FORMAT		
1. Name of resource	**WIPO Intellectual Property and the Safeguarding of Traditional Cultures: legal issues and practical options for museums, libraries and archives**	
2. Location	https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo_pub_1023.pdf	
3. Alternative location		
4. Author[s]	Torsen, M. and J. Anderson	
5. Publisher/producer/host	World Intellectual Property Organization (WIPO)	
6. Year	2010	
7. Suggested citation	Torsen, M. and J. Anderson (2010). Intellectual Property and the Safeguarding of Traditional Cultures: legal issues and practical options for museums, libraries and archives. World Intellectual Property Organization (WIPO), available at https://www.wipo.int/edocs/pubdocs/en/tk/1023/wipo_pub_1023.pdf	
8. Languages in which available	English	
9. Geographic area resource relates to	Global	
10. Does the resource relate to a specific time frame?		
11. Type	Report	Yes
	Toolkit/Framework/Roadmap	Yes
	Sign-post to other resource (database)	
	Case studies	Yes
	Other	
12. If this is part of an initiative, what is the initiative?	WIPO's 'Creative Heritage' project.	
COLLECTIONS AND COLLECTIONS-BASED INSTITUTIONS		
13. Explicit links to collections	Yes	
14. Explicit links to museums/libraries/archives	Yes	
15. Types of institutions the resource covers	Museums	X
	Archives	X
	Libraries	X
	Other	X

16. Does the resource relate to specific disciplines?	Arts, humanities and social sciences: philosophy, psychology, religion, social sciences, law, politics, language, arts and recreation, architecture, literature, history, geography and ethnology, anthropology, archaeology	X
	Science, natural history, technology, medicine, engineering, manufacturing	X
17. If no explicit links to collections, justification for inclusion		

HOW IT CONTRIBUTES TO SUSTAINABLE DEVELOPMENT	
18. Collections-related activities the resource relates to (mark all that apply)	
Develop collections to protect and safeguard wider cultural and natural heritage more effectively, for example by targeting collecting to threatened forms of heritage in strategic ways	X
Use collections to promote learning and educational opportunities that contribute to sustainable development more effectively, for example education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development and/or skills development relating to collections	X
Use collections to promote cultural participation/social inclusion more effectively, for example by reducing barriers to participation, to ensure no-one is 'left behind'	X
Use collections to promote sustainable tourism more effectively, for example by developing new products based on local cultural heritage, and/or considering the rights of stakeholder groups in relation to collections	X
Use collections to support research that contributes to sustainable development (including all forms of personal and self-directed research at all levels that make use of stored collections) more effectively, for example by providing effective facilities, collections and information to meet researchers' needs	X
Make decisions around collections that contribute to sustainable development more effectively	
i. employment (recruiting, staff training, staff safety)	X

ii. energy consumption, greenhouse gas emissions, reduction, monitoring and reporting		
iii. waste management and reduction of waste		
iv. transport (forms of transport, energy use)		
v. commercial activities including copyright and IP	X	
vi. governance and management	X	
vii. security, disaster preparedness and risk reduction		
Direct external leadership, partnerships and collaborations towards sustainable development more effectively, for example by developing impactful partnerships	X	
19. Does the resource relate clearly to any international conventions (mark all that apply)?		
Culture conventions:		
1952, 71 Protection of Copyright and Neighbouring Rights	X	
1954 Protection of Cultural Property in the Event of Armed Conflict		
1970 Fighting Against the Illicit Trafficking of Cultural Property	X	
1972 Protection of the World Cultural and Natural Heritage	X	
2001 Protection of the Underwater Cultural Heritage		
2003 Safeguarding of the Intangible Cultural Heritage	X	
2005 Protection and Promotion of the Diversity of Cultural Expressions	X	
Rio Conventions:		
Convention on Biological Diversity (CBD), Convention to Combat Desertification (UNCCD), Framework Convention on Climate Change (UNFCCC)		
AIMS AND CONTENT		
20. What issues does the resource aim to address?	"Through examples and analysis, this publication explores areas of cultural heritage and IP law and policy in order to elucidate questions and issues relating to the management of collections, documents, and recordings related to TCEs [Traditional Cultural Expressions] by museums, libraries, archives, and other cultural institutions. It explores the role, responsibilities, and range of activities of museums, libraries and archives which raise IP and TCEs considerations. The publication lays out the IP issues that may arise when acquiring, preserving, displaying, communicating and re-using TCEs and cultural heritage materials. The focus and structure is the interface between the preservation, protection, and promotion of TCEs, both tangible and intangible. Cultural institutions usually hold (i) tangible expressions (products of arts and handicrafts) and (ii) materializations (photographs, films, audio and audiovisual recordings, transcripts, descriptions) of tangible and intangible expressions and practices. Cultural institutions do not hold – as such – intangible TCEs; what	

