**CONVENTION FOR THE SAFEGUARDING OF THE
INTANGIBLE CULTURAL HERITAGE**

**Expert meeting on economic dimensions of**

**intangible cultural heritage safeguarding**

**27 – 28 September 2023 (Part I)**

**UNESCO Headquarters, Paris**

**20 October 2023 (Part II)**

**Online**

**Analysis of issues and trends**

Introduction[[1]](#footnote-1)

This document is an analysis of issues and trends describing:

1. positive and negative effects of commercialization actions,
2. initiatives to maximize the positive impact of commercialization for the safeguarding of intangible cultural heritage, and
3. initiatives to prevent and mitigate the negative impact of commercialization.

Positive and negative effects of commercialization actions

It is clear that economic activity, especially changes in scale and context, can have positive and negative effects on ICH safeguarding on the one hand, and on the livelihoods of practitioners and communities, on the other. These effects on safeguarding and livelihoods (or sustainable development more generally) are often intertwined, since earning a living may make continued practice possible. Under the Convention and in the academic literature, negative impacts of economic activity associated with ICH have been a particular concern for some time, while the positive effects of sustainable development have been emphasized more overtly since the mid-2010s. Some specific impacts (over-commercialization, decontextualization, misappropriation, misrepresentation etc.) have been identified, but there has been no clear attempt to define these terms. Nor has much attention been paid to associated concepts such as the ‘context’ of ICH practice and transmission which may be affected by ‘decontextualization’. Relatively little work has been done on determining what factors might be considered by communities in discussing the impacts of economic activities on ICH safeguarding, or indeed the value of ICH to them as a ‘driver’ of their sustainable development, which is often understood mainly from a national or regional perspective.

Some kinds of secret and sacred ICH practice rituals are considered by communities to be inappropriate for commercial exploitation. In Brazil, for example, the body art of the Wajãpi indigenous communities from Amapá were used inappropriately and without permission on wallpaper by a home decoration company. The community did not want to earn money in this way, and asked for reparations by the company such as stopping production, destroying stocks of the wallpaper and contributions towards a community project. In other cases, community leaders may decide that commercial use of their ICH should be restricted in some way, for example to specific times of year, certain occasions, or certain groups. These forms of ICH are particularly vulnerable to negative effects of commercialization actions by third parties (or even other community members), which could be described as decontextualization or misappropriation. The Traditional Feast of January in Chiapa de Corzo (Mexico) and its central figures, the Parachicos, was given as an example in the survey of the inappropriate marketing of an ICH element to tourists by private sector and local authority actors without community participation, which has reportedly had a negative impact on the development of the ritual cycle formerly associated with the element. A researcher had apparently also attempted to register the steps of the ritual dance under intellectual property laws, although it is not clear whether this would have been possible.

Other forms of ICH can more easily accommodate economic activity as part of normal practice and transmission. Examples of these can be found in all of the domains of intangible cultural heritage listed in article 2.2 of the Convention:

* **Oral traditions and expressions**: for example, poets, singers or storytellers being paid for performances, whether directly, in-kind or through patronage arrangements;
* **Social practices, rituals and festive events**: for example, festivals bringing visitors to a town who may purchase crafts, food and accommodation; seamstresses making costumes for ritual or festival performers; cooks selling traditional food products;
* **Performing arts**: for example, musicians or dancers being paid for performances or for instructing others;
* **Knowledge and practices concerning nature and the universe**: for example, the sale of traditional medicine and associated medical advice; use of traditional agricultural methods in farming for subsistence or sale of products;
* **Traditional craftsmanship**: for example, artisans selling traditional handicrafts; artisans repairing traditional buildings for payment.

