

IV. IP Issues in Information Building and Sharing

As one of objectives of CACSARC-kg is to assist artisans of Kyrgyzstan and other Central Asian countries in protecting their professional, civil, economic, and social rights, we have to and would like to start working on IP issues in sphere of business based on traditional handicrafts.

IP issues are of the least investigated issues for craftspeople. But as many of them are ICH custodians, they are allowed to be informed about their rights and responsibilities in terms of transmitting traditional knowledge to future generations.

Some IP issues have arisen within CACSARC-kg activities on promoting Kyrgyz craft products, publishing printed materials, protecting craftspeople rights including their copyrights, and sharing information and traditional knowledge through training on craft technologies and ornaments.

- There was one case in which an ICH practitioner refused to share her knowledge on the traditional ornament and ornamental motifs creation, on the ornamental symbols and meanings interpretation.

The craftsperson refused to demonstrate her skills of the traditional patterns creation and to explain the meaning of the traditional ornamental motifs because she was afraid that teaching other craftspeople she would create competitors in the market.

- Issue related to recognising the ICH owner and sharing benefits by the first and second level users and producers have also arisen from time to time as have issues related to copyrights on similar products produced by several different designers using the same traditional technologies or images.

Many craftspeople make and sell felt rugs. The ornaments and technology they use are traditional, but some details could be recognised as innovations. For example, dyeing one piece of felt several colours was created by craftspeople of Tamchi village. This became an issue for the craftspeople community members in terms of ownership for this innovation, and therefore, the right to use it in the production of the felt rugs.

The same situation involves some innovative felt/silk technologies. Kyrgyz craftspeople never mixed silk with felt in past. In 1990s, however, they were trained for this 'nuna' technology (originally appeared in Japan) by European designers. But as Kyrgyz craftspeople are very creative in felt technologies, they successfully continued to develop 'nuna' technology. And there are craftspeople who claim ownership of using traditional elements within the framework of the non-traditional 'nuna' technology.

- Issues have arisen in using and disseminating information as well as in the trading of products. The cause and content of the issue is that the producer of traditional patterns for the Kyrgyz ritual costumes and modern dress refused to demonstrate the process of cutting and producing the patterns at the master classes during the presentation of the *Beauty in Harmony with Nature: Kyrgyz Traditional Craft Technologies and Ornament* project.

CACSARC-kg provides training for craftspeople and other people who would like to learn about traditional and modern handicraft technologies. Some craftspeople, the best producers of felt/silk scarves with traditional Kyrgyz patterns, refused to be involved as trainers and share their skills and knowledge with other people. The reason is that craftspeople do not want to teach their potential competitors, so their refusal is a method of protecting their business. We cannot push craftspeople to share their knowledge against their wishes, so we try to attract them by offering high fees to the trainers or looking for other trainers who do not care about competition.

The craftsperson, a sixty-year-old woman from Jalalabad province, refused the opportunity to partake, as she believed that after demonstrating her techniques, some craftspeople would be able to use her ornaments for profit, without sharing the profits with her. She feels that she is owner of these patterns even though this traditional knowledge was transmitted from earlier generations.

CACSARC-kg, as an organiser of the presentation of the project, accepted the right of the craftsperson for secrecy and invited another woman, a famous member of the CACSARC trainers' team who is always willing to share her knowledge with younger craftspeople. She made an excellent presentation of traditional patterns making.

We also invited a woman who refused to be a presenter as a participant of the round table to discuss issues of ICH and IP rights in the craft sphere.

In this way, we demonstrated our belief that in our age of globalisation, when traditional culture including craft objects are in danger of disappearing, the only way for small nation such as Kyrgyz to be saved is through transmitting ICH to the next generation. During round table, we tried to pass this thought to the participants (including one from Jalalabad), most of whom shared this idea.