	they may do is invite communities to stage/enact intangible practices, expressions or representations on their premises… **In acknowledging the current gaps in the legal management of such collections, the function of this publication is to address a range of questions that cultural institutions are currently grappling with, in the management of their collections, namely:**
	   • **What are TCEs?**
	   • **What are the specific IP laws relating to cultural institutions and repositories of TCEs?**
	   • **What are the specific IP issues that arise when dealing with TCEs?**
	   • **What alternative practices in managing TCEs exist?**
	   • **What options are there if conflicts emerge?**
	   • **What are examples of good practices that could be useful to emulate?**
	This publication addresses copyright and related rights law, touches on trademark law as currently written and construed in a range of jurisdictions and references other relevant IP laws in the context of TCEs.” (p.20-21)

21. Intended audience of resource	[Cultural institutions, including museums, libraries and archives]
22. Process of development	“The publication has been prepared as part of WIPO's Creative Heritage Project. It draws on information gathered through surveys conducted in several cultural institutions from around the world by experts commissioned by WIPO, namely, Antonio Arantes, Vladia Borissova, Shubha Chaudhuri, Laurella Rincon, Martin Skrydstrup and Malia Talakai. It also builds on and complements traditional IP guides for museums, libraries and archives on more conventional IP issues, such as the WIPO Guide on Managing Intellectual Property for Museums. Indeed, this publication extends the prior body of publications into the context of the legal and ethical IP questions that arise for cultural institutions, specifically with a focus on collections comprising intangible cultural heritage and TCEs.” (p.6)
23. Organisation/structure/contents	EXECUTIVE SUMMARY ACRONYMS **PART I. SETTING THE SCENE: AN OVERVIEW OF ISSUES** 1. An Illustration: The Djalambu [Hollow Log] Ceremony 2. What is the Issue? 3. Building and Strengthening Relationships between Cultural Institutions and Indigenous Peoples and Traditional Communities 4. Exploring the Intellectual Property Dimension

Can intellectual property systems protect traditional cultural expressions?

5. IP and TCEs – the Work of the World Intellectual Property Organization

The Intergovernmental Committee

The meaning of "protection"

IP and TCEs – Context of misappropriations

6. The objectives and nature of this publication

PART II. INTELLECTUAL PROPERTY AND TRADITIONAL CULTURAL EXPRESSIONS:

ISSUES SPECIFIC TO MUSEUMS, LIBRARIES AND ARCHIVES

COPYRIGHT

1. Objects of Protection: What Does Copyright Protect and What Does it Not?

Originality

Database protection

Idea/expression dichotomy

Fixation

Adaptations

The public domain

2. Authorship

Orphan works

Orphan works in the TCE context

3. Duration of Protection

4. Economic and Moral Rights

Economic rights

Moral rights

Resale rights

5. Exceptions and Limitations

Exceptions and limitations in the TCE context

Preservation, restoration and administrative uses of TCEs

6. Ownership, Transfers and Licensing of Copyright

Ownership

First ownership, joint ownership

Crown or government copyright

Assignment

Licensing

7. Related Rights

8. The Internet and Digitization

9. Collective Management

TRADEMARKS, GEOGRAPHICAL INDICATIONS AND DOMAIN NAMES

1. Trademarks

2. Geographical indications

3. Domain Names

RISK MANAGEMENT STRATEGIES AND DISPUTE RESOLUTION

	1. Risk Management Strategies 2. Dispute Resolution Litigation Alternative dispute resolution **PART III. CONCLUSIONS: GOOD PRACTICES** 1. Good practices from Cultural Institutions – Research Ethics and Collection Policy The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Agence de Développement de la Culture Kanak - Centre Culturel Tjibaou PIMA Code of Ethics for Pacific Museums and Cultural Centers ATSILIRN Protocols A Framework of Guidance for Building Good Digital Collections by NISO Museum policy of New Zealand's bicultural Te Papa Tongarewa 2. Good practices for Digital Archives – Protocols Pacific and Regional Archive for Digital Sources in Endangered Cultures (PARADISEC) British Library Archival Sound Recordings Musée du Quai Branly: Conditions for Placing Material on the Internet Archives and Research Centre for Ethnomusicology, American Institute of Indian Studies 3. Good Practices from Indigenous Peoples and Traditional Communities – Codes of Conduct and Protocols for Behavior HOPI Community – HCPO Policy and Research Navajo Nation – Guidelines for Visitors 4. Examples of Current Practices by Cultural Institutions – Frameworks, Protocols, Guidelines and Agreements Fiji's Indigenous Affairs Ministry The Vanuatu Cultural Centre Reproduction Rights Organizations 5. Standard Agreements, Consent Forms, Licenses and Undertakings License Form, Consent to Access to and Use of Historical Materials by DISA and Aluka The Laura Aboriginal Dance and Cultural Festival Notes GLOSSARY FAQ BIBLIOGRAPHY INDEX

	ABOUT THE AUTHORS ACKNOWLEDGEMENTS
FRAMEWORKS	
24. Framework structure	The section on good practices includes a number of sets of recommendations and template agreements that can be considered as frameworks.
25. Relevant policy considerations	Yes
26. Resources for implementation identified	Yes
27. Specific assessment points/indicators/mile stones/action plan for monitoring	Yes

28. ASPECTS OF SUSTAINABILITY COVERED BY RESOURCE (mark all that apply)	
People (social sustainability)	X
Planet (environmental sustainability)	
Prosperity (economic sustainability)	X
Peace	X
Partnerships	X
29. CROSS-CUTTING CONSIDERATIONS COVERED BY RESOURCE (mark all that apply)	
Gender perspectives	
North and South perspectives	X

HOW THE RESOURCE CONTRIBUTES TO AGENDA 2030 AND THE SDGs	
HOW AGENDA 2030 AND THE SDGs FEATURE IN THE RESOURCE	
30. SDGs and Agenda 2030 specifically mentioned?	No
31. SDGs specifically mentioned?	No
32. SDG targets specifically mentioned?	No
33. SDG indicators specifically mentioned?	No
SDGs AND SDG TARGETS AND LINKAGES	
34. Comments on SDG linkages	The resource can help inform a range of activities relating to collections-based institutions, and that support the SDGs, notably in terms of: 1.4 (access to property, including heritage), 2.5 (ensuring fair sharing of benefits from use of crops and traditional

