plans and change projects as well as their close ties to their communities.

Since 2019, the program has selected nearly 50 women entrepreneurs from hundreds of applicants based in countries including Cameroon, Jamaica, Kenya, Myanmar, New Zealand, Norway, Uganda, and Zimbabwe. They include artisans, designers, performing artists, researchers, healers, and small-scale farmers who are planning or have already initiated a project or business based on traditional knowledge and/or cultural expressions.

**“There is a renewed drive to create a legal framework
around geographical indications in Nigeria.”**

Ngozi Aderibigbe, Jackson Etti & Edu (Nigeria)



One such project is the Taita Basket Association in Kenya. In Taita-Taveta County, local women produce sisal baskets according to a traditional art—a skill that has been passed down from generation to generation.

The community of basket weavers has formed the Taita Baskets Association, which is the proud owner of the TAITA BASKET collective trademark, registered in 2016 with the aim of developing a strong, recognizable, and profitable regional brand.

Members can use the collective mark to protect and promote their baskets, and the association has established regulations on the use of the mark and adopted certain quality standards.

According to Dorcas Gombe Mwambeta, an entrepreneur and member, the mark has heralded a turnaround in the basket-weaving community's fortunes.

She told WIPO that the collective mark has led to a lot of changes, including an improvement in sales and quality, because “when you weave a basket you should meet the standard of the association.”

To enhance this success, Kenya's Ministry of Trade & Industry recently established a monthly market day in the town of Voi in Taita-Taveta County, where cottage industries, including members of the Taita Baskets Association, can display their products.

Innovative Solutions

But the dearth of awareness of how IP can safeguard traditional knowledge continues to present an acute problem in other parts of Africa such as Nigeria. The country has a wide variety of unique specialties including Adire tie-dye products, Sokoto goat's skin, Yaji (dry pepper), and Nsukka yellow pepper, to name just a few.

However, none of these products have benefited from any comprehensive registration such as geographical indications (GIs)—signs used on products that have a specific geographical origin and possess qualities or a reputation that is due to that origin.

Consequently, this gap in protection means that any enterprise in any location could use one of these denominations on their products.

According to Ngozi Aderibigbe, partner at Jackson Etti & Edu (Nigeria), legislation is necessary to rectify the situation:

She said that while there is nothing in place now, there is a “renewed drive” to create a legal framework around GIs in Nigeria.

To further this IP journey, the EU Intellectual Property Office engaged with the Nigerian Government in February 2022 at a conference entitled “Creating Legal and Institutional Frameworks for Geographical Indications in Nigeria,” to help lay the foundation for future solutions.

In Ms. Aderibigbe's view, the emergence of such a provision would be groundbreaking.

“It would help protect our indigenous resources and the creativity that emerged from our culture. For the first time, communities would be able to enjoy some commercial benefits from the use of their indigenous resources,” she enthused.

Ms. Aderibgbe pointed to the example of the Indigenous Adire, created by artisans in the Ogun state in southwest Nigeria, who create tie-dye textiles using local ingredients. This ancient commercial enterprise, she explained, is increasingly vulnerable to misappropriation by the manufacturers of low-cost, machine-dyed versions produced elsewhere.

“It is essential to establish a dialogue with the concerned communities and act in line with their needs and desires.”

Vera Albino, Inventa (Portugal)



“The process of making Adire is derived from traditional knowledge: each Adire is unique and handcrafted. It is unique in every sense, but we are seeing an encroachment into this space, and now the artisans’ livelihoods are threatened,” she warned.

But as the wait for more concrete legislation continues, the Ogun state has produced an innovative solution to create better opportunities for its authentic Adire market.

In 2020, Ogun State Governor Prince Dapo Abiodun backed the creation of an online marketplace to promote virtual sales of authentic Adire and to improve global access to the 2,000 legitimate sellers.