Even where economic activities associated with ICH are part of normal practice and transmission, they frequently change, as does their broader economic context, which may give rise to negative as well as positive effects. For example, pastoralists across the world, faced with climate change, pandemics, conflict and other challenges, have to adapt very rapidly. New kinds of economic activity can also be associated with ICH elements: for example, ritual events might start to generate new forms of income through cultural tourism, as visitors increasingly want to have a deeper experience of another culture. Staging and professionalization of performance artists might change the nature and context of performance-related ICH. Higher demand for certain kinds of handicrafts, foods and other ICH-related products might increase earnings, increase production (sometimes by third parties), or change production methods. While growing demand could lead to mass production of cheaply-produced goods in some cases, in other contexts it could led to artisans charging higher prices for wealthier consumers.

Changes in the origin, scale or nature of economic activity around ICH have been the focus of much of the concern about negative effects. Overall, however, survey respondents considered negative effects of economic activities on both safeguarding and sustainable development to be less frequent on the whole than positive effects. In fact, more survey respondents noted positive compared to negative effects of economic activity associated with ICH across all relevant categories of impact, including effects on ICH practice and transmission, meaning and value, socio-cultural and economic as well as environmental impacts on communities.[[2]](#footnote-2) The nature of the effects may be difficult to determine, and they may be different in the short or longer term. In many cases, positive and negative effects of economic activity co-exist with effects that could be classified as neutral or indeterminate, and there may be different perspectives on the classification of such effects even within a community.

In work under the Convention, there has been more concern expressed about the impact of too much new economic activity, rather than too little, perhaps because the Committee has been concerned about the role of inscription on its Lists encouraging new forms of visibility and promotion of ICH elements. Committee decisions have focused more on challenges of over-commercialization and decontextualization than on under-remuneration, even as the discourse around sustainable development has emphasized maintaining practitioner livelihoods within a community. It is difficult to determine the relative importance of under-remuneration and over-commercialization in driving negative effects of economic activity on safeguarding on the ground, but as of December 2022 in the Urgent Safeguarding List’s nomination files, too little economic activity (e.g. insufficient remuneration or financial resources) was indicated as a problem in 42 of the 76 files (55%), whereas too much (or the wrong kind of) economic activity was indicated as a problem in only 30 files (39%).

Under-remuneration can thus be as much of a safeguarding problem as over-commercialization, but has received less attention. Although in many cases declining practice and transmission can be connected to under-remuneration, ‘ageing practitioners’ and ‘loss of youth interest’ is sometimes treated as a problem of awareness or loss of cultural connection. For example, under-remuneration for ICH-related practice discouraged younger people from taking it up in the case of Jamdani weaving in Bangladesh.[[3]](#footnote-3) In India, the HIPAMS project found that young Patachitra artists showed greater interest in learning songs that traditionally accompanied painted scrolls (and new products such as painted T-shirts) once the songs had been included in digital links on the labels and their importance had been highlighted.[[4]](#footnote-4)

No specific safeguarding approach or methodology has been proposed by the Committee or its evaluation bodies to help communities, groups and individuals concerned identify where, when and to what extent economic factors pose a threat to ICH safeguarding, or not. There is also currently no guidance on how to choose possible mitigations when such threats or risks are identified. Mitigations should be presented not as isolated ‘magic bullets’, but as part of broader planning processes that both protect and promote the interests of communities in regard to their ICH.

In this regard, community control over commercialization processes, become a key metric of success. At the same time, it is important to note that in many communities and groups of practitioners, there will be no consensus about how to commercialize their ICH and what kinds of problems need to be addressed, so discussions are needed about appropriate and inappropriate ICH-related change or commercial action within communities. Attention thus needs to be paid to consensus building and developing common perspectives, or common platforms, if problems are to be identified and addressed collectively.

Many community efforts to benefit from their ICH take the form of small businesses. However, safeguarding methodologies for ICH do not include information on heritage-sensitive business planning. Business planning models for small and medium enterprises, start-ups and ‘creative industries’ do not address ICH safeguarding (even where ICH is regarded as a ‘resource’ for the business), and how the interests of individual entrepreneurs relate to those of the broader community. Business planning models tend to focus on competition rather than collaboration, and often present unlimited growth as a legitimate aim. There are alternative planning models such as ‘doughnut economics’ that pay greater attention to the limits on growth posed by environmental or ethical considerations, and encourage consideration of social and cultural benefit as part of business planning. However, such approaches are yet to be integrated into planning tools on ICH safeguarding.