	knowledge), 8.9 (sustainable tourism), 9.1 (inclusive infrastructure that supports economic development, with a focus on equitable access), 10.2 (universal social, political and economic inclusion), 10.3 (removing discriminatory practices), 10.4 (adopting inclusive practices), 11.4 (strengthen efforts to protect and safeguard cultural and natural heritage), 16.3 (promote the rule of law and access to justice), 16.6 (effective, accountable and transparent institutions, 16.7 (inclusive and representative decision making), 16.10 (a key consideration, on ensuring the right to information and protecting other fundamental freedoms), 16.B (upholding laws and adopting policies for sustainable development), 17.14 (policy coherence for sustainable development) and 17.16 (international partnerships). The resource can also help to understand the context regarding target 15.6 (fair sharing of benefits from use of genetic resources). The resource can also help support the development of knowledge and attitudes regarding Indigenous rights, appreciation of cultural diversity and of culture's contribution to sustainable development (4.7).
35. SDGs and SDG targets the resource helps advance	
SDG 1: End poverty in all its forms everywhere 1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance	Numbers and proportions of people from particular groups using collections in comparison with demographics in broader society. Numbers of people accessing collections. Number of targeted programmes that aim to enhance access to collections by disadvantaged groups. Sustainable tourism that enhances local communities' access to basic services, ownership and control over land and other forms of property (including cultural and natural heritage), as well as to technology and markets. Involvement of people from disadvantaged groups in decision-making activities and processes relating to collections and collections-based institutions.
SDG 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture 2.5 By 2020, maintain the genetic diversity of seeds,	Collections development related to genetic diversity of seeds, cultivated plants, farmed and domesticated animals (notably of local or at-risk varieties) and related wild species, for example in herbaria, museums, seed and gene banks, and seed libraries.

cultivated plants and farmed and domesticated animals and their related wild species, including through soundly managed and diversified seed and plant banks at the national, regional and international levels, and promote access to and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge, as internationally agreed	Number of educational programmes related to genetic diversity of domesticated plants, animals and wild relatives. Number of educational programmes related to fair and equitable benefits of use of genetic resources and associated traditional knowledge, following international agreements (e.g. Nagoya Protocol). Number of educational and awareness programmes for people to ensure that they are aware of their rights and protections in terms of traditional knowledge, and exploitation of genetic resources. Number of research activities that help understand traditional knowledge, and genetic diversity of crop plants and animals. Ensure that producers of crop plants and animals are fairly compensated. Policies and procedures in place to ensure legal compliance with fair and equitable benefits of use of genetic resources and associated traditional knowledge, following international agreements (e.g. Nagoya Protocol). Number of partnerships at national, regional and international levels, as appropriate, to soundly manage seed and plant banks.
SDG 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all 4.7 By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of	Numbers of people in each type of programme drawing on collections from different demographic groups. Increases in numbers of people in each type of programme from different demographic groups. Proportion of people involved in such programmes in relation to overall audience size. Evidence that learners have acquired knowledge and skills to promote sustainable development.

culture's contribution to sustainable development	
SDG 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all 8.9 By 2030, devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products	Numbers of jobs created or supported that relate to sustainable tourism drawing on local products (e.g. craft producers). Develop and implement plans to reduce and remove negative impacts of tourism. Numbers of activities and/or products drawing on local culture. Value to artisans and source communities of activities and products drawing on local culture.
SDG 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation 9.1 Develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all	Development of research-useful collections to support reliable, sustainable and resilient use by researchers and others. Number and proportion of collections facilities and stores that support economic development and human well-being. Number and proportion of collections facilities and stores that provide affordable and equitable access for all. Investment in collections facilities. Inclusion of collections information in regional and transborder initiatives, notably via digital access for discoverability.
SDG 10. Reduce inequality within and between countries 10.2 By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status	Collections development to ensure that collections effectively meet the needs of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status. Numbers and proportions of people making use of collections in relation to the demographic of the local population

	Numbers and proportions of people involved in focused programmes aimed at promoting social, economic and political inclusion Numbers and proportions of people from different demographic groups involved in decision-making processes relating to collections and collections-based institutions Number and types of partnerships that build relationships with marginalized groups, individuals and communities.
SDG 10. Reduce inequality within and between countries 10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard	Identification of discriminatory policies and practices, with clear plans to address these, to ensure equal opportunity for all and reduce inequalities of outcome.
SDG 10. Reduce inequality within and between countries 10.4 Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality	Number and proportion of policies that proactively address equality issues relating to fiscal, wage and social protection considerations.
SDG 11. Make cities and human settlements inclusive, safe, resilient and sustainable 11.4 Strengthen efforts to protect and safeguard the world's cultural and natural heritage	*11.4.1 Total expenditure (public and private) per capita spent on the preservation, protection and conservation of all cultural and natural heritage, by type of heritage* Plans, policies and procedures in place for the safe use of collections for a variety of purposes, protecting and safeguarding both collections and those who use them. Plans, policies and procedures in place for the identification, safeguarding and protection of cultural and natural heritage at risk.

