

III. Legislations in Mongolia

1. Constitution of Mongolia

Two important issues concerning the intellectual value and the copyright are stated in the Constitution of Mongolia. In Chapter 1 of the Constitution of Mongolia, it is stated that the historical, cultural, scientific, and intellectual heritage of the Mongolian people shall be under state protection, and the intellectual values produced by the citizens are the property of their authors and the national wealth of Mongolia. Furthermore, in paragraph 8 of Article 16, Chapter 2, it is said that the citizens of Mongolia shall be guaranteed the privilege to enjoy the right to engage in creative work in cultural, artistic, and scientific fields and to benefit thereof. Copyrights and patents shall be protected by law.

2. Current Legislation

- Law on Culture—1996
- Law on Protection of Cultural Heritage—2001
- Law on Copyright and Related Rights—2006

Mongolia's current legal system on cultural heritage does distinguish between intangible and tangible cultural heritage (called "physical items of historical and cultural value"), with the latter enjoying a greater protection.

The Cultural Heritage Law gives a definition of intangible heritage and has a section that specifically deals intangible heritage, but only in terms of physical protection or preservation. The Law defines intangible heritage as intellectual cultural properties possessing significance in the areas of history, ethnography, folk wisdom, customs, artistry, techniques, art, and science, which have been transmitted through traditional, non-physical means, and which are clear expressions of folk talent, knowledge, practices, wisdom, and skills.

It is evident that the scope of the definition covers not only traditional cultural expressions, but also traditional knowledge. Unfortunately, the Law does not provide a specific framework for protecting traditional knowledge and traditional cultural expressions against misappropriation or misuse. Therefore, protection against misappropriation or misuse of traditional knowledge and traditional cultural expressions must rely upon the existing legal system in place to protect intellectual property rights, copyrights, trademarks, or patents.

Currently, more than a hundred tradition-based inventions in the field of food industry (meat and dairy products), medicine, and medical compositions based on traditional medicine are protected by patents. Innovative artistic designs based on folkloric themes are protected by design patents. Trademarks as well as certification marks and geographical indications are used for protecting traditional medicine and technology.

Article 3.1.4 of the Law on Copyright and Related Rights defines an expression of folklore as ‘a work of traditional literature and arts which is communicated by any means from one generation to another and the author of which is unknown’. Expressions of folklore, as such, are not protected by copyright (as clearly stated in Article 8.1.7), but “derivative works based on the works of folklore” are included in the list of works protected by copyright (Article 7.1 12).

According to Article 3.1.3, a performer is ‘an individual who performs literary and artistic works, as well as expressions of folklore for the purposes of circus, stage, screen, and artistic performances through acts such as singing, playing, acting, dancing and declaiming’, which suggests that expressions of folklore can be protected by related rights.

The Intellectual Property Office of Mongolia (IPOM) is responsible for implementing public policy to protect copyrights and functions ‘to work with citizens and organizations on protecting expressions of folklore’ (Article 26.1.9).

IPOM undertakes an active capacity-building programme aimed at protecting the intellectual property interests of the bearers and custodians of traditional cultures, including when their cultural heritage is recorded, digitised, and disseminated.

An example of such a best practice is the production of *Mongolian Folklore-Worshipping the Nature*, a promotional DVD produced by IPOM with the assistance of WIPO. The performers' consent was sought and obtained with proper remuneration given, and a copyright notice and acknowledgement were displayed on the coversheet of the DVD. The acknowledgement reads as follows: 'The Intellectual Property Office of Mongolia would like to express its gratitude to native people of Hovd *aimag*, Munkhkhairhan *soum*, and other amateur performers for their talent and endeavours to preserve our cultural heritage.'

3. Under Consideration

- Draft Law on Protecting Genetic Resources
- Revision of the Law on Protecting Cultural Heritage

A draft law on protecting genetic resources and associated traditional knowledge and their sustainable use and equitable benefits sharing was proposed to be formulated within the framework of the World Bank and funded by the NEMO project. In August 2010, a working group was established at the Ministry of Nature, Environment and Tourism (MNET). After working on the draft law and through several consultations with stakeholders, the working group submitted a final draft law with the law concept to the MNET in January 2011. A registration system of genetic resources and associated traditional knowledge, provisions related to obtaining prior informed consent and benefit sharing, envisaged by the draft law, could be used as a defensive protection mechanism against a third party's claims of IP rights over traditional knowledge (as far as intangible heritage issues are concerned).

Within the framework of the Nationally Focused Action Plan for Mongolia entitled 'Strategic Assistance for Enhancing the Use of the Intellectual Property System in Mongolia', the provision of expert assistance on traditional knowledge and traditional cultural expressions was requested. The objective of the activity was to identify priority areas for IP protection of traditional knowledge and associated genetic resources in Mongolia and to identify administrative, legislative, and policy measures that the government of Mongolia could take to provide effective legal protection for Mongolian traditional knowledge and traditional cultural expressions.

In 2005, within the abovementioned project, a draft Law on Protection of Traditional Knowledge was formulated, and in 2008, after consultations with

the relevant stakeholders, it was submitted to the government. After the long consultations with the Ministry of Education, Culture and Science, it was decided that some provisions of the draft law could be incorporated in the Law on Protection of Cultural Heritage rather than adopt it as a *sui generis* law. Currently the Law on Protection of Cultural Heritage is under revision.