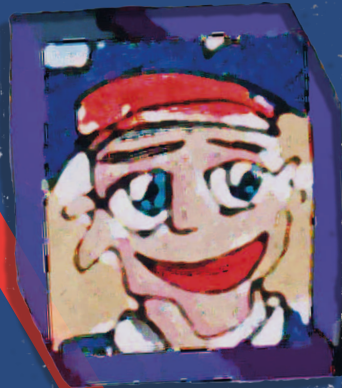
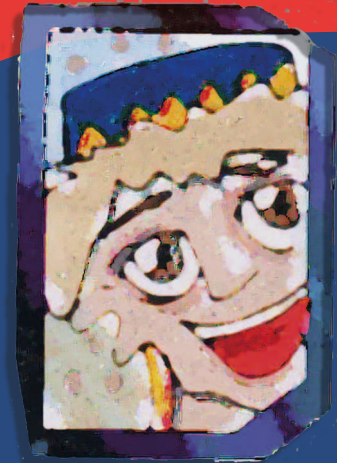
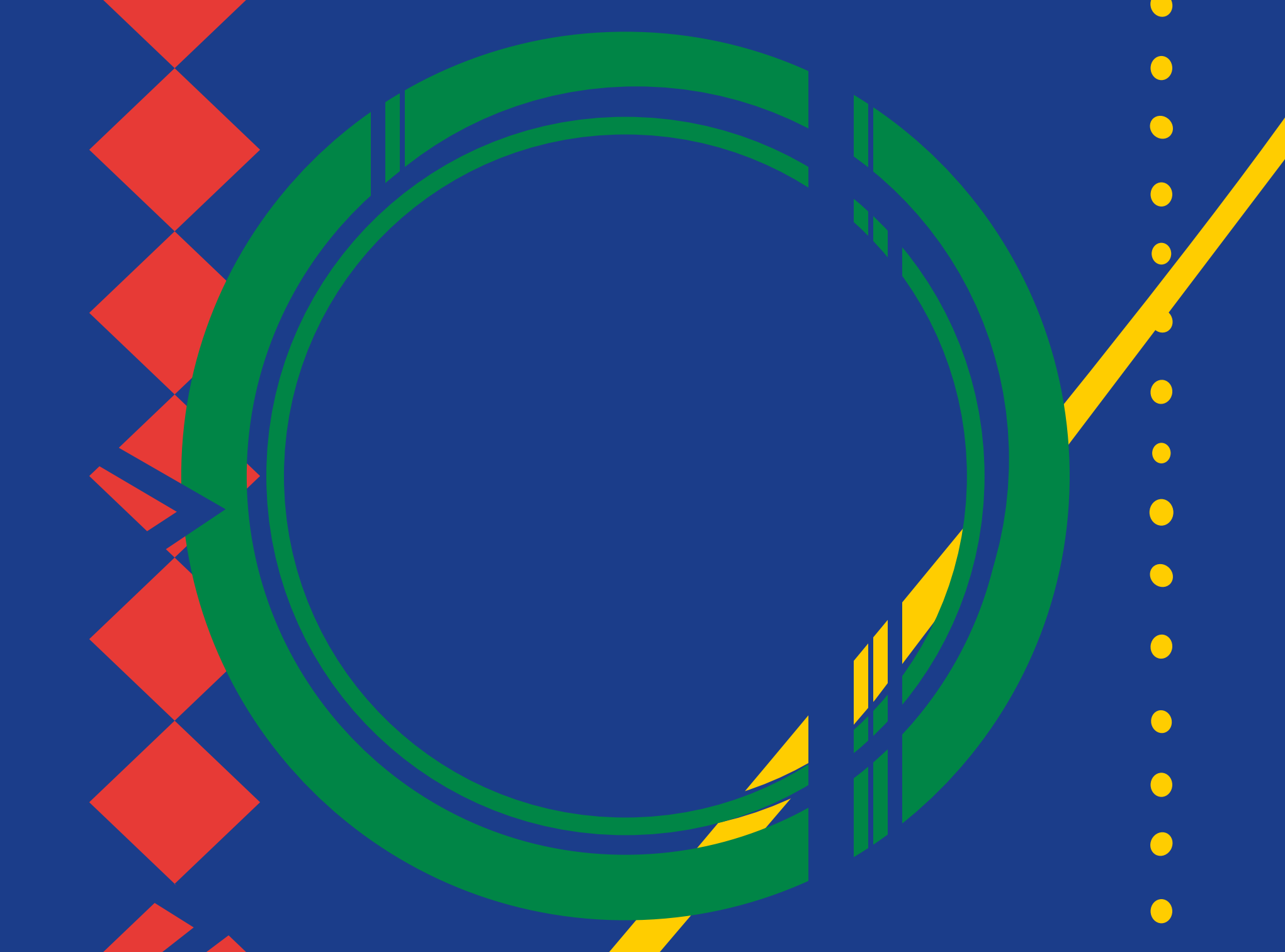


Tuomas Mattila | Pasi Jaakonaho

OURS

CULTURAL INTELLECTUAL
PROPERTY OF NORTHERN
INDIGENOUS PEOPLES







OURS

CULTURAL INTELLECTUAL
PROPERTY OF NORTHERN
INDIGENOUS PEOPLES

Tuomas Mattila | Pasi Jaakonaho



Saamelaisalueen koulutuskeskus
Sámi oahpahusguovddáš
Säämi máttááttáskuávdáš
Sää'm škooltemkөөskөөs

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SÁMEDIGGI
SÁMITIGGE
SÁÄ'MTE'G'G
SAAMELAISKÄRÄJÄT



MINISTRY OF
EDUCATION AND CULTURE





Muhto ain dat ihtet, mánát
geaid bealjit dego lasttat, mánát
geat gazzet giellaoahpa biologijjas.

Bussábielluid taktihkka
duodaštít juohke sáni adjektiiván.

Dat lea rássegietti strategijja.

FOREWORD

INTELLECTUAL PROPERTY LEGISLATION IS CONSIDERED a complex area of law and the indigenous peoples and the public officials responsible for the matter are not particularly familiar with it. Likewise, many public officials tasked with developing intellectual property law are unfamiliar with the legal framework created to protect indigenous peoples. However, intellectual property plays a key role when solutions are sought to the legitimate legal expectations of indigenous peoples. To meet these needs, a project on the cultural intellectual property of northern indigenous peoples was carried out during 2022.

The Sámi Education Institute (SAKK) acted as the main project implementer and the project was carried out in cooperation with the Sámi Parliament and the Ministry of Education and Culture, the ministry responsible for the project. The project was carried out under the guidance of and in cooperation with the steering group appointed for the project and in coordination with intellectual property experts of the Barents Euro-Arctic Region and other partners. Tuomas Mattila, an expert on intellectual property rights and Pasi Jaakonaho, a lecturer in Sámi handicrafts in the Sámi Education Institute and doctoral candidate, were tasked with carrying out the project and preparing this training material. As part of the project, the authors interviewed approximately twenty experts on the Sámi cultural heritage and other experts on the topic. The training material created in the project supports the training of both intellectual property experts and Sámi artists (especially young artists) and all those interested in traditional livelihoods.

There are slight differences between intellectual property law issues pertaining to traditional culture, depending on whether the matter is examined from the perspective of an individual or the community as a whole. Artisans, yoik singers,

storytellers, cultural entrepreneurs and other authors and creators can protect the results of their own work when from the community perspective, the issues common to all those involved are highlighted in the need for protection. At the same time, when we are talking about traditions, it is sometimes difficult to make a distinction between individual and communal activities. These different perspectives and interaction between them have been taken into account in the material.

The need for cross-border cooperation has also been a consideration in the project. It is important to safeguard the linguistic and cultural rights of the Sámi people enshrined in the Constitutions of Finland, Sweden and Norway. This can only be achieved if there is expertise in and a comprehensive situation picture of intellectual property rights in the Sámi regions of Finland, Sweden and Norway (Sápmi). This training material has been prepared as part of the programme for the Finnish Presidency of the Barents Euro-Arctic Council (2021–2023).

The building of common practices can be encouraged by enhancing a dialogue across national and sectoral boundaries. With this project, a more coherent, long-term and proactive approach can be taken to common issues as they can be addressed and coordinated by also boosting cooperation within the framework of the Northern Dimension. Paying attention to better protection enhances the trust of indigenous peoples in their own heritage and allows the new generation to focus on the preservation and development of their culture in a manner that benefits the entire population and, at the same time, is part of the intellectual property law and not a component outside it.

Anna Vuopala
Senior Ministerial Adviser
Ministry of Education and Culture
Department for Art and Cultural Policy
Division for Copyright Policy and
Audiovisual Culture

Janne Näkkäläjärvi
Director of Program Development
Sámi Education Institute

THE SÁMI HAVE THEIR OWN HISTORY, LANGUAGE, CULTURE, LIVELIHOODS, WAY OF LIFE AND IDENTITY

IN ALL ITS ACTIVITIES, THE SÁMI PARLIAMENT shall safeguard the viability of the Sámi language, culture and livelihoods, ensure the equal improvement of the livelihoods of the Sámi in the entire Sámi Homeland Area and promote the realisation of the linguistic and cultural rights of the Sámi also outside the Sámi Homeland Area. The most important task of the Sámi Parliament is to implement the cultural autonomy guaranteed for the Sámi in the Constitution and to safeguard the preservation and development of the indigenous Sámi culture.

When we talk about Sámi cultural heritage, concepts such as “culture” and “heritage” should be defined in accordance with the understanding, values and world view of the Sámi themselves. For example, dividing intangible and tangible cultural heritage into different parts disperses the Sámi people’s own concept. Such a distinction between intangible and tangible assets can be made, but in accordance with the terms and conditions of the Sámi people. “Gulahala’s nature code”, or the ability to discuss with nature, means that when you see changes in nature or seek material from nature, you can recognise the characteristics of nature. Tangible and intangible heritage cannot be separated from each other, because they overlap and affect each other.

Tuomas Aslak Juuso

i.e.

Gáijjot Ánte Issáha Duommá
Chair of the Sámi Parliament

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THE SÁMI – THE ONLY
INDIGENOUS PEOPLE IN
THE EUROPEAN UNION

THE SÁMI

ARE AN ARCTIC INDIGENOUS PEOPLE WHOSE traditional homeland is located in the territories of four countries: Norway, Sweden, Finland and Russia. Depending on the calculation method, there are between 75,000 and 100,000 Sámi. As shown by the map, the Sámi homeland lies in the northern parts of Norway, Sweden and Finland as well as in the Kola Peninsula in Russia. It is estimated that in Finland, more than 60% of the Sámi live outside their homeland. According to Statistics Finland, Finland's largest Sámi municipality in 2019 was Oulu, followed by Inari, Rovaniemi, Utsjoki and Helsinki.



THE SÁMI ARE DIVIDED

INTO NINE LANGUAGE GROUPS: Southern Sámi, Ume Sámi, Pite Sámi, Lule Sámi, Northern Sámi, Inari Sámi, Skolt Sámi, Kildin Sámi and Ter Sámi. In addition, Akkala Sámi was still spoken about twenty years ago. Northern Sámi has the largest number of speakers and they can be found in most parts of the Sámi region.

All Sámi languages are under threat and to safeguard their existence, the Sámi Language Act was passed in Finland in 2003. Its purpose is “to ensure, for its part, the constitutional right of the Sámi to maintain and develop their own language and culture”.

The greatest challenges in the implementation of the Sámi Language Act concern the funding needed to hire a sufficient number of Sámi-speakers for public posts. It is difficult to find teachers and daycare personnel proficient in Sámi languages. One problem is to find Sámi-speakers for part-time jobs (for example, for jobs involving 60% of the full hours) if one can work full time in tasks where language skills are not required.

THE SÁMI ARE THE ONLY INDIGENOUS PEOPLE

IN THE EUROPEAN UNION AND THEIR STATUS IS ENSHRINED IN THE CONSTITUTION OF FINLAND.

The Sámi were already living in their homeland before the present-day national borders had been drawn. However, despite their status as an indigenous people, the Sámi are not dominant in their own homeland.