Examples of some possible tools and approaches are presented below.

Initiatives to maximize positive impacts and mitigate negative impacts

The fundamental principles behind the safeguarding of ICH, established under the Convention to date, suggest that in the context of the market, communities, groups and individuals concerned should be able to determine (with free, prior and informed consent), inter alia:

* what ICH-related products and services are placed on the market (for example, being able to exclude some sacred or secret ICH from exploitation),
* how this market engagement is conducted (for example, being able to ensure the accuracy of messaging about ICH related to products, or its labelling), and
* receive equitable benefit from market engagement (for example, ensuring equitable distribution of profits from partnerships, preventing misappropriation by third parties).

However, there has been too little discussion about how to support or guide communities in doing so.

Research for the Guidance Note has identified different kinds of strategies for mitigating against negative effects of economic activities, and maximizing benefits for communities:

* Building consensus within communities
* Working in partnership with other stakeholders, creating enabling environments
* Developing multifaceted strategies
	+ Community empowerment and capacity building
	+ Awareness raising and media
	+ Protocols and codes of ethics
	+ Legal frameworks
* Project / business planning
* Monitoring and evaluation

This section discusses some examples of approaches and tools that can inform the development of such strategies. These include both ‘bottom-up’ practical projects supporting community-led economic engagement that is both heritage-sensitive (oriented to safeguarding) and sustainable (oriented to sustainable development), and ‘top-down’ policies and programmes to create enabling environments supporting such engagement. These broader policies and programmes can be led by governments, NGOs and civil society, researchers, the private sector, and other stakeholders, often serving the needs of multiple communities and groups, or the general public as a whole.

There is an extensive literature on the need for, and difficulties of, bottom-up participatory engagement and respect for community rights that is relevant to ICH safeguarding (e.g. Ruhanen and Whitford 2019 on Indigenous tourism; Forsyth 2012 on Samoa; Aykan 2013 on Turkey). Community empowerment and leadership, participation and consent help to position ICH safeguarding within a broader community-focused development framework for building resilience and development potential (Ghahramani et al. 2020). In engaging with the market, however, communities often struggle to maximize use of tools such as legal protection that are available to them, to use their ICH as a strategic advantage, and achieve equitable benefit from market engagement.

There are large differences between communities globally in this regard, influenced by diverse political, legal and economic contexts, not just between the Global North and South, but also within those categories. Differences might be linked to the extent of community cohesion and control over certain land and resources, access to legal protections through treaties or constitutional protections, and/or access to government subsidies and other forms of support. It is thus not possible to identify a ‘magic bullet’ that can ensure commercialization of ICH has good outcomes.

More feasible, perhaps, is the development of multi-faceted strategies led by communities to ensure that commercialization of their ICH happens under their control and meets both their safeguarding and development goals. Attention also needs to be paid to the development of monitoring and evaluation approaches to assist in the design, adjustment and implementation of such strategies. Government and institutional support, including from NGOs and research agencies, covering technical issues, as well as funding and regulation, can create an enabling environment for communities to develop appropriate strategies. In line with the emphasis in this report on community-driven initiatives, these strategies have been dealt with below in the context of partnerships with different stakeholders.

**Building consensus within communities**

In discussing the question of community control and equitable benefit, much of the emphasis has been on managing unequal relationships with third parties. Identifying and mitigating negative effects of these relationships is important, as is developing positive partnerships, but finding consensus within communities about what the problem is and what to do about it may also benefit from further discussion. Appropriate business cooperatives and other kinds of community organizations can help to institutionalize and stabilise coordination and collaboration initiatives.[[5]](#footnote-5)

The challenge of regulating ICH commercialization has individual, communal, and structural (political) dimensions. ICH practitioners engaging with the market have both commercial and cultural responsibilities and interests.[[6]](#footnote-6) However, the interests of individual bearers or practitioners, and of the community as a whole, might not always be aligned with each other, or focused on safeguarding. In the case of the Drunken Dragon Festival, a traditional cultural festival in Macao (China), two groups within the community have different attitudes towards the transformation of the festival for tourism (Choi et al. 2020). Stoffelen (2020) found that lambic beer makers in Belgium all benefited economically within the globalising beer market as producers of ‘craft beer’, but brewers still disagreed among themselves about what was traditional about beer making, and how this tradition could or should be commercially positioned in the current market. There may also be significant internal debate about what threats communities face when engaging in the market, how to address them, and ensure equitable community benefit.