Nigeria’s Federal Ministry of Information & Culture partnered with e-commerce company Salescabal—since renamed Bumpa—to develop a digital application called ÀDÌRE ÒGÙN. As part of the project, Adire sellers were trained in how to use the application on their Android mobile phones and were supplied with a seal to be put on every fabric for authentication.

Traditional Knowledge

Elsewhere, countries such as Kenya and Mexico have adopted provisions regarding third-party use of indigenous cultural property.

Ms. Albino explained that these approaches involve a system whereby the government is charged with the responsibility of establishing traditional knowledge databases.

“This is a possible mechanism for addressing these issues, since it would provide access to the use of the knowledge strictly within a specific framework, avoiding its exposure to the public domain,” she explained. “Additionally, it would permit communities to negotiate meaningful and effective benefit-sharing arrangements with companies that wanted to obtain access to their knowledge.”

According to Vitor Vila, managing partner at Vila Attorneys (Mexico), this database system aids communities in Mexico in safeguarding their cultural heritages.

“For a long time, IP was considered by communities as an opponent to their cultural heritage among members of Indigenous communities such as the Wixarikas, a group of people that live mainly in the states of Jalisco, Nayarit, Durango, Zacatecas and San Luis Potosí,” he said. “But in Mexico, we are striving to change this perspective, focusing on strengthening the legal framework to benefit such communities.”

But this database model still faces many challenges as it requires action by governments and organizations, while mistrust between the parties and linguistic barriers compound the issue, Ms. Albino suggested.

One example of how this complex system can create more problems than solutions occurred in Peru, according to Daniel Sumalavia, a Peru-based lawyer and expert on Indigenous rights who has consulted on a host of humanitarian projects in the Amazon run by the Inter-American

Commission of Women (US), the Organization of American States (US), and currently the World Bank (US).

According to Mr. Sumalavia, in 2002, Peru implemented Latin America's first legislation to specifically address IP traditional knowledge. But this legislation eschewed any stipulations around patents; instead, it advocated licensing agreements between the parties themselves and a benefit-sharing "Fund of the Development of Indigenous Peoples. In theory, the onus was on brands to allocate 10 percent of profits to the Indigenous communities and/or inventors.

“One of the problems is the lack of a public policy aimed at the development and maintenance of traditional Indigenous knowledge.”

Claudia Maria Zeraik, Montaury Pimenta, Machado & Vieira de Mello (Brazil)



However, he continued, the fund never became fully operational because it remained unclear to companies how to calculate the percentage. Additionally, it was also hard for Indigenous communities to establish a complex licensing contract with any third party that wanted to develop products based on their traditional knowledge, or to overcome linguistic barriers.

“Consequently, many Indigenous entrepreneurs became disillusioned with this approach to protecting and commercializing their knowledge and innovation,” added Mr. Sumalavia.

“This law is still in place and hasn’t changed; it is still in force with the same issues,” he said.

“But it was innovative when it appeared because it established, in theory, a sui generis system back in 2002.”

According to Mr. Sumalavia, only Brazil in the Latin America region has implemented a law with that level of detail.

In 2015, Brazil introduced Law number 13.123 (Access and Benefits Sharing of Genetic Resources and Associated Traditional Knowledge). It also includes a fund, but it stipulates allocating a more modest 1 percent of the annual net revenues to the Indigenous rights holder.

Valuable Intermediaries

In the face of such mixed results by state initiatives, independent entities such as nonprofit governmental organizations (NGOs) play a key role in championing Indigenous rights or navigating trust issues that may exist between the communities and brands that want to work with them.

“Brands can adopt a bottom-up strategy, working with local- and regional-level authorities that are closer to the communities and may have better tools to support an articulated approach.

They can also work with local NGOs and researchers with a better understanding of each community and their knowledge,” explained Mr. Sumalavia.

One successful example is the work of the Indigenous Peoples of Africa Co-ordinating Committee (IPACC), a network of 135 Indigenous peoples’ organizations in 21 African countries, to promote the recognition, assessment, and certification of the traditional knowledge of biodiversity.