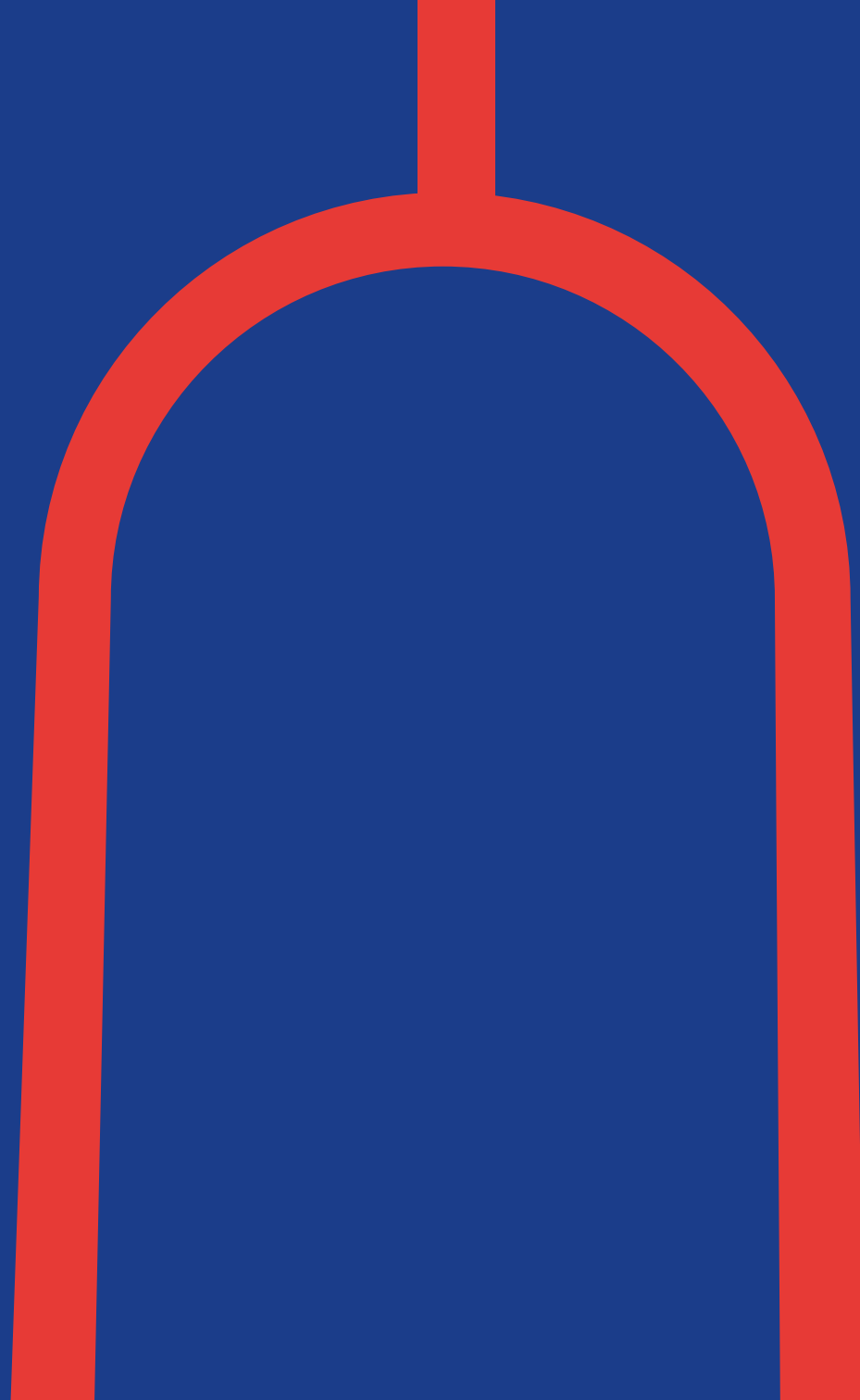
The traditional annual cycle of the Sámi has involved the moving of reindeer from inland areas to the coast for the summer months for the duration of what is called the räkkä period (insect plague). The present national borders have shaped this tradition and to some extent put an end to it.



TRADITIONAL SÁMI LIVELIHOODS

INCLUDE FISHING, FORAGING, HUNTING AND REINDEER HERDING and their contemporary forms. Sámi handicrafts are also an important part of everyday life and a source of livelihood for many members of the community. In addition, combined livelihoods refer to the combined livelihood of fishing and agriculture of the Sámi living in the coastal areas. Most of the Sámi inhabiting the Sámi homeland and relying on traditional livelihoods live from nature and in accordance with the annual cycle. In fact, the Sámi annual cycle has eight seasons: spring, early summer, summer, late summer, autumn, early winter, winter and late winter.

However, at the start of the 21st century, an increasing number of the Sámi people are engaged in non-traditional livelihoods. The continuation of traditional Sámi livelihoods and lifestyles is under constant pressure as contemporary professions are gaining ground and efforts are made to find a balance between the two. However, many members of the Sámi community are involved in the traditional livelihoods of their families even if they earn their living elsewhere. Traditional livelihoods play an important role as carriers of the Sámi languages and culture.





RIGHT OF THE SÁMI
TO THEIR OWN
CULTURAL HERITAGE

THE STATUS OF THE SÁMI

AS AN INDIGENOUS PEOPLE IN Finland is recognised in section 17 of the Constitution of Finland. Under this provision, the Sámi have the right to maintain and develop their own language and culture.

Under section 121 of the Constitution, the Sámi have linguistic and cultural self-government in their homeland.

FINLAND HAS ADOPTED THE UNITED NATIONS DECLARATION on the Rights of Indigenous Peoples introduced in 2007. Under Article 3 of the Declaration, indigenous peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Under Article 31 of the Declaration, Sámi have the right to maintain, control, protect and develop their intellectual property over cultural heritage, traditional knowledge and traditional cultural expressions.

Although the Declaration itself does not establish new rights, the states that have signed the document are expected to take action to achieve the objectives set out in the Declaration. Together with the Constitution of Finland, this creates the legal basis for examining the rights of the Sámi both as individuals and as a community to protect and manage their own intangible cultural heritage.

ARE THESE CULTURAL RIGHTS A REALITY?



THE UNAUTHORISED COMMERCIAL use of the Sámi cultural heritage without a genuine connection to the Sámi identity is in conflict with these rights. It harms those practising traditions causing them economic losses and resulting in cultural erosion. This speeds up the disappearance of traditional knowledge, skills and traditional expressions, thus preventing the Sámi from practising their right to self-determination and cultural rights.

COMMERCIAL USE OF CULTURAL heritage should be ethically sustainable and support the communities in which the traditional knowledge and traditional expressions have developed. This will ensure that those using the traditions do not simply take away intangible values created in the community but can also support the handing down of the cultural heritage to future generations.

HOWEVER, THERE IS NO LEGISLATION protecting intangible cultural heritage in which the protection of the traditions would be examined from the perspective of the communities and individual authors and creators maintaining and developing them. For this reason, the international efforts to safeguard the rights of indigenous peoples to their own culture by means of intellectual property rights have continued for decades.

CAN INTELLECTUAL PROPERTY RIGHTS IMPROVE THE SITUATION?



INTELLECTUAL PROPERTY RIGHTS

comprise copyrights, trademarks, geographical indications, patents, utility models, design rights and trade secrets as well as the Act on Unfair Business Practices. The Consumer Protection Act also plays an important role in the examination of commercial use of intangible cultural heritage.



WITH INTELLECTUAL PROPERTY

rights, artists, artisans, entrepreneurs and individuals maintaining traditions can protect the results of their own intellectual efforts.

The Sámi as a community can use intellectual property rights to protect their common cultural heritage from unauthorised use.

THIS TRAINING MATERIAL

THIS MATERIAL EXAMINES HOW EXTENSIVELY INDIVIDUALS and communities can use intellectual property rights to safeguard the rights arising from Sámi intangible cultural heritage. How feasible or impractical are intellectual property rights in this respect?



SÁMI TRADITIONAL
KNOWLEDGE AND THEIR
TRADITIONAL CULTURAL
EXPRESSIONS



THE SÁMI CULTURAL HERITAGE

COVERS A WIDE RANGE OF DIFFERENT physical objects and places as well as oral expressions, traditions, customs, practices, knowledge and skills. These are often connected to each other and tangible and intangible heritage cannot be completely separated.

Did you know?

THE SÁMI TRADITION ALSO INCLUDES DRUMS, in which tangible and intangible cultural heritage are connected to each other. The drums can be several hundred years old and they are considered historical artefacts and part of the Sámi cultural heritage. The making of new drums involves traditional skills and know-how, which together with the knowledge and skills related to the use of the drums is part of the Sámi intangible heritage.

The patterns recognised by most Sámi are also a typical feature of the drums. The patterns are part of the Sámi culture and should be treated accordingly.

There are clear stylistic similarities between the drum patterns and rock paintings and drawings. These patterns are also used in contexts not connected with the drums, such as in souvenirs, jewellery and postcards. However, it is important to be aware of and respect the original context of the patterns, which is of great significance to the Sámi people.



In connection with Christianisation, most of the drums were destroyed and attempts were made to eradicate the old Sámi religion and world view. In Finland, this happened in the mid-18th century. Many drums are still kept in museums in different parts of Europe. Thus, museums have in their own way done valuable work to preserve this tradition. In recent years, voices have been raised in support of returning Sámi drums to the regions where they originated.

”

Heini Wesslin
Skolt Sámi artisan

HOW CAN ONE DEFINE TRADITIONAL HANDICRAFTS?

It is clear that the masters acting as teachers have a great deal of influence over their students and on what they learn to consider as traditional. It is also important that handicrafts have been documented and books on them published. In this way they can be preserved. However, in both cases, it may ultimately be a question of views held by a small number of individuals rather than the only way to make handicrafts.

Likewise, a great deal of terminology on handicrafts has been translated. It has emerged in the Sámi homeland that the people translating place names for maps do not always know what the words mean. As a result, the meanings may have changed. Traditionally, there are three types of headgear for Skolt Sámi women: pee'rvessk (for girls), šaamsšik (for married women) and po'vdnekk or poo'vdnekk (for widows). Are the Finnish translations correct? Could it be that the meaning has been different or even wider?

In all these cases, the artisans, teachers, individuals documenting the items and translators have a great deal of responsibility and influence at the same time. Responsibility and influence over the preservation, vitality and meanings of handicrafts and symbols and the way in which they are interpreted.

THE SÁMI CULTURAL HERITAGE

INCLUDES TRADITIONAL KNOWLEDGE AND traditional cultural expressions. These concepts have been formulated by the Intergovernmental Committee of the World Intellectual Property Organization (WIPO) and they can be used to examine to what extent and how intellectual property rights can protect intangible cultural heritage.

SINCE 2000, the Intergovernmental Committee of WIPO has conducted regular and documented negotiations in the Swiss city of Geneva to formulate international legal instruments for the protection of traditional knowledge and traditional cultural expressions and the declaration of the origin or source of genetic resources in connection with patent applications. Representatives of indigenous peoples and local communities also take part in the meetings.

Did you
know?

”

Jukka Liedes
Vice-Chair of WIPO's
Intergovernmental
Committee

PROGRESS IN INTERNATIONAL COOPERATION

The Intergovernmental Committee of WIPO has produced drafts of international legal documents on the three issues referred to above. The documents, formulated as articles, could be binding international agreements or non-binding recommendations issued as guidelines. The work has made little progress in recent years because some of the WIPO member states are critical of the issues in question or reject binding agreements.

However, in July 2022, the situation changed when the WIPO General Assembly voted to end the unanimity requirement. A decision was taken to convene a diplomatic conference in 2024 to prepare an international agreement on genetic resources. This may also clear the path for an international agreement on the protection of traditional knowledge and traditional cultural expressions.

TRADITIONAL KNOWLEDGE

TRADITIONAL KNOWLEDGE MEANS INFORMATION, KNOW-HOW, SKILLS and practices that have been developed, preserved and passed down from generation to generation, often orally and within the Sámi community.

Sámi traditional knowledge can be related to reindeer herding, fishing, hunting, foraging, handicrafts and knowledge of nature.



REINDEER HERDING IS ONE OF THE BEST known manifestations of the Sámi culture. With some exceptions, in the Sámi regions of Sweden and Norway, only Sámi may engage in reindeer herding (own reindeer in the context of reindeer herding). In Finland, there are no similar restrictions as the freedom to engage in business activities allows any citizen of an EEA member state residing in the reindeer herding area or any reindeer herding cooperative located in the area to own reindeer. In Russia, there are collective farms specialising in reindeer herding. Other indigenous peoples in the Russian Arctic also keep reindeer. Reindeer herding skills are mainly learned at home or they are taught by other family members. However, the following education institutions in the Sámi region also provide training in the subject: The Sámi Education Institute in Inari, Ovidereskolet in Kautokeino and Karasjok and Samisk Áahpahusguovddas in Jokkmokk.



FISHING HAS BEEN PART OF THE SÁMI culture throughout the Sámi region. There are local traditional ways of fishing that differ from each another. They have one common feature: only the amount needed is caught.

The Sámi fishing tradition is in transition. The urban way of living and the existence of Sámi communities outside the Sámi region make traditional fishing impossible. A number of court rulings were issued in autumn 2022 stating that the Sámi have the right to engage in traditional fishing in their homeland even though this is not stated in the existing legislation.

”

Tauno Ljetoff
reindeer herder

KNOWLEDGE AND TRADITIONS PASS FROM REINDEER HERDER TO REINDEER HERDER AND THEY ARE HANDED DOWN FROM GENERATION TO GENERATION

In reindeer herding, it is quite natural that methods are handed down from generation to generation and that people learn from each other. It is understandable that older generations do not easily learn new methods and customs. It is also difficult for younger people. There is a great deal of openness within the reindeer herding culture. At the same time, it is clear that regional differences and unique circumstances lead to differences between operating methods.