Within communities engaging in ICH commercialization, there are unequal power relationships (e.g. Maags 2021). Market exploitation of cultural resources may be affected by historical factors such as cultural dispossession or minoritization, whose effects and ideologies persist. They may also be affected by the lack of legal protection over commercial use of cultural resources. Even when legal protections exist, many communities do not have the knowledge or resources to enforce them (Hnamte 2022). Ghahramani et al (2020:11) thus propose a conceptual framework for building marginalized community resilience through community-led cultural tourism, moving from conflict resolution, to community attachment, preservation of community capitals, community-led tourism and community resilience.

Finding appropriate solutions within communities is critical for the development of a community-led approach to ICH market engagement characterized by good safeguarding outcomes and equitable benefit. Drawing on work in social policy planning, Grant (2014a) argues that ICH safeguarding (of music, in this case) is a ‘wicked’ problem - one with complex interdependencies, uncertainties, and conflicting stakeholder perspectives.[[7]](#footnote-7) Addressing ‘wicked’ problems involves building nuanced individual, collective, and interdisciplinary knowledge sharing to develop multifaceted experimental collaborative strategies addressing multiple needs. Solving wicked problems is fundamentally a social process. Solutions are best considered as products of strategic negotiations around a common set of goals, focused on community interests and needs. This, of course, fits well with the idea of community-led safeguarding under the Convention in article 15.

Possible approaches to building consensus during this process may include community members:

* acknowledging the complexity of ICH and market engagement as a wicked problem, in which both the terms of the debate and the solutions are up for discussion (Grant 2014);
* acknowledging the historical, political and economic context for the problem, including the mandates, actions and ideologies of other third parties, whether commercial, governmental or institutional, and power imbalances both within communities and between them and third parties (Ruhanen and Whitford 2019; Pfeilstetter 2015);
* articulating community-defined development outcomes;
* allowing for individual reflection before common discussion, and sharing ideas anonymously for communal review. This kind of consultation may need to be broad-based and iterative, over an extended period of time;
* setting out the nature and scope of existing community norms and rights, and embedding them in solutions (Carr et al., 2016 in Ruhanen and Whitford 2019);
* seeking common ground among themselves for first actions, and developing appropriate organizational structures to effect these actions;
* educating consumers or third party businesses (not just ICH practitioners) and developing appropriate partnerships with them.

**Working in partnership with other stakeholders, creating enabling environments**

Lees (2011) argues that the responsibility for creating a positive environment for ICH safeguarding in the market context lies with all sectors of society, individuals, communities, NGOs, museums and other cultural institutions, and government policymakers. The idea of NGOs as cultural brokers assisting communities in safeguarding their ICH has been advanced by Jacobs et al. (2014). One of the challenges in this area is to identify strategic priorities. Technical assistance may be particularly important in the commercial arena, where community practitioners may lack specific business skills. Stakeholder assistance can also involve the provision of market infrastructure and collective marketing platforms. In Austria, a [survey](https://www.wko.at/branchen/gewerbe-handwerk/study-traditional-craftsmanship-austria.pdf) on traditional craftsmanship commissioned by government identified the need for changes in the public image of traditional craft as a vocation, in the vocational system supporting transmission of skills, and the taxation and regulation of small craft-based businesses.

Government agencies, NGOs and civil society organizations, as well as institutions such as museums (including eco-museums), have played a well-documented role in supporting community livelihoods through ICH. Considerable emphasis has been placed on the value of policy instruments in creating an enabling environment for economic activities in regard to ICH.