Our institute has cases of documenting the rights and the participation of ICH subjects (bearers, practitioners, or communities) in the institute's information building and sharing activities. Up to implementing the *Beauty in Harmony with Nature: Kyrgyz Traditional Craft Technologies and Ornaments* project, we thought that we had right to use images of ICH products automatically as soon as we own photographs of the objects. But in the orientation seminar, Christensen Fund, the donor organisation, requested us to make an agreement concerning the use of ICH objects with our partners and custodians of traditional knowledge.

In framework of the project, ICH subjects (bearers, custodians, and creators) were informed in writing about the project's purpose in promoting ICH in Kyrgyzstan and abroad. So, all the ICH subjects, before being questioned by researchers, were requested to sign a form that gave CACSARC-kg the right to use the ICH information. This approval was signed by all respondents, excluding Chinese and Turkish citizens, who refused to sign any documents for political reasons.

Also, memorandum of understanding was signed between CACSARC-kg and the National Museum of Fine Arts concerning the common use of collected materials to promote Kyrgyz ICH. All profit should be used to continue activities on ICH protection after the *Beauty in Harmony with Nature: Kyrgyz Traditional Craft Technologies and Ornaments* project finishes.

CACSARC-kg still does not have a general guideline, policy, or protocol to address IP issues that could arise in the process of building and sharing ICH information. But the first steps were taken to prevent problems in sphere of IP rights, as we just faced the issue of following rules in collecting and sharing information related to ICH.

As we work very closely with creators and custodians of ICH, as well as with some users on the first and second level, we guess, that in future we can face the following problems regarding ICH and IP rights:

- identifying the nature of rights existing in ICH
- ownership of ICH
- maintenance of collected information

- adaptations
- secret, sacred, or confidential ICH
- bearers' moral rights
- sharing of benefits
- unfair use or misuse of ICH material

Some problems can arise in the stage of preparation. Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities. We faced the problem of not being able to identify any kinds of IP rights and can be made answerable for our activities in terms of misusing ICH objects.

Problems regarding ICH ownership can arise in the stage for collecting and creating information. We had an experience when some individual members of artisan communities pretended to hold ownership concerning some ICH objects, which, by our opinion, were related to the entire community.

There were some cases in our practice of craftspeople claiming ownership of patterns or ornamental motifs of traditional felt rugs. The ornaments as well as composition of the felt rugs depend on local traditions in felt rug production, felt rug fashions streams in general, and the individual style of the craftsperson. So, it is nearly impossible to recognise ownership of every individual felt rug producer, even in terms of a percentage.

In the stage for maintaining information, problems regarding unfair use or misuse of ICH material and problems regarding secret, sacred, or confidential ICH can arise.

The stage for processing and producing information can include problems regarding portraits, filming, and reproduction as well as problems regarding the use of ICH as a trademark, geographical indication, or domain.

Problems regarding adaptations, secret, sacred, or confidential ICH, bearers' moral rights, and benefit sharing belong to the stage of using and disseminating information.

In general, there are good and trustful relations between CASARC-kg Public Foundation and focus groups, which consist of different players in the craft sector as they know that our organisation was established to help them. But among the groups, there are many issues regarding copyrights related to ICH intellectual property rights. Mostly it comes into play with the opposition of producers:

artisan-artisan, artisan-designer, and designer-designer. Sometimes, it is an international issue, such as when traders from other countries represent Kyrgyz craft products as theirs or steal Kyrgyz designs to produce the same product for the international market.

CACSARC-kg includes intellectual property matters in the institute's vision, purpose, function, and polices. By the institute's charter, the artisan is one of the main values of CACSARC-kg and protecting artisans' social, civil, and economic rights are part of the objectives of CACSARC-kg.

Developing the craft sector in Kyrgyzstan, also mentioned in the charter as an objectives of CACSARC-kg, is impossible to achieve without protecting IP rights in the ICH sphere. Although we work with different ICH subjects, we never identified the nature of rights existing in ICH.

There is a real need in Kyrgyzstan to work out regulations and rules concerning the use of traditional knowledge. Now, it is impossible to recognise IP rights of the community or private person. As CACSARC-kg has not been equipped with policies or guidelines for protecting IP related aspects of ICH, we planned to collaborate with KYRGYZPATENT on these issues.