	Collecting programmes in place to protect, safeguard and make use of cultural and natural heritage, addressing the needs of communities and stakeholders, and ensuring that collections can be an effective resource for sustainable development. Number and diversity of educational, awareness-raising, research programmes, and partnerships that aim to strengthen protection of cultural and natural heritage.
SDG 15 Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss 15.6 Promote fair and equitable sharing of the benefits arising from the utilization of genetic resources and promote appropriate access to such resources, as internationally agreed	Policies, plans and agreements in place for access and benefit sharing relating to use of collections, in line with the Nagoya Protocol (notably relating to natural history collections, gene banks, tissue banks, seed banks). Effective communication and dissemination methods in place to promote access to resources, and access to relevant policies, plans and agreements, in place.
SDG 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all	Collections development that relates to the rule of law, equality before the law, and justice for all. Number of activities drawing on collections, for example educational, research and partnership activities, that promote the rule of law at national and international levels, and that promote a culture of lawfulness, and the right of all to justice.
SDG 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.	*16.6.2 Proportion of the population [audience/users/non-users] satisfied with their last experience of public services* Access to information, and accountability policies and mechanisms, in place.

16.6 Develop effective, accountable and transparent institutions at all levels	Effective institutional arrangements, both for own working and for working in partnership with other sectors, in place. Plans and arrangements in place for extraordinary circumstances such as natural and human-caused disasters. Effective arrangements in place to fulfil legal and social obligations and responsibilities. Effective arrangements in place for transparent communication and reporting of institutional performance. Effective arrangements in place for transparent decision-making and accountability.
SDG 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels	***16.7.1 Proportions of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service, and judiciary) compared to national distributions*** ***16.7.2 Proportion of population [audience/users/non-users] who believe decision-making is inclusive and responsive, by sex, age, disability and population group*** Decision-making addresses societal, environmental and economic challenges related to the community, considering short-term and long-term risks and opportunities. Decision-making draws on diverse backgrounds, viewpoints and interests, reflecting a broad base of stakeholders, and working to promote inclusion and provide effective services for all of society.
SDG 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. 16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements	Adopt and implement constitutional, statutory and/or policy guarantees for public access to information. Plans in place, and plans implemented to enhance public access to information relating to collections. Plans in place, and plans implemented to support fundamental freedoms, in line with human rights, national and international agreements and legislation. Plans and procedures in place for public access to information relating to the operation and management of collections-based institutions.

	Complaint mechanism in place for public to use where public access to information and fundamental freedoms not supported or fulfilled.
SDG 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. 16.B Promote and enforce non-discriminatory laws and policies for sustainable development	*16.B.1 Proportion of population [audience/users/non-users] reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law* Number and proportion of policies that incorporate sustainable development considerations, in the full sense of recognizing all three of social, economic and environmental considerations.
SDG 17. Partnerships for the goals 17.14 Enhance policy coherence for sustainable development	Proportion of policies that incorporate sustainable development considerations, linking to SDGs and targets. Incorporation of policy considerations from outside the collections sector into policies of collections-based institutions, to facilitate partnerships and effectiveness.
SDG 17. Partnerships for the goals 17.16 Enhance the global partnership for sustainable development, complemented by multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement of the sustainable development goals in all countries, in particular developing countries	Number and/or increase in number, and diversity of global and international multi-stakeholder partnerships that share collection-related knowledge, expertise, technology and financial resources to address the SDGs, or that otherwise involve collections-based organisations and institutions. Number and/or increase in number, and diversity of global and international multi-stakeholder partnerships involving developing countries that share collection-related knowledge, expertise, technology and financial resources to address the SDGs.

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7	8	3	4	5	6
13	14	9	10	11	12