The activities mentioned in the survey included:

* Community-led planning, organization and support for safeguarding actions;
* Documentation of the ICH and reflection on its economic context;
* Awareness-raising about the value of ICH among practitioners and consumers ;
* Capacity building on business skills (intellectual property rights, marketing, etc.) and on safeguarding measures;
* Subsidies, grants and prizes for practitioners and their students, both for the acquisition of ICH-related skills and for related business establishment and management;
* Provision of better access to markets, online and in person, including support for market spaces and platforms;
* Organization of events promoting traditional skills and workshops, including festivals and other promotional events;
* Certification or intellectual property protection for products or services;
* Tourism promotion and other forms of regional development programming that incorporates ICH; and
* Media, legal or other measures to expose and address misappropriation or misrepresentation.

Government agencies or arms-length institutions can play a role in supporting communities directly. For example, the Economic Reactivation Plan for Masaya's craftspeople in Nicaragua (reported in their Periodic Report for 2021) is a local government initiative in an Indigenous neighbourhood, which involved financial assistance to entrepreneurs and the renovation of market spaces for traditional foods and crafts. Artesanias de Colombia is a Colombian organization funded by government that assists communities to share skills for making marketable products based on their ICH, market the products on a common digital platform, and protect their businesses using intellectual property law.[[8]](#footnote-8) Their travel guides incorporate traditional craft routes.[[9]](#footnote-9) They also help artists enforce infringements of their rights through court actions. A similar role has been played by the Brazilian National Institute for the preservation of cultural heritage (IPHAN). In 2011, graphics from the body painting traditions for the Wajãpi indigenous communities from Amapá (Brazil) were used without authorization on home wallpaper by a decoration company. The Wajãpi did not want monetary compensation because the art has a cosmological and ritualistic meaning for them and its use would be damaging to the health of the home owner and a cause of collective tension. Through the mediation of IPHAN the community successfully requested the company to stop production and destroy stocks of the wallpaper. The unauthorized and inappropriate use of Wajãpi graphic art was considered a collective moral harm to the community and the company involved had to support a cultural project proposed by the community as recompense.

NGOs and non-profit initiatives have also provided effective assistance to communities. Since the mid-2000s, Banglanatak dot com, an Indian NGO, and its Art for Life programme, has been assisting communities of ICH practitioners in India with financial skills training, entrepreneurial infrastructure, market access and ICH safeguarding strategies.[[10]](#footnote-10) Since 2015, the Jameel Houses of Traditional Arts in Jeddah and Cairo, and on the Dumfries House estate in Scotland, have been supporting a new generation of practitioners to learn traditional arts and crafts, develop contemporary designs from older forms, and apply their skills in the restoration of monuments or as entrepreneurs.[[11]](#footnote-11) WhyWeCraft® is a social innovation cultural entrepreneurship platform created and implemented by the Cultural Intellectual Property Rights Initiative® (CIPRI) that helps businesses in the textile sector connect with customers and other businesses in a way that fosters their cultural sustainability.[[12]](#footnote-12) In South Africa, the Woza Moya project of the Hillcrest AIDS Centre Trust, an NGO in KwaZulu-Natal, works with rural Zulu women bead-workers practising their traditional craft and selling various products based on it. The project helped the women to gain recognition for themselves and their traditional practice through collaborative action while ensuring equitable compensation for their individual creativity, even though suitable intellectual property protection was not available to them (Oriakhogba 2020). In Zambia, the Choma Museum and Crafts Centre supports local Tonga basket-weavers by facilitating basketry and life skills training for practitioners, exhibiting their crafts, buying baskets and selling them in the global craft market, as well as providing a space for them to sell locally. In making sales on digital platforms, the museum takes a cut of the profits. Visibility gained through the museum has led to sponsorships and opportunities for local weavers (Musiza 2022). The ‘Local contexts’ project in the US provides community-led mechanisms for educating users of community heritage resources in