The network includes the Eudafano Women’s Cooperative in Namibia, which was established more than two decades ago. The collective extracts ingredients from seeds of indigenous plants such as the deciduous tree, marula, for partners in the cosmetics industry. In other regions such as the Amazon, such partnerships and grassroots support are equally pivotal to the protection of the rights and innovation of its native peoples, whose incomes have been increasingly imperilled by industrial-scale deforestation.

The deforestation of Brazil’s Amazon rainforest reached a 15-year high in 2021, according to data from Brazil’s National Institute for Space Research (INPE). The agency found that 13,235

square kilometers (8,224 square miles) of forest was lost between August 2020 and July 2021, an increase of 22 percent from the previous year.

Today, about 1.5 million of the Amazon population is Indigenous, distributed across 385 ethnic groups including the Guarani, Tukuna, and Yanomami. NGOs are vital in helping to amplify their voices and entrepreneurship amid this deforestation.

For example, one NGO, Casa do Rio (Brazil), which works with craftswomen dwelling alongside the Amazon's Tupana and Igapó-Açu Rivers, launched its Teçume fashion project with the Brazil Foundation and Yael Sonia, an influential Brazilian jewelry designer.

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Daniel Sumalavia, (Peru)



In 2018, the designer unveiled her Teçume collection, a limited-edition capsule collection made in partnership with these women, and promoted in luxury magazine, Vogue Brasil.

Elsewhere, another NGO, the Platform for the Amazon Acceleration Program, has supported an online marketplace, TUCUM Brasil, as a forum for Indigenous entrepreneurs to sell their products.

And while Brazil is home to 60 percent of the Amazon's Indigenous people, efforts in the country to support their rights and innovation have met with mixed results, according to Claudia Maria Zeraik, partner at Montauray Pimenta, Machado & Vieira de Mello (Brazil).

“We have witnessed progress in Brazil in recent years with a sharper focus on Indigenous Peoples and appreciation of its culture and handicrafts,” Ms. Zeraik observed. But, she added, “One of the problems is the lack of a public policy aimed at the development and maintenance of traditional Indigenous knowledge.”

Given the lack of clarity, brands are playing a key role in safeguarding Indigenous knowledge and innovation, she noted.

According to Ms. Zeraik, Brazilian companies are working together with Indigenous communities in the sustainable exploitation of products, creating opportunities and bringing economic and social improvements to these communities. In many cases, they have received investment from companies to learn how to cultivate the land and exploit it in a sustainable way.

In neighboring Peru, the multinational AJE Group (Peru), which manufactures and distributes alcoholic and non-alcoholic beverages, partnered with the country's Ministry of the Environment on its commercial Bio Amayu project, which involves producing juices from indigenous fruits such as camu camu and aguaje.

Grown and harvested from the Amazon by native communities using sustainable farming practices, the fruit juices are sold internationally as part of an initiative to economically empower the communities of the Peruvian jungle.

As Ms. Albino noted, there are many examples of successful, innovative collaborations with Indigenous communities, cooperatives, and brands. But, she cautioned, “It is essential to establish a dialogue with the concerned communities and act in line with their needs and desires.”

Dynamic Cultures

“Undoubtedly, creating an international mechanism for transboundary protection for traditional knowledge would prevent it from being vulgarized and dispersed. It would also stop it from encroaching on Indigenous peoples' incomes,” Ms. Albino added.

Reaching a multilateral consensus remains enormously challenging, which means that brands have a vital role to play in growing awareness of these issues and championing these often-neglected rights.

“There is little pressure from the public and civil society for supporting the Indigenous communities, due essentially to the general ignorance of the difficulties these communities endure,” Ms. Albino said.

Ultimately, it will be brands that will lose out if they fail to promote these rights or engage and engender trust.

After all, Indigenous Peoples and local communities are bearers of ancient traditions and practices, yet constantly adapt to the world around them, enthused Mr. Wendland, noting: “Their cultures are dynamic and evolving, and they continue to be springs of creativity and innovation.”

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