Traditional sledges play a major role in reindeer herding. Over the past twenty years, plastic sledges have become more common. The number of reindeer herders using them is still quite small and they mostly make them for their own needs. Each reindeer herder constructs their own sledges in their own workshops. Ideas are readily shared with others. On the other hand, if someone wants to start producing sledges on a commercial basis they should first ask those behind the ideas for permission.

TRADITIONAL FISHING SKILLS ARE KEPT ALIVE BY THE FISHERMEN THEMSELVES

Traditionally, for families in the Sámi homeland, fishing has been a source of both food and livelihood. Different types of fishing and the location of fishing sites have traditionally been taught by other family members or in some other way on fishing trips from the early age. Even though the fishing methods are not considered as secrets, they are only disclosed to a chosen few. For example, would you tell your neighbour where to get the best catch?

Today, more and more Sámi people live outside the Sámi homeland. This means that the traditional fishing knowledge and skills are only partially passed down to younger generations. Such matters as global warming and sea fishing pose a major threat to salmon fishing in the Tana river. Salmon stocks have collapsed and as a result, a ban on salmon fishing has been introduced. People mastering the traditional fishing methods are already old. If the fishing ban will last long, the traditional Tana salmon fishing culture may be extinguished. Reviving it may be impossible.

”

An experienced
Sámi fisherman
from the municipality
of Utsjoki



Klemetti Näkkäläjärvi
PhD
Postdoctoral Researcher
University of Oulu

GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

Sámi traditional knowledge related to genetic resources means the Sámi knowledge of the healing, caring, medication and odour properties of an organism, such as a plant or part of an animal and other related properties, that can be used in the preservation and modifying of raw materials for such purposes as handicraft. The Sámi make extensive use of parts of plants and animals for medication and for maintaining wellbeing and as stimulants, even though modern medicine and commercial products have significantly reduced their use.

Traditional knowledge related to genetic resources is still a living tradition but it is under threat. In Finland, the use of genetic resources and the sharing of the benefits arising from them are regulated by the Act on Implementing the Nagoya Protocol (Genetic Resources Act, 394/2016). The Nagoya Protocol is an international agreement aimed at safeguarding access to genetic resources important to humanity for research, development and commercial purposes and ensuring that the benefits of genetic resources are shared in a fair and equitable manner. The Genetic Resources Act prevents the utilisation of traditional knowledge related to Sámi genetic resources and safeguards the right of the Sámi to administer their traditional knowledge. The Act only applies to traditional knowledge related to Sámi genetic resources that has not been used for commercial or research purposes before its entry into force.

A database of traditional knowledge for Sámi genetic resources will be established and it will be administered by the Sámi Parliament. In Finland, knowledge for the database is being collected and guidelines on the traditional utilisation of Sámi genetic resources are under preparation. The database will contain information on the special properties of plants and parts of animals and their use in the Sámi culture. A permit will be required for the use of the database. The benefits of utilising information on Sámi genetic resources should be channelled to supporting the Sámi culture.

INFORMATION ITSELF CANNOT BE PROTECTED

WITH INTELLECTUAL PROPERTY RIGHTS BUT INNOVATIONS based on traditional knowledge can be covered by such means as patents or trademarks. However, Sámi traditional knowledge can be protected when it relates to Finnish genetic resources and is used for research and development. Prior Sámi consent must be obtained for the research and development use of traditional knowledge related to genetic resources.

TRADITIONAL CULTURAL EXPRESSIONS

TRADITIONAL CULTURAL EXPRESSIONS ARE EXPRESSIONS THAT HAVE BEEN passed down from generation to generation and that form part of the identity of a traditional community. They include music, dance, art, design, names, signs and symbols, handicrafts, stories, performances and ceremonies.



UNTIL RECENTLY, THERE HAS BEEN NO SÁMI EQUIVA-
lent to the Western concept of ownership. Traditionally, there has been no concrete ownership of land, waters or the design of individual handicrafts in the Sámi community. This is partly due to a way of life in which commercial aspects and monetary economy have only played a minor role until recently. As a result, there has been no need to protect the design of a knife or the use of regional features and decorations of the Sámi costumes. However, even today, the origin of the design can be accurately identified on the basis of its aesthetic and visual features. Traditional designs and features are not randomly combined with those of other regions or families. For example, ornamental features from two different areas are only combined if the combination carries a specific meaning. Perhaps the person ordering the knife has family roots in two different areas, both of which they want to emphasise or respect.



SÁMI HANDICRAFTS CONTAIN A VARIETY of different meanings, both externally and internally, and this does not only concern physical items. Making handicrafts involves traditional knowledge, from choosing the right materials to making the products themselves. At the same time, finished handicraft products serve as individual expressions of the Sámi culture.

An artisan is not used as a professional title in the same way as in Finnish society. A Sámi artisan is the guardian of their own cultural heritage. They possess knowledge of the Sámi lifestyle, the lifestyle of their own village, the lifestyle of their family and their own lifestyle.

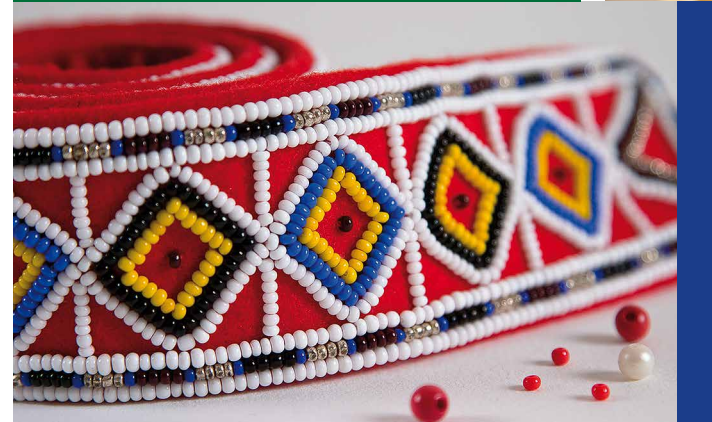
In the past, most Sámi learned to make handicrafts at home. Today, however, more and more Sámi receive their training in education institutions. Important training institutes include the Sámi Education Institute in Inari, Sámi áahpahasguovddas in Jokkmokk, Ovidereskolet in Karasjok, Sámi general upper secondary school and reindeer herding school, and the Sámi University of Applied Sciences in Kautokeino. In Russia, training in traditional Sámi handicrafts is provided in Lovozero.



SÁMI IN FINLAND HAVE THREE DIFFERENT TYPES OF traditional vocal music: The Skolt Sámi have leu'dd, the Inari Sámi have livde and the Northern Sámi have luohiti (yoik). Leu'dd is also heard in Russia and Norway although it is becoming increasingly rare. Livde is only present in the Inari Sámi tradition, while luohiti is also part of the traditions in the Northern Sámi regions of Sweden and Norway. The Sámi Education Institute used to organise the Sámi musihkkaakademija in Utsjoki. In August 2022, the Saami Council selected the Sámi eatnan duoddariid (Fells of the Sámi homeland), which Nils-Aslak Valkeapää used to sing, as the Sámi national yoik. It has been translated into all Sámi languages and can be used alongside the Song of the Sámi family, the Sámi national anthem, in everyday life and on festive occasions.



VISUAL ARTS ARE A RELATIVELY NEW PHENOMENON in the Sámi culture. In the past, visual arts were a feature in handicrafts: abstract images or pictures of concrete objects were drawn on items made of antlers, bones and wood. This meant that visual arts were present in everyday items. Of course, there have been differences between families but most of them have arisen between families with a permanent home and families with a more nomadic lifestyle. Sámi visual arts of today are founded on the pioneering work of Nils Nilsson Skum and Johan Turi. Sámi Dáiddaguovddáš (Sámi Centre for Contemporary Arts) is located in Karasjok in Norway and a few years ago, teaching in visual arts was also offered in Karasjok. One purpose of art to take a stand and inspire people to think. In fact, there is a need for an education institution in the Sámi region teaching the basics of arts.

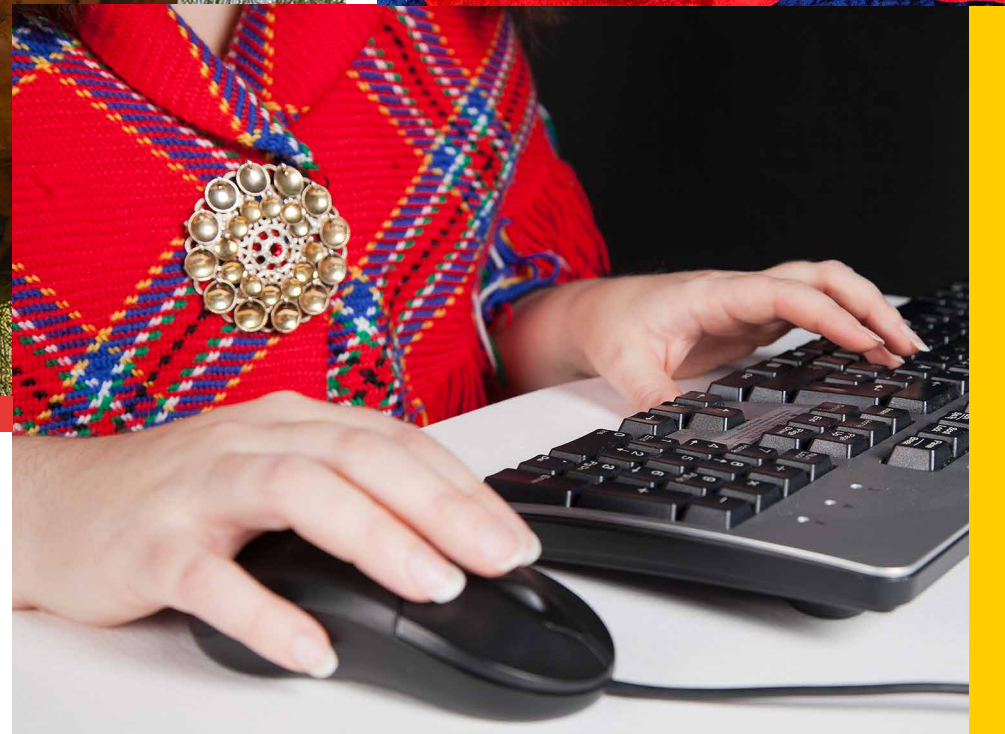


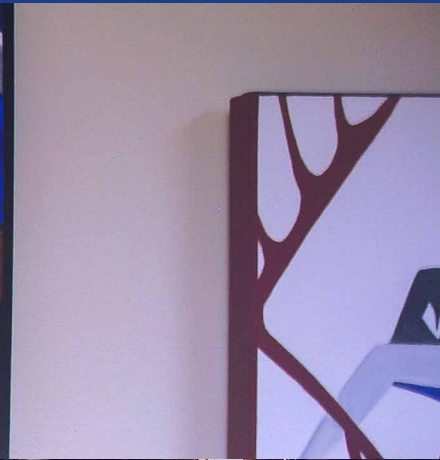


ARTS (INCLUDING VISUAL ARTS) ALSO COMPRISE FILM, theatre, media and photography. These are all forms of expression that are new to Sámi. Film, media and photography are taught at the Sámi Education Institute in Inari. The Sámi filmmainstitute located in Kautokeino in Norway serves as the central organisation of the Sámi film. Kautokeino is also home to Beaivváš, the Sámi National Theatre.



THE SÁMI HAVE A STRONG ORAL STORYTELLING tradition, which is doing well in many places of the Sámi homeland, especially when elderly people meet. Literature as such is a more recent addition to the Sámi tradition. The first Sámi writers were educated people who started by writing fiction. The number of Sámi writers of fiction is growing. In 2015, the Turku Book Fair offered a broad range of Sámi culture (including literature) under the Saamenmaa (Sámi homeland) theme.







COMMERCIAL USE OF THE SÁMI CULTURE

COMMERCIAL USE OF TRADITIONAL CULTURE

IS NOT NECESSARILY IN CONFLICT WITH ITS VALUES. THE question is how and on whose terms the cultural heritage is used and who benefits from its use and how.



COMMERCIAL USE OF TRADITIONS MAY also have positive consequences and it may encourage the continuation and development of a wide range of different skills as well as the transfer of knowledge. By selling their handicraft products to tourists, artisans can earn a living and continue their traditional activities. Ethically sustainable commercialisation can also help to disseminate information about traditional culture, make it more accessible and encourage people to appreciate it.



HOWEVER, UNAUTHORISED COMMERCIAL use of traditional knowledge and traditional expressions could make it more difficult to preserve and develop them. Unauthorised commercial use outside the traditional context can lead to cultural erosion and loss of income for those working to keep traditions alive.

HOW AND ON WHOSE TERMS IS THE HERITAGE USED AND WHO BENEFITS FROM ITS USE?

Commercial use of cultural heritage is not necessarily in conflict with traditional values. The key consideration is how and on whose terms it is used, how traditional expressions are used and who benefits from their use. From the perspective of keeping the handicraft traditions alive and ensuring their future, it may actually be good that there are commercially oriented artisans. However, those engaged in traditional activities should always consider what can be shared with others, for example, as finished products or instructions. I also believe that any errors in judgement should be forgiven and the lessons learned from them should be harnessed for the benefit of the whole community.

Occasionally, requests are also received from outside the community for permission to use traditional contents on a commercial basis. In such cases, it should be remembered that no individual person can authorise the use of a common tradition on behalf of the whole community. Decisions on such things should be made jointly by the members of the community. We need situations and opportunities to discuss how and on what terms such permits can be granted or can they be granted at all. These matters have only been discussed in more detail in recent years, which is why there are no ready-made answers or operating models for all questions or situations. Besides, the decisions are often on a case-by-case basis.

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Minna Moshnikoff
Skolt Sámi artisan

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Ante Aikio
Reindeer herder
Entrepreneur

RICH CULTURAL HERITAGE IS AN ECONOMIC ASSET FOR THE WHOLE COMMUNITY

Every effort should be made to keep cultural heritage alive. If there is interest in traditions and they can be used to earn a living, many people may be able to stay in their own region instead of moving away for work. However, in commercial activities, it is important to provide tourists and consumers with correct information. In other words, we should keep to the facts when explaining the Sámi identity and culture and should not just invent something that is attractive and sells well. Respect for traditions should also have priority in commercial activities and traditions should be used in a sustainable manner so that they can also be respected by future generations.

IF USED CORRECTLY, CULTURAL HERITAGE WILL REMAIN ALIVE AND GENUINE IN THE FUTURE

There is a demand for souvenirs and semi-industrial handicrafts in the Sámi homeland and they are popular among specific target groups. Many artisans could earn a living in their own region by making souvenirs and in fact their sellers would rather offer locally made items than products made elsewhere. So far, however, the range of products on sale has been very limited. Moreover, the souvenirs have a different target group than such products as Sámi handicrafts and items sold in museum shops. In this way, there is no competition between them and they actually complement each other.

Attitudes and awareness have changed over the years so that selling the ‘four winds hat’ to tourists is no longer an example of how to highlight cultural aspects in an ethical manner. For this reason, we have dropped it from our range. I am only talking on my own behalf and I do not comment on the activities of others. However, in general it would be good if all people and companies doing business with traditional cultural items would consider these ethical issues so that cultural heritage would remain alive and genuine in the future.

”

Iisko-Matti Näkkäljärvi
Reindeer herder
Entrepreneur

Did you know?

CULTURAL EROSION CAN, FOR EXAMPLE, LEAD TO THE WEAKENING OR DISAPPEARANCE OF TRADITIONAL EXPRESSIONS. Cultural erosion can be the result of prolonged and unauthorised use of an expression outside the traditional context, often on a commercial basis. The values and images associated with traditional expressions change and they can be connected with alien or even negative images. The expressions may even disappear altogether if they are used on a prolonged basis outside their original contexts and solely for the purpose of seeking external benefit. Unauthorised use may also make traditional authors and creators less willing to preserve traditions in accordance with old customs and practices. This may be the result of commercialisation in which the economic benefits arising from the use of the expression are not channelled to the individuals and communities among whom the traditional expressions originated and who still use them. Cultural erosion was also examined by the World Intellectual Property Organization (WIPO) in its 2001 report *Intellectual Property Needs and Expectations of Traditional Knowledge Holders*.

WHEN THE CONTENT ARISING FROM THE TRADITION IS SEPARATED FROM THE ORIGINAL CONTEXT THERE IS A RISK THAT THE MEANINGS OF THE SÁMI EXPRESSIONS BECOME BLURRED.

It may be difficult for ordinary tourists to recognise the difference between Sámi handicrafts and souvenirs produced elsewhere. The images and attractiveness associated with the Sámi identity can be exploited by not directly claiming that a handicraft is of Sámi origin even though the context in which this link is highlighted suggests that it is.

In this context, commercial exploitation means that traditional expressions of others are used to generate economic profits. Legal protection of Sámi traditional expressions should therefore be strengthened. When we consider the rights protecting intangible cultural heritage, there is a great deal of potential in them but they also give rise to questions. One of the characteristics of a living culture is that it is in a constant state of change and that the pace of change varies. If we want to protect an expression, it must be ensured that the protection does not prevent the expression from changing.

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Sigga-Marja Magga
Researcher of duodji

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Mattias Åhren
Professor in
International Law,
Indigenous Rights Law
and Sámi Law
UiT The Arctic
University of Norway

THE UNAUTHORISED COMMERCIAL USE OF SÁMI TRADITIONAL CULTURE IS IN CONFLICT WITH THE SÁMI PEOPLE’S RIGHT TO SELF- DETERMINATION

Creation and reproduction of Sámi traditional cultural expressions, also for economic purposes, can be beneficial to the Sámi people and society; it is a matter of what use, in turn hinging on who determines what use. Today, international law says that the Sámi themselves that have the right to determine if expressions of the Sámi culture are to be used and, if so, how. Article 3 of the UN Declaration on the Rights of Indigenous Peoples proclaims that “Indigenous peoples have the right to self-determination. By virtue of that right they ... freely pursue their economic, social and cultural development. Article 31 clarifies that indigenous peoples’ right to determine their “economic, social and cultural development” encapsulates a right to “maintain, control, protect and develop their cultural heritage ... as well as the manifestations of their ... cultures ... including ... seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs ... and

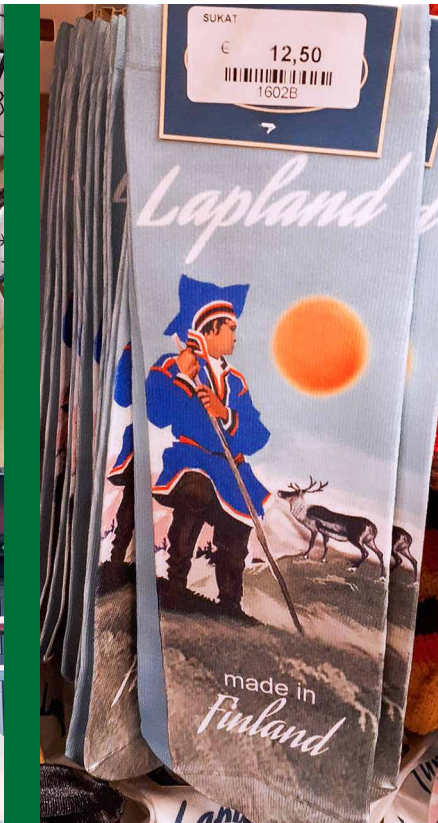
visual and performing arts". The Declaration here reflects a general international norm, which the state must both respect itself and ensure that others respect. Expressed differently, the Sámi have the right to determine over all aspects of their traditional culture, both tangible and intangible, including Sámi traditional dresses, duodji, traditional symbols and patterns, yoik songs, legends and knowledge about the properties of lands, waters and natural resources in Sápmi. They are also entitled to state action enforcing that right.

THE SÁMI CULTURE IS USED IN COMMERCIAL ACTIVITIES IN MANY WAYS

SÁMI EXPRESSIONS MAY BE USED DIRECTLY OR the aim may be to create associations with the Sámi identity even if the product or service did not have anything to do with the Sámi culture.

Differentiating between acceptable and unacceptable commercial use of culture is not always easy. The pictures below are examples of the presence of Sámi identity in commercial activities. The purpose of these examples is not to make a judgement about the suitability of using traditional culture. Instead, the decision must always be made on a case-by-case basis. However, these examples show how extensively the Sámi culture is utilised commercially and that there is a great deal of commercial interest in the Sámi culture in the market. It is essential to ask whose efforts have kept traditional expressions alive and allow them to remain available to future generations, who benefits from their commercial utilisation and how commercial utilisation promotes their sustainable use.







NOADI RECORDS



A LARGE NUMBER OF SÁMI TRADEMARKS

HAVE BEEN REGISTERED IN THE European Union and its Member States. However, registering a trademark is not enough to demonstrate that it has been used in the market. Moreover, the possible link between the trademark holder and the Sámi identity or the motives for registration cannot be checked from databases. In other words, the examples below are not accompanied by an assessment of their acceptability as they are only presented to show that associations with Sámi create market interest and the image of Sámi also has commercial value.





PERSPECTIVES ON THE PROTECTION OF CULTURAL HERITAGE

THE PROTECTION OF THE SÁMI TRADITIONAL CULTURE

MAY INVOLVE THE PROTECTION OF TRADITIONAL KNOWLEDGE and traditional expressions but also the preservation and safeguarding of its culture. These perspectives are not mutually exclusive but offer a variety of different instruments to address the threats and challenges facing the vitality of traditional culture.

Protection refers to the legal protection of traditional knowledge and traditional expressions within the meaning of exclusive rights. In such cases, the rightsholder has the right to prohibit others from using the symbol, expression or other intellectual property granted protection. In other words, the expression can only be used with the consent of the rightsholder.

The protection can be ensured by means of intellectual property rights, such as protected signs or copyrights. The protection can serve as an instrument preventing situations where the traditional Sámi culture is used, especially on a commercial basis, without permission and in a manner that is unrelated to Sámi people. However, there are restrictions on the use of legal protection and the existing safeguards may not be appropriate in all cases. For example, if the expressions are very old or they are already widely used commercially, legal protection on the basis of existing intellectual property rights may not be available. It is important to identify the situations in which protection is available, while the social and political dimensions of legal protection and its practical implementation should also be taken into account.

INTELLECTUAL PROPERTY RIGHTS AS AN INSTRUMENT PROTECTING CULTURAL HERITAGE AROUND THE WORLD. Both indigenous peoples and local communities and organisations in different parts of the world have used trademarks and copyrights to protect expressions that are part of their cultural heritage from unauthorised commercial use. It should be noted, however, that situations and protection needs often differ and intellectual property rights do not work everywhere. There are also differences between legislation in individual countries, even though the basic principles governing intellectual property rights are often the same. However, these examples illustrate the wide range of different situations in which the systems of intellectual property rights can protect individual authors and creators as well as communities.

Did you
know?

Did you know?

'NAVAJO' AS A REGISTERED TRADEMARK. In the United States, the Navajos registered the name of their tribe as their trademark already in 1943 and they currently own more than 80 trademarks to protect the name 'Navajo' in various forms in connection with a range of different products and services. In 2012, the Navajo started legal action against the Urban Outfitters clothing chain in the State of New Mexico for infringement of their trademark rights in a case where the defendant had used the name 'Navajo' in clothing, jewellery and footwear without the permission of the trademark holder. In addition to using the name, some of the products displayed patterns similar to traditional Navajo patterns and shapes. The case ended in 2016 in a settlement and after the parties had concluded a licensing agreement under which they cooperate in the commercialisation of certain products.

Did you know?

COPYRIGHT PROTECTS CARNIVAL COSTUMES FROM NEW ORLEANS.

The Mardi Gras Indians are African-American groups that have participated in the Mardi Gras carnival in the United States city of New Orleans at least since the mid-19th century. They are characterised by extremely colourful, impressive and skilfully hand-sewn carnival outfits. Many photos of Mardi Gras Indians are taken and they are sold in souvenir shops and art galleries and used in advertising and marketing, such as books and brochures, without the permission of the costume makers. The participants have emphasised that the purpose of protecting the costumes is not to prevent the public from taking photos of them as keepsakes but to prevent the unauthorised commercial use of the photos. For this reason, the performers have taken measures to protect their colourful carnival outfits with copyrights. The first of their applications was approved in 2010 when one of the costumes was granted copyright protection. This means that the publication of photographs of this costume requires permission from the copyright holder.

Did you know?

MOTHER TERESA'S SARI PATTERN AS A TRADEMARK. In 2016, the Missionaries of Charity, the order founded by Mother Teresa, applied for the registration of the white and blue sari made famous by Mother Teresa as their trademark. The application was approved and the registration first entered into force in India and later also in the United States. For decades, the face and sari of Mother Teresa have been used commercially in books, souvenirs and masquerade costumes. The purpose of the trademark registrations is to prevent unauthorised use of the pattern for commercial purposes. Similarly, the name 'Mother Teresa' has been registered by the order as a trademark in the European Union.

IN ADDITION TO LEGAL PROTECTION

WE CAN ALSO TALK ABOUT PRESERVING and safeguarding intangible cultural heritage. These concepts refer to the identification, documentation, preservation and transmission of cultural heritage as well as education and revival of traditions. This helps to strengthen the vitality of traditions and to prevent them from declining or disappearing altogether. Preservation and safeguarding is not a matter of protecting exclusive rights but of safeguarding the vitality and future of cultural heritage. The perspectives of preservation and safeguarding are key considerations in the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003). Both conventions were brought into force in Finland in May 2013. The Finnish Heritage Agency is responsible for implementing the conventions in Finland.

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Leena Marsio
Senior Specialist
Finnish Heritage Agency

THE FINNISH HERITAGE AGENCY ACTIVELY COOPERATES WITH THE SÁMI PARLIAMENT IN THE PROTECTION OF INTANGIBLE CULTURAL HERITAGE

A large number of joint seminars, webinars and workshops have been held since 2014. The aim has been to raise awareness of and collect information on the living cultural heritage of the Sámi people. In early 2022, Finland submitted its first report to UNESCO on the state of protection in our country and a review of the situation in the Sámi homeland was also prepared in the same connection. In recent years, grants provided by the Finnish Heritage Agency have been used to support Sámi cultural heritage projects. The digitalisation project of Sámi Duodji and the yoik project of Sámi Árvvut are currently under way and the Finnish Heritage Agency has supported them with grants for intangible cultural heritage.

EDUCATION IS PART OF THE PRESERVATION OF THE SÁMI CULTURE AND ITS PASSING DOWN TO FUTURE GENERATIONS

The ways of handing down Sámi handicraft skills to future generations are changing. People still learn handicraft skills at home but they are increasingly taught in training programmes both in the Sámi homeland and outside it. The Sámi Education Institute in Inari offers teaching in Sámi handicrafts as part of short courses and degree programmes.

Sámi handicrafts are rich in expression. In order to take the cultural spectrum of Sámi handicrafts and different Sámi languages into account in the training, we should be able to allocate more resources to the local special features of Sámi handicrafts. By taking these matters into account, we can provide each student with a safe space where they can study their cultural heritage.

From the perspective of the Sámi handicrafts culture, it is important that the whole spectrum of the current skills and knowledge is also handed down to future generations.

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Anniina Turunen
Lecturer
Duojár

THE PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

THUS REFERS TO EXCLUSIVE RIGHTS, WHICH MAY PROHIBIT other actors from using the expression in a certain manner. Preservation and safeguarding, on the other hand, refer to maintaining the vitality of traditional expressions in other ways. These aspects are not mutually exclusive but offer different solutions to different threats and challenges. For example, the challenges posed by climate change or the ageing of the population cannot easily be addressed with intellectual property rights but rather by means of preserving and safeguarding culture. At the same time, unauthorised commercial use of traditional expression can be addressed by means of protection. In this material, the focus is on the protection aspect (how intellectual property rights can be used to safeguard the vitality and continuity of cultural heritage).

INTANGIBLE CULTURAL HERITAGE

Protecting heritage by means of intellectual property rights

Preserving and safeguarding the heritage by identifying, documenting, storing and reviving it, by training those who maintain the heritage, and by handing it down to future generations.

USING DIFFERENT INSTRUMENTS IN DIFFERENT SITUATIONS

Unauthorised commercial use

Unauthorised use in tourism and advertising, creation of invented images

Tangible heritage, sacred places and names and traditions associated with them

Privacy issues related to traditions, rights of the performers

Climate change, shrinking of reindeer habitats and environmental change

Economic factors if the tradition does not provide livelihood and there are not enough authors or creators

Language situation and language wellbeing

Geographical location of the population

Situation where traditional knowledge and traditional expressions are not handed down to new generations



GENERAL PRINCIPLES
GOVERNING
INTELLECTUAL
PROPERTY RIGHTS



THE PURPOSE OF INTELLECTUAL PROPERTY RIGHTS

IS TO PROMOTE CREATIVE AND INTELLECTUAL effort and the creation of new innovations and inventions. At the same time, they help to make new inventions and creative work accessible to the public. Intellectual property rights also improve the functioning of the market, boost competition and safeguard consumers' interests. In a broad sense, the purpose of intellectual property rights is to enhance the intellectual and cultural capital of humanity. Thus, intellectual property rights are not meant to prevent traditional and communal activities. By protecting traditional knowledge, expressions and skills, they can promote creativity at individual and community level.

Did you know?

'TRADITIONAL' DOES NOT MEAN SOMETHING OLD AND UNCHANGED AS TRADITIONAL EXPRESSIONS ARE CREATED, communitised and handed down to future generations. Although it is not always possible to identify individual authors and creators, traditional expressions are always based on human intellectual effort carried out and accumulated in the community. Therefore, maintaining and continuing traditions and keeping them up to date are also part of creative and intellectual effort that deserve the protection provided by intellectual property rights. Traditional expressions combine communal activities with individual expression. Traditions also change as new models, forms and expressions become accepted in the community as part of the common heritage. The mere fact that traditional expressions evolve over generations does not mean that they would be ineligible for legal protection. The concept of living culture refers to communal interaction in which traditional expressions are recreated again and again and each author or creator can bring their own additions to old expressions within a common framework.

INDIVIDUAL CREATIVITY AND TRADITIONS OVERLAP

My family has been known for strong handicraft traditions for generations. My grandfather made sledges, pulkas and butter boxes. The grandmother made belts and clothes with elaborate patterns telling a great deal about the person wearing them. My father moved from traditional everyday items to art handicrafts: skilfully decorated objects made of wood, antlers, bones and silver. Making items of silver is a relatively new thing in the Sámi community.

I have inherited the sense of forms, materials and using ornaments as decorations. Traditions live and change with time. When changing my models I am guided by my own sense of beauty. I do it gradually so that objects that have become familiar will remain familiar and recognisable. You do not create new things for the sake of being fascinated by new things because that is a passing feeling. For me, it is much more important to add my creations to the continuum of past and future generations.

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Sami Laiti
Entrepreneur
Duojár

THERE ARE A NUMBER OF GENERAL PRINCIPLES

COMMON TO ALL INTELLECTUAL PROPERTY rights. They are based on exclusive rights which can be transferred and the validity of which is usually of limited duration.



AN EXCLUSIVE RIGHT ALWAYS HAS AN IDENTIFIABLE OWNER (RIGHTSHOLDER). The owner can be an individual or an organisation, such as a company, association or other actor. An unknown rightsholder may in some cases be represented through a representative. However, the rightsholder or the holder's representative is always legally identifiable.



AN EXCLUSIVE RIGHT MEANS that certain actions, such as publicly using a creative work enjoying copyright protection or using a protected trademark in business activities, require the consent of the rightsholder. The scope of the exclusive right (the type of activity that requires the permission of the rightsholder) is specified in each piece of legislation on intellectual property rights. However, the basic principle is that the protected item may only be used with the consent of the rightsholder.



TRANSFERABILITY OF AN EXCLUSIVE RIGHT

means that the rightsholder can transfer their rights, in full or in part, to another person or organisation. The rightsholder can also license the work in question (grant specific persons the right to use or change the protected work).



THE EXCLUSIVE RIGHT OF THE RIGHTSHOLDER is not absolute and the content of the right has been restricted in order to safeguard the interests of the public. For example, you can quote a copyrighted work and use it for private purposes or in teaching. Similarly, trademark rights only apply when a sign or a symbol is used as a trademark in business activities. The purpose of the restrictions is to allow the free use of protected symbols and expressions in important situations. In fact, in the case of any infringements, it should first be examined whether the alleged misuse falls within the scope of a rule restricting the coverage of intellectual property rights.



INTELLECTUAL PROPERTY RIGHTS ARE

time-limited. The rightsholder is considered to receive a time-limited exclusive right to the results of their creative effort as a reward for their input. However, at the same time, in the interests of humanity, this exclusive right is of limited duration. It is important to find a balance between the duration of the exclusive right and the material available to everyone. After the creative work is no longer protected, the results of the effort are freely available to everyone. Trademarks are an exception to this rule because the protection they provide can be extended indefinitely by renewing the registration at certain intervals.

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Heli Huovinen
Theatre professional
Musician

ETHICAL CONSIDERATIONS AS STARTING POINT FOR SUSTAINABLE CREATIVE EFFORT

More and more artists want to act in an ethically sustainable manner. Nowadays, even individuals are contacted and asked to give permission for using Sámi identity in such contexts as summer theatre performances. However, a single person cannot speak on behalf of everyone and an individual often gets into a difficult situation if they feel that they should grant such permissions. At the same time, one should not be hypersensitive and delete all references to Sámi or the Sámi homeland in the works. Perhaps there should be an authority or a representative that could be contacted at a low threshold so that individual persons do not need to determine who can highlight Sámi issues in creative works and how. However, the most important thing is to ask if there is any uncertainty about the matter.



INTELLECTUAL PROPERTY RIGHTS

have a relatively uniform history internationally, they are based on similar principles and they are more or less similar in most countries. However, there are differences between the geographical scope of the protection offered by intellectual property rights. For example, under international copyright agreements, an author or creator who has created a work in Finland also receives protection for their works in other countries that have joined the agreements. However, the trademark must be registered in the European Union or separately in each country where protection is sought. Similarly, patent and design rights are only valid in the countries in which they have been registered. When intellectual property rights are examined internationally, it is therefore important to check in which geographical area the rights apply.



THE GENERAL PRINCIPLES GOVERNING

intellectual property rights are not necessarily well-suited to traditional use and the protection of cultural heritage. Differences may arise because traditional knowledge and traditional cultural expressions can be considered as the property of the entire community without specifying the ownership of individual persons. Time-limited rights may also be unknown in the traditional context; instead, the right can be handed down from generation to generation and remain valid indefinitely. This may, for example, be the case with traditional yoik songs belonging to certain families, regardless of when they were created. There may also be differences between the scope of exclusive rights with respect to intellectual property because in the traditional context, the restrictions and rules are different from those set out in the law.

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Hanna-Maaria Kiprianoff
Multi-skilled Skolt Sámi
cultural actor

DECISIONS ON COMMON TRADITIONS SHOULD BE MADE TOGETHER

It is important that the Sámi culture is visible but it is also important to know who benefits from it and how. The village meeting has traditionally been the highest administrative body in the Skolt Sámi community. External actors have occasionally asked for a permission to use the design and symbolism of traditional Skolt Sámi items in new commercial products. The requests have been discussed by councils, which have decided to submit the matter to village meetings. However, no permission has been granted. The use of the designs and symbols would only have given visibility to the Skolt Sámi community, which is one reason why the requests have been rejected. The actor making the request would have benefited economically from the use but none of the benefits would have been channelled to the Skolt Sámi community.

The commercial actor acted correctly by first submitting a request before making any products. Skolt Sámi village meetings discuss a wide range of different matters and have thus limited resources. There are a lot of items on the agenda and for this reason, the matters must be prioritised.

DESPITE THESE DIFFERENCES

INTELLECTUAL PROPERTY RIGHTS may in some cases and to some extent be used to safeguard the traditional context of the expressions. This is also justified because there is no legislation in Finland regulating the use of traditional expressions and safeguarding the communal interests behind them.



USE OF INTELLECTUAL PROPERTY RIGHTS TO protect traditional expressions should be examined from two different perspectives.



INDIVIDUALS, SUCH AS ARTISANS, YOIK SINGERS, visual artists and other persons continuing traditions who use traditions to perform intellectual work and to create original expressions, can protect the results of their own efforts in the same manner as any other artist or entrepreneur. In that case, the use of the protected expression requires the consent of the rightsholder unless the use falls within the scope of a restriction on the exclusive right specified in the law.



IT SHOULD BE NOTED THAT THE AU-thor's or creator's exclusive right based on intellectual property applies to both external actors and the members of the author's own community. Under the law, the author or the creator may independently decide to also exercise their rights in relation to the members of their own community. Therefore, in a traditional context, it is also important to examine how profoundly the content of the protected expression has been influenced by the tradition of one's own family, region or the entire Sámi community. It should also be considered whether the person seeking protection for creative work and the community have had a trust-based relationship influencing the creative efforts that could also define the use of intellectual protection rights. This may be the case if there are agreed rules or tacit consent among the authors or creators in the community on how extensively persons belonging to the same group may borrow each other's works and how rights to intellectual efforts should be used. Sometimes the existence of a tradition and traditional content can constitute an essential framework for individual expression. However, this does not limit anyone's right to also create entirely new and original works based on traditions. The question is to what extent the content of the protected expression has been influenced by common tradition and to what extent it can be considered part of the common tradition, or whether it is a new work created by the author.

Did you know?

A TRUST-BASED RELATIONSHIP BETWEEN AUTHORS AND THE COMMUNITY CAN SERVE AS A BASIS FOR CREATIVE EFFORT. In its 1998 ruling *John Bulun Bulun & Anor v R & T Textiles Pty Ltd*, the Federal Court of Australia concluded that the original copyright can only be created for individuals and that the author's community does not therefore have the status of a rightsholder in the copyright on the work. However, it was stated in the decision that because there was a trust-based (fiduciary) relationship between an individual author and the author's background community, which had been necessary to create the work, the individual author should also consider the interests of the community when using the copyright. Such a fiduciary relationship could therefore oblige the rightsholder to act in a certain manner when using the copyright even if the copyright belonged to the rightsholder as the creator of the work.

The decision was based on Australian copyright law and only limited conclusions can be drawn from it when legislation in the Nordic area is interpreted. However, the general principle of the ruling concerning the trust-based relationship between an individual author and the author's background community and its role in the creative activity and impact on the use of the copyright may also serve as useful general guidance in the interpretation of Nordic copyright laws. The agreements that authors can be considered to have concluded when starting their creative effort may be relevant when it is examined how the copyright should be used.

IN ADDITION TO INDIVIDUALS PROTECTING THEIR OWN INTELLECTUAL EFFORT

COMMUNITIES MAY ALSO SEEK TO USE intellectual property rights to protect their own cultural heritage. In that case, it is also a question of how the rights can be used to meet the legitimate legal expectations of the Sámi communities arising from the Constitution of Finland and the Declaration on the Rights of Indigenous Peoples. For example, intellectual property rights can be used to enforce the cultural autonomy of the Sámi in the Sámi homeland enshrined in the Constitution of Finland. Communities can protect their expressions in order to ensure that they are used in the market in a manner respecting traditions. However, the protection of well-known expressions may be limited by the internal requirements of intellectual property rights, especially if the expressions are very old or they are already widely used in the market. This is a matter of case-by-case assessment and of the manner in which specific expressions are protected. The social, political and cultural implications of legal protection must also be taken into account (for example, who can apply for protection, who decides on its use and who is allowed to benefit from the protection).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



COPYRIGHT AS
AN INSTRUMENT
PROTECTING
CREATIVE EFFORT

THE PURPOSE OF THE COPYRIGHT

IS TO ENCOURAGE CREATIVE EFFORT AND TO ensure that creative works are made available to the public. This can be achieved by giving authors and creators exclusive rights to their works while at the same time restricting these exclusive rights to ensure wider access to the works.

The copyright protects all original expressions and the traditional character of the work does not make it ineligible for copyright protection. Artisans, yoik singers, visual artists and other authors creating traditional expressions automatically receive copyright protection for their works provided that the works meet the originality criterion required for the copyright. Being of traditional nature does not mean being stagnant and a traditional work may be characterised by individuality and originality even if it is produced in accordance with traditional rules and practices.

THE SOUNDS OF BYGONE TIMES AND PAST GENERATIONS CAN BE HEARD IN YOIK SINGING

Using a Sámi yoik may pose challenges. There are old recorded yoik songs that may refer to something in a manner that you can only interpret if you are familiar with the subject and the context. Yoik songs telling about individuals give a comprehensive picture of the subject by creating a sound painting of the person in question. Yoik songs are recollections of the past and they contain references to events and places. They also have their own regional characteristics. Yoik singing is alive and well and new yoik songs are created all the time.

It is important that the Sámi yoik is heard and seen because that is how it will remain alive.

The challenge is to make old yoik songs relevant in a culturally sustainable manner. How can one define 'somebody's property'? What can be updated? On the one hand, it is important to make old yoik songs known to today's audiences while on the other is always important to consider what is the best way to support the Sámi community and the handing down of traditional knowledge.

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Anna Näkkäläjärvi-Länsman
Musician
Postdoctoral researcher

THE COPYRIGHT IS ALWAYS CREATED

FOR THE AUTHOR OF A WORK AS SOON AS THE work is completed and no separate registration is needed to create the protection. Similarly, the performer of a work or folk tradition also receives protection for their own performance. The work may not be used without the author's permission and the work or its performance may only be recorded or published with the author's consent. A variation of the work is also granted copyright protection. However, the copyright is not absolute as private use, educational use and quotations are exempted from it.

The copyright protects the form of the work (features that can be detected in the work by senses). The copyright does not protect style, knowledge, skills or competence. Anybody examining a work can use the ideas, themes or stylistic features that they detect in the work. Furthermore, the Copyright Act does not prevent anybody from seeking inspiration from a work or from imitating earlier works if this will result in a new and independent work that is sufficiently different from the earlier works.

SÁMI STORYTELLING TRADITIONS AS INSPIRATION IN MUSIC

The voice of Sámi storytellers can be heard in the background of certain songs on the upcoming rap record we have made with Amoc. We interviewed Sámi storytellers for the lyrics and agreed with them that we would use some of their stories as material for new lyrics. Together, we pondered what would be appropriate for publishing and how the stories can be used. Thus, although the rap lyrics were written by us, the themes and contents of the songs are based on Sámi stories. The Sámi storytelling traditions are the key starting point and inspiration for the new album and they are an example of how protecting traditions is also important when new and individual creative works are produced.

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Áilu Valle
Musician

THE AUTHOR OR CREATOR MAY TRANSFER THEIR COPYRIGHTS

IN FULL OR IN PART AND MAY ALSO PERMIT SPECIFIC persons to use their works as a basis for new works. The author or creator may also authorise an association, organisation or other representative to supervise the copyright on the author's behalf. A group of authors or creators can decide that all members of a community may use the copyrights of all authors of the group to create new works. The authors may also undertake to use their own copyrights in the interest of all members of the community.

The copyright is in effect for 70 years from the end of the year when the author dies. If the author is not known, the 70-year copyright term starts from the release or creation of the work. After the end of the copyright term, anyone can use the work freely. However, the protection of classics rule restricts the use of certain works in the public domain. Under this rule, old creative works in the public domain may not be treated in a manner that violates cultural interest in them. In Finland, the protection of classics is supervised by the Ministry of Education and Culture.

Copyright issues are often difficult to resolve in advance. It may be difficult to determine whether the work in question is protected by copyright. You can request a statement on copyright matters, such as the copyright protection of an individual product, from the Copyright Council. The statements are provided free of charge.



Handicrafts and their patterns, traditional music and narrated stories are eligible for copyright protection if they are sufficiently original.





THE AUTHOR, THE PERFORMER AND THE PRODUCER

OF THE AUDIO RECORDING ARE EACH PROTECTED BY COPYRIGHT.

	AUTHOR	PERFORMER	PRODUCED OF THE AUDIO RECORDING
<i>What are their roles?</i>	The author creates a work, such as a song or the lyrics. The author does not necessarily perform the work.	The performer performs a piece of music or a play or reads a poem written by the author. The performer may also perform a piece of folklore written by an unknown author. The performer does not necessarily create the works they perform.	The first party to record the sound of a specific performance is considered the producer of the audio recording.
<i>Object of copyright</i>	The work created by the author is the object of the copyright protection. The work (such as a melody or a poem) can be written down but the work can also be produced in an improvised manner and exist without any permanent form. For example, a yolk song created impromptu during a hike is granted copyright protection on the same basis as a symphony written on a music paper.	A single performance of a specific work is the object granted protection. The performance of a work is always an action taking place at a certain moment. The performer performs an existing work created by the performer in question or somebody else.	An individual recording is the object granted copyright. The producer produces the recording or digital file that can be used to listen to the performance of the work.

	AUTHOR	PERFORMER	PRODUCED OF THE AUDIO RECORDING
<i>What is covered by copyright?</i>	The copyright covers the work created by the author as well as its variations and other forms. For example, a film version of a novel can only be produced with the consent of the author. The author's permission is also required for the performance of the work.	<p>The performer's right applies to their own individual performance taking place at a certain moment.</p> <p>The performer's right does not prevent others from giving the same performance again.</p>	The producer's right applies to the individual audio recording made by the producer. The right of the producer does not prevent others from performing and recording the same work again.
<i>Who can grant a permission and for what?</i>	The author permits others to use the work in public, such as its performance and the distribution of the copies of the work.	The performer needs the author's permission to perform the work publicly. The performer's permission is required for the distribution of the recording of their live performance in public, for example in the radio, on television, social media or online platforms. The performer is entitled to a compensation for a recorded presentation.	<p>The producer needs the permission of the author and the performer to record the performance of a work for non-private use.</p> <p>The producer may not use the recording in public without the consent of the author or the performer.</p> <p>However, the producer decides on how the recordings they have made are used. The author or the performer does not have any right to request a recording from the producer. The producer owns the recording in its possession and the rights to right to it, unless otherwise agreed.</p>

THE COPYRIGHT IS IN EFFECT

FOR 70 YEARS FROM THE AUTHOR'S DEATH. AFTER THAT date, the work is in the public domain. However, if a work in the public domain is later recorded, this creates a new and separate right to the performer and the producer of the audio recording. In that case, anybody can perform and record the work but an audio recording of the work made by somebody else is not necessarily in the public domain. In that case, the work is in the public domain but a specific recording of the performance may be covered by the copyright. It should be remembered that the copyright terms of works, performances and audio recordings are independent of each other.

PROTECTION OF CLASSICS AS AN INSTRUMENT PROTECTING OLD WORKS OF PARTICULAR IMPORTANCE

UNDER SECTION 53 OF THE COPYRIGHT ACT, “if, after the death of the author, a literary or artistic work is publicly treated in a manner which violates cultural interests, the authority to be designated by decree shall have the right to prohibit such an action, notwithstanding that the copyright therein is no longer in force, or that copyright has never existed”. In other words, if a work of particular importance is publicly used in a manner that can violate cultural interests, the Ministry of Education and Culture can prohibit such action. The party dissatisfied with this decision may bring the matter before a court.

Protection of classics is a special right contained in the Copyright Act under which a public authority can prohibit a certain action to protect the public interest in connection with particularly important works. However, the right has only been used once: In the 1960s, the distribution of certain classic children’s books was prohibited because it was considered that the translations were of poor quality and the contents of the works had been changed. There was another case in 1980s, which, however, did not result in a ban. The case involved the use of the paintings of Akseli Gallen-Kallela as illustrations in a set of dishes sold as a collectors’ series.

Traditional expressions are, at least in principle, eligible for protection under the protection of classics if they meet the

requirements for a copyrighted work. In such cases, it is also a question of how cultural interest is defined and how it has been violated. If, for example, designs of a Sámi costume could be considered eligible for copyright protection, any use violating traditional rules should be followed by an assessment of whether the use of a Sámi costume in a manner that affects or harms its semantic content might violate cultural interests.

When this legal provision is examined, it is essential to ask where and how the cultural interest with regard to the work can be violated and what is the audience that this interest concerns. However, the infringement should be so obvious that identifying it does not require extensive knowledge of art or literature and the infringement is clear to everybody. No case law exists on whether the protection of classics is limited to nationally recognised works or whether an educational or cultural value identifiable among a particular group or community can also be considered a cultural interest.

In other words, even if a traditional expression were so old that the copyright on had expired, the use of the expression and the procedure directed at it can be assessed by the authorities within the framework of the Copyright Act if a traditional expression that is particularly important and still part of a living culture is used publicly in a manner that clearly violates cultural interests.



TRADEMARK RIGHTS
CAN ALSO BE USED
TO PROTECT
TRADITIONAL SYMBOLS

A TRADEMARK RIGHT

GIVES AN ENTREPRENEUR THE EXCLUSIVE right to decide on the use of a protected mark as a symbol for certain products or services available in the market. The trademark holder may prohibit others from using an identical or similar mark as the symbol of identical or similar products in the market. The purpose of the trademark rights is to safeguard competition and the functioning of the market and to protect marketing and product development investments made by entrepreneurs. A trademark indicates the origin of the products and services and distinguishes the products and services of a company from those of its competitors. However, trademark rights only apply to business activities and they do not restrict the use of symbols by individuals or the use covered by freedom of expression. However, the difference between commercial and private use is not always straightforward as artistic activities can be both professional and commercial at the same time, but also enjoy the protection granted by the freedom of expression.

In addition to ordinary trademarks, there are also collective and certification marks. With a trademark, an entrepreneur can be associated with a specific product or service whereas a collective mark indicates that the entrepreneur is a member of a specific community. The certification mark, on the other hand, indicates that the product meets specific quality requirements.

SÁMI CERTIFICATION MARKS



THE SÁMI DUODJI MARK used for Sámi duodji handicrafts has been registered as a certification mark in such countries as Norway. The mark may be used by the members approved by the community administering the mark.



THE 'SÁMI MADE' MARK, indicating a Sámi product, has also been registered as a certification mark. The use of the mark is administered by the Sámi Council and it may be used by persons who meet the conditions for its use.



ANY SYMBOL THAT CAN be clearly and accurately displayed can be used as a trademark. Most trademarks are words or patterns or combinations of the two but an audible signal or a three-dimensional shape, such as a product package, colour combination or moving image, can also be used as a trademark.

Did you know?

MANY TRADITIONAL SYMBOLS ARE USED IN THE SAME MANNER AS TRADEMARKS and many traditional expressions fulfil similar needs. A traditional expression can indicate origin or ownership and a symbol can be used to differentiate between things. For example, reindeer earmarks are unique identifiers that are used to mark the reindeer of individual owners. Likewise, in traditional handicrafts, the authors can use their own individual marks to indicate authorship.

A TRADEMARK RIGHT IS CREATED

BY REGISTERING OR ESTABLISHING A TRADEMARK FOR THE USE of the entrepreneur. An application for the registration of a trademark in the territory of a specific country can be submitted to the national authorities of the country in question or in the EU area to the European Union Intellectual Property Office. A registered trademark is in effect for ten years from the date of application but the registration can be renewed for ten years at a time. An exclusive right may arise without registration if the mark is well-established and generally known as the entrepreneur's logo in connection with specific products or services. However, it may be difficult to prove that a trademark is well-established and in practice, registering a trademark is a more common way to protect a logo.



THE TRADEMARK RIGHT ONLY PROTECTS THE use of the symbol in connection with the products or services covered by the registration. When planning the registration, the entrepreneur should therefore carefully consider which products or services should be provided with trademark protection. Similarly, when a trademark infringement is assessed, it should be examined whether the products or services used are identical or sufficiently similar and whether the trademarks used are identical or similar to the extent that the relevant target audience may be unable to make a distinction between the origins of the products or services. If the trademarks or the products and services are sufficiently different, there is no likelihood of confusion or trademark infringement.



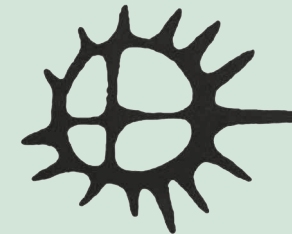
BEFORE APPLYING FOR THE REGISTRATION OF a trademark, the entrepreneur should examine the scope of their own activities and future plans. The registration of a trademark costs money and the registration of the mark alone does not generate income or boost business. The trademark must also be used in the market to ensure that the registration will remain in effect. Even if a symbol is registered as a trademark, the rights to it may be lost if it has not been used in the market for five years as a trademark of the products and services for which it was registered. On the other hand, if an entrepreneur's aim is to expand an established business and to use a specific sign as a company symbol on a long-term basis, it may be reasonable to register a trademark even before the business is started. This is especially the case if there is a risk that someone else will unlawfully start imitating or using the same symbol in their own business activities.



WHEN PLANNING A TRADEMARK APPLICATION, one should check whether the trademark contains anything that is part of the common tradition of the Sámi community, certain regions or individual families. Although a trademark does not need to be the result of creative effort, the words and symbols used by the community should remain available to all members of the community. However, the mere registration of a trademark does not yet prevent anyone from using the protected mark, as it is always a question of how the trademark right is used and how the protected symbol is administered. Trademark right is the exclusive right of the trademark holder and the holder should actively exercise this right to ensure continuous protection. Moreover, a trademark right does not restrict the use of the protected mark outside business activities.

Did you know?

TRADEMARK RIGHTS MAY ALSO RESTRICT THE ACTIVITIES OF AN ACTOR CONTINUING A TRADITION. The application of a Norwegian jewellery company for a trademark had been approved in 2009. The trademark was very similar to the traditional Sámi solar symbol. The trademark holder also sought to prohibit traditional artisans from using a symbol infringing its trademark rights. The trademark was invalidated in 2020 as the values associated with the solar symbol were considered to be comparable to religious values and the registration of the mark was deemed to have been in breach of good practice. The Sámi artisans were also considered to have the constitutional right to use their own intangible cultural heritage.



Norwegian trademark registration No. 251306.



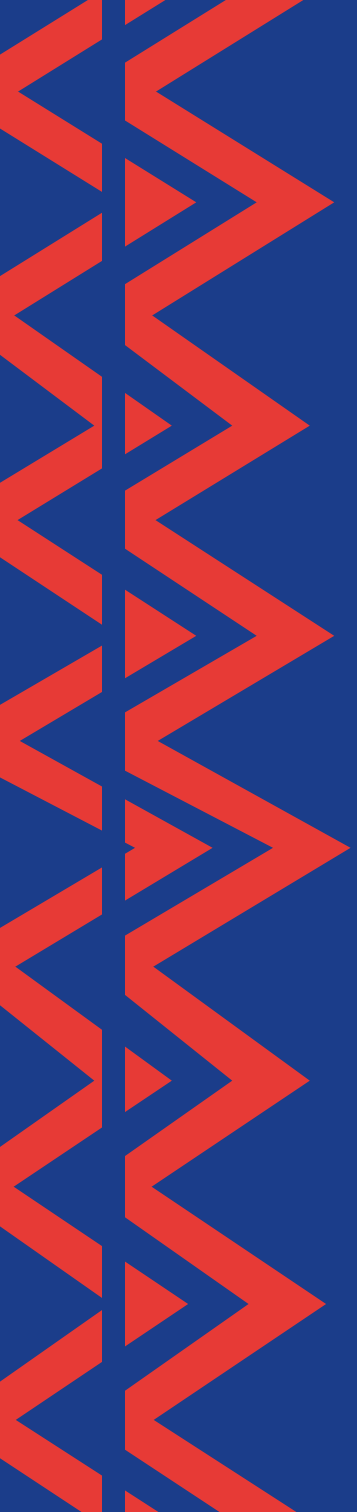
Sámi solar symbol.

WHEN AN APPLICATION FOR THE REGISTRATION

OF A TRADEMARK IS SUBMITTED, the geographical area in which protection is needed should be considered. If the activities are limited to the territory of a specific country, an EU-wide registration is not necessarily needed. However, if the aim of the company is to internationalise its business operations and operate globally (for example through the internet) EU-wide registration or registration that also includes non-EU countries should be a high priority.



IT SHOULD BE NOTED THAT A TRADEMARK registration alone does not provide a company with effective legal protection. As a trademark right is an exclusive right, the trademark holder must monitor the market for any infringements and actively protect its rights. When preparing a trademark application, the applicant should therefore consider the likelihood of any infringements and determine how to ensure the protection in practice. In this respect, organisations and associations representing the applicant's field may also assist in the practical implementation and representation of trademark protection.





OTHER CATEGORIES OF INTELLECTUAL PROPERTY RIGHTS AND LEGISLATION

GEOGRAPHICAL INDICATIONS

GEOGRAPHICAL INDICATIONS PROTECT THE names of traditional products from misuse and imitation. Like trademarks, they also indicate the origin of the product. Protection may be granted to a product name associated with a quality or characteristic attributable to its geographical origin. Protection can be applied for agricultural products, foodstuffs and alcoholic beverages. The protected name may be used by any producer operating in the area concerned and meeting the requirements for the use of the name. For example, the names 'Lapin puikula' (a potato variety from Lapland) and 'Lapin Poron liha' (reindeer meat coming from the reindeer herding area in northern Finland) have been registered and entered in the name protection system of the European Union.

Did you know?

GEOGRAPHICAL INDICATION PROTECTION FOR TRADITIONAL HANDICRAFT PRODUCTS. The European Commission has presented a proposal for the regulation 2022/0115 (COD), which would also provide handicraft products with geographical indication protection. The system would run alongside with the existing name protection system. The protection would be provided on the basis of the product's geographical location and its quality, reputation or other features must be closely associated with the region concerned and at least one stage of production must take place in that region. This means that the names related to Sámi handicrafts, such as gákti or duodji, or the name saamelainen käsityö (Sámi handicrafts) might be eligible for protection under which these designations could only be used for products that are at least partly produced in the Sámi homeland. However, the name only protects the geographical origin and not the creation of the product by a Sámi individual. The protection also applies to the product name and not the product itself. The Commission's proposal was submitted for comments during 2022, which means that there is still no certainty of the final form of the protection or the criteria for it.

DESIGN RIGHT PROTECTS THE DESIGN OR APPEARANCE OF THE PRODUCT

DESIGN RIGHT CAN ONLY BE granted to products with new and unique design. 'New' means that the application for design protection must be submitted before the product is presented to the public or released for sale. However, if the product has already been presented to the public, protection may be sought under certain conditions within 12 months of the presentation. The uniqueness of the design is determined on the basis of its overall impression. The design must differ from already known designs and the differences may not be limited to minor details. The novelty of the design is assessed from the perspective of what is called well-informed consumer and consideration is also given to the purpose of the product and the product group. The key consideration is whether the de-

sign differs from what is already known in the market and whether the differences are limited to minor details. The design must also be the result of human intellectual effort and designs such as natural shapes cannot be registered. A registered design right is in effect for 25 years. An application for the registration of a design right in a specific country can be submitted to the authorities of the country in question and in the EU area to the European Union Intellectual Property Office. There are differences in the registration procedures between national and EU authorities and they concern such matters as whether the authorities investigate the novelty and uniqueness of the design at their own initiative during the application stage or whether the other party should, at a later stage, apply for the invalidation of a design that fails to meet these criteria.

Did you know?

DID YOU FORGET TO PROTECT THE DESIGN BEFORE THE PRODUCT WAS PRESENTED TO THE PUBLIC? An unregistered design can be protected as what is called an unregistered Community design for three years in the territory of the European Union from the date on which it was presented to the public. Therefore, if a product without design right protection has been placed on the market, the manufacturer may still invoke its rights against other manufacturers in the territory of the European Union for three years from the date on which the product was presented to the public. This protection gives a three years' lead to such groups as artisans that do not consider the registration of each of their designs as cost-effective but whose designs may be copied quite quickly after they have been placed on the market. The design may not be copied without the consent of the manufacturer during the three years following the date on which the product was placed on the market if the product design meets the requirements of uniqueness and novelty required for design protection at the time of the disclosure.

PATENT RIGHTS PROTECT INVENTIONS

PATENT PROTECTION CAN BE GRANTED TO A TECHNICAL SOLUTION that meets patentability requirements: the solution must be new, inventive and industrially applicable. The requirement for inventive step means that the solution must significantly differ from the technical solutions that are already known. The invention itself and the parts of the invention that should be covered by the protection must be carefully specified in the patent application. The patent right gives the holder the exclusive right to use the invention professionally (to manufacture, sell or use the products containing the invention). The patent is only valid in the countries in which the patent application was submitted and in most cases it remains in effect for a maximum of 20 years from the date of application.

UTILITY MODEL PROTECTION IS INTENDED FOR SIMPLE INVENTIONS

UTILITY MODEL IS INTENDED FOR SOLUTIONS THAT ARE SIMPLER THAN patentable inventions. Applications for utility models are processed more quickly than patent applications and the fees charged for them are lower than those payable for patents. The period of protection granted to a utility model is also shorter (maximum of ten years). There must be clear differences between a utility model and existing technologies. The invention must also be new and industrially applicable. A utility model gives the holder the exclusive right to use the protected invention professionally.

TRADITIONAL KNOWLEDGE AS TRADE SECRET

A TRADE SECRET MEANS ANY INFORMATION that is not generally known or easily available and that therefore has economic value for a company and that the company seeks to protect by reasonable means. Under the Trade Secrets Act, a product violating a trade secret means a good or service the design, characteristics, functioning, production process or marketing of which significantly benefit from an unlawfully acquired, used or disclosed trade secret. The Trade Secrets Act thus regulates the use of valuable information in business activities and when the suitability of the Act is assessed it must be examined whether the holder of the information is an entrepreneur and whether the information has economic and business significance.

ACTING FAIRLY WHEN USING CULTURAL HERITAGE ON A COMMERCIAL BASIS

THE ACT ON UNFAIR BUSINESS PRACTICES prohibits practices that are in breach of good business practice or are otherwise unfair to other business operators. Such activities include the use of false or misleading expressions concerning one's own or somebody else's business activities that are likely to affect the demand for or supply of a product or to harm the business activities of somebody else. Moreover, expressions referring to irrelevant circumstances or that are presented or formulated in an inappropriate manner may not be used in business if the expression in question is likely to harm the business activities of somebody else. An opinion on an unfair business practice can be requested from the Board of Business Practice of the Central Chamber of Commerce, or (in a procedural matter) the Market Court can be asked to make a decision. The Act on Unfair Business Practices contains provisions on good business practices. Thus, when the Act is examined in a traditional context, it should be considered whether the activities intended to maintain traditions are business activities and whether the activities of a competitor are unfair or otherwise inappropriate in a manner specified in the Act.



PROTECTING TRADITIONS IS ALSO A QUESTION OF PROTECTING CONSUMERS' RIGHTS

THE CONSUMER PROTECTION ACT does not deal with intellectual property rights but its provisions may also be relevant to the protection of intangible cultural heritage.

The Act regulates the supply, sales, transfer and marketing of consumer goods and services by entrepreneurs to consumers. The marketing of such goods and services may not be based on unfair practices or practices that are inappropriate from the consumers' perspective. Marketing may be based on unfair practices if it is clearly in conflict with generally accepted societal values and in particular if it violates human dignity or religious or political beliefs. Similarly, a practice is considered inappropriate if it is in breach of a generally acceptable appropriate business practice and likely to significantly undermine the consumer's ability to make a reasoned purchasing decision or any other decision related to a consumer product and lead to the consumer making a decision that they would not have otherwise made. If the practice is aimed at a particular consumer

group, its inappropriateness is assessed from the perspective of this particular consumer group.

Under the Consumer Protection Act, false or misleading information may not be provided in marketing or in a customer relationship if the information is likely to lead to a consumer making a purchasing decision or other decision related to a consumer product that the consumer in question would not have made without this information. False or misleading information may in particular relate to the origin, manner and time of manufacture, use and effects of the consumer product and the results of tests carried out on the product as well as to the entrepreneur's or their representative's identity, contact information, personal characteristics and position in the market as well as the awards and recognition that they have received.

In marketing or in a customer relationship, the consumer must also be provided with essential context-based information that the consumer needs to make a purchasing decision or other decision related to a consumer product and the absence of which is likely to lead to the consumer

making a decision that they would not have made if sufficient information had been available. When the adequacy of the information is determined, consideration must be given to the clarity, comprehensibility and timeliness of the information, the limitations regarding the media used and other measures taken by the entrepreneur to provide consumers with relevant information.

From the perspective of the Consumer Protection Act, the lawfulness of market practices that utilise the Sámi cultural heritage to enhance the attractiveness of a product or service without having a legitimate link to the Sámi identity can be assessed in a manner that may affect consumers' purchasing decisions. In that case, it should be examined whether the directly or indirectly claimed link to the Sámi culture, arising from the origin, manufacturing method or characteristics of the product or service, is likely to affect the consumer's purchasing decision. If this is the case, but the product or service does not have any association with the Sámi culture that is conveyed by its marketing to consumers, the action may constitute a violation of the Consumer Protection Act. A notification of inappropriate marketing can be submitted to the Consumer Ombudsman on an online form.





PRACTICAL WAYS TO
DEFEND ONE'S OWN
RIGHTS AND THE RIGHTS
OF THE COMMUNITY

IN PRACTICE

THE PROTECTION OF INTELLECTUAL property requires market surveillance and an active approach on the part of the rightsholders. The authorities do not intervene in infringements of rights at their own initiative and the mere existence of an intellectual property right does not have any practical effect if the rightsholder fails to actively monitor their own rights. However, the authorities can provide advice on intellectual property matters. For example, you can contact the advisory services of the Finnish Patent and Registration Office for advice on trademarks, design rights and patents. You can turn to the European Union Intellectual Property Office (EUIPO) for advice on the European Union trademark system. In copyright matters, you can request a statement from the Copyright Council. Grants are also available: for example, Business Finland's innovation voucher can be used to cover expenses arising from the protection of intellectual property rights.

IF YOU ARE

AN ARTISAN, A MUSICIAN, A YOIK SINGER, A storyteller or other artist and you want to protect your traditions-based work with intellectual property rights, you should perhaps take a look at the intellectual products you create and whether the types of protection presented above can provide the necessary legal means for your own use. It might also be a good idea to examine the relationship between one's own work and the community's tradition as well as the collective features that might also be associated with your own intellectual effort. Who can decide on the use of the works and other expressions and who benefits from their use? How would you characterise the extent and nature of the interaction that has arisen between your own creative effort and the communal tradition? It is also important to consider the need for legal protection and the matters or actions for which protection is sought.

From the perspective of the communities, the expressions for which protection is sought may be generations old. In that case, it should be considered when the works were created and whether they are still protected by the copyright. Moreover, who is the copyright owner and has the ownership been transferred to such parties as the author's beneficiaries? On the other hand, trademark rights can be used to protect important signs, patterns, designations or symbols from unauthorised commercial use even if the objects of protection were old. It should be considered how collective interests and the continuity of traditions can be safeguarded when the use of intellectual property rights is planned and what are the threats or challenges against which these rights should provide protection.

IT SHOULD ALSO BE NOTED

THAT MOST OF THE people interested in intangible cultural heritage and traditional expressions want to act sincerely and respect traditional customs. In that case, it is important that clear ethical guidelines or statements by rightsholders on how intangible heritage should be used are available to these audiences. This can already go a long way towards preventing the use of traditional expressions violating traditional customs and rules.

IN CASES INVOLVING INAPPROPRIATE USE

OF TRADITIONAL EXPRESSIONS, IT IS ADVISABLE TO FIRST contact the operator in a constructive manner and examine the basis for the activities and to explain the significance of the expression to communities, companies and individual authors. It should also be examined which uses fall under the freedom of expression and when the activity becomes a business aimed at obtaining economic benefits from the utilisation of traditional culture. The users of cultural expressions have not always understood the communal values associated with their use and the situation can be improved by negotiations and joint action.

IF DISPUTES ARISE

THE LEGAL ASPECTS OF THE SITUATION can be examined. Legal disputes are ultimately resolved in courts, but court proceedings are often time-consuming and involve cost risks. Therefore, before any legal action is considered, the legal aspects of the matter should be carefully examined on the basis of such instruments as official statements.

A STATEMENT CAN ALSO BE REQUESTED

PROACTIVELY AND EVEN IF THERE IS no dispute concerning the matter; for example, to determine whether a specific traditional expression constitutes a creative work. If the traditional expression is eligible for copyright protection, the Ministry of Education and Culture can be requested to take action to terminate the violation of cultural interests affecting the work. In this manner, cultural expressions that are particularly important and involve a significant cultural interest can receive legal protection, even if their actual copyright term has already expired.

IF THE USE OF THE EXPRESSION INVOLVES COPYRIGHT ISSUES

AND IT IS ELIGIBLE FOR COPYRIGHT PROTECTION, A STATEMENT can be requested from the Copyright Council. The Copyright Council may state whether a copyright has been created for the disputed expression, whether the copyright is still in effect, who is the rightsholder and whether the copyright has been infringed. The statement can be requested free of charge and, unlike legal action, it does not involve any cost risks. The statement is not legally binding but as the Council is an important advisory body, its opinions carry a great deal of weight.

IF A REGISTERED TRADEMARK CONTAINS

A FEATURE OF SIGNIFICANT INTELLECTUAL or community value, the option of invalidating the trademark can be considered. This was the case in the Solar Symbol dispute in Norway in 2020, in which a registered trademark was invalidated for such reasons. In such cases, you should first contact the Finnish Patent and Registration Office to find out whether/how to request for the invalidation of the trademark. The request for the invalidation of a trademark can also be submitted to the Market Court if, for example, a claim for damages is planned in connection with the case.

IF THE INFRINGEMENTS INVOLVE

MISLEADING MARKETING OR other activities that may be in breach of consumer protection legislation, submitting a complaint to the Consumer Ombudsman could be the first step. This may be the case if the marketing of products or services is likely to give rise to a false impression that they possess a certain characteristic or quality of the Sámi cultural heritage and if this fact might also influence consumers' purchasing decisions. Such action may involve misleading marketing.

IF INTANGIBLE CULTURAL HERITAGE

IS COMMERCIALY USED IN A MANNER THAT MAY involve unfair business practices, a complaint may be submitted to the Board of Business Practice of the Central Chamber of Commerce. In such cases, the complaint must be filed by an entrepreneur whose activities have been affected by the practices. For example, unauthorised use of traditional knowledge classified as secret in business activities could be an unfair business practice if this confidential knowledge has been important to the activities of traditional business operators.

ALL THE ABOVE- MENTIONED ACTIONS

PRECEDE COURT proceedings and they are based on the opinions and decisions of the authorities and experts.

IF CONSTRUCTIVE NEGOTIATIONS FAIL TO PRODUCE

A FAVOURABLE OUTCOME AND IF A CAREFUL PRIOR LEGAL assessment indicates that intellectual property rights or other legal protection based on the said legislation have been infringed, the option of submitting a complaint to the Market Court can be examined with a legal expert. In addition to complaints concerning the infringement of intellectual property rights, the Market Court also considers cases involving consumer protection and unfair business practices in Finland.



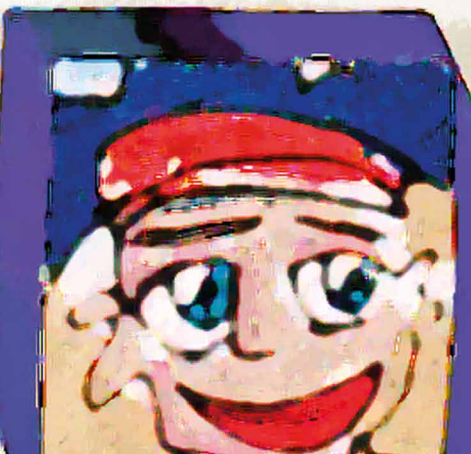
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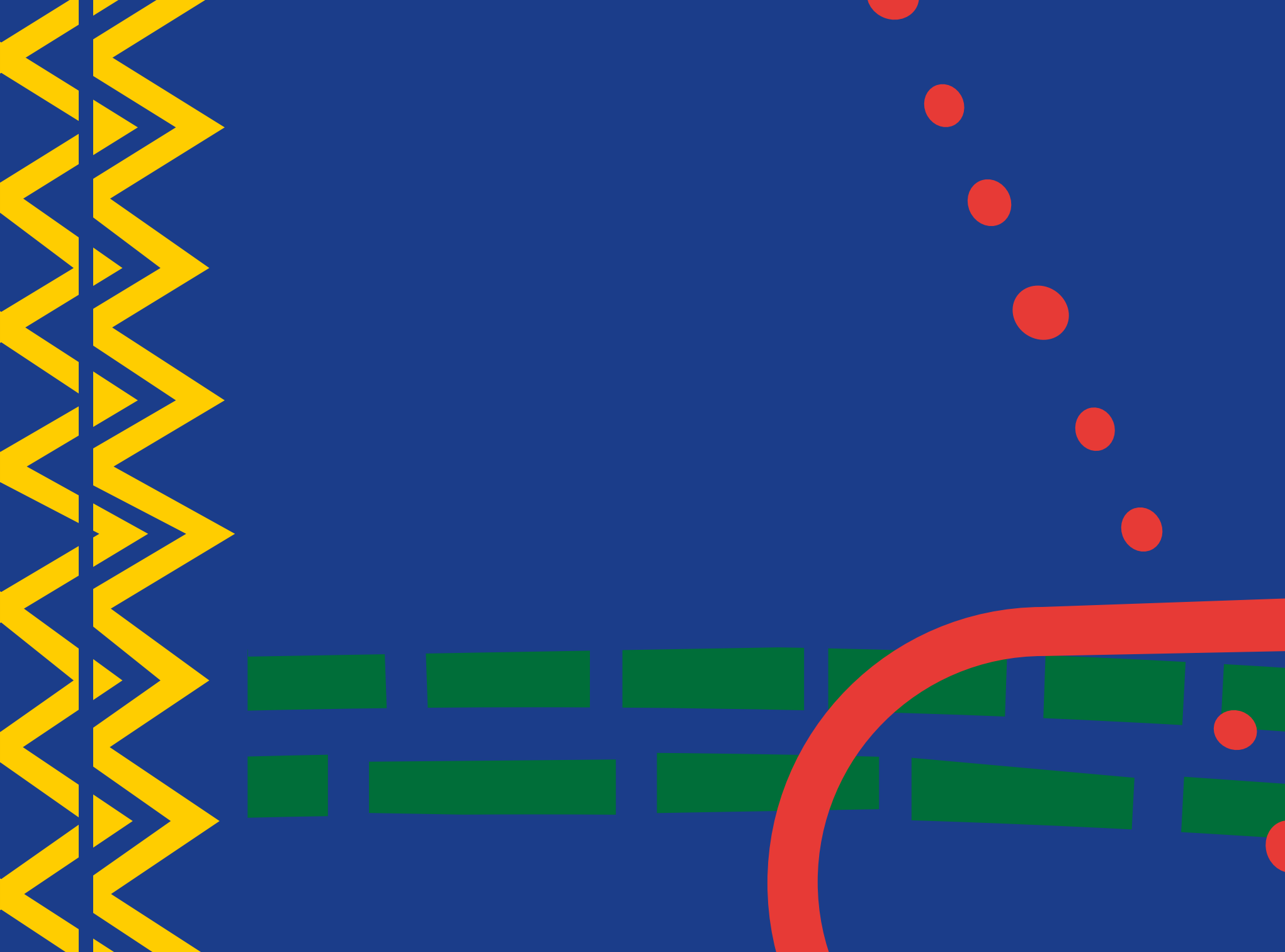
Jearaldat lea eana


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EANA.







Legislation on intellectual property rights (IP, “intellectual property”) is considered a complicated field of law. It is poorly known among both among indigenous peoples and policy officers in charge. However, IP rights play a key role in seeking solutions to meet the justified legal expectations of indigenous peoples.

In order to meet these expectations and questions which arise, a project on the cultural IP rights of indigenous peoples in the northern region was carried out during 2022, on the basis of which this training material was prepared.

The training material supports the education of both IP experts and Sámi artists and young Sámi people who practice traditional livelihoods. The main project implementer was the Sámi Education Institute (SAKK), and the project was carried out in cooperation with the Sámi Parliament and the Ministry of Education and Culture, the ministry responsible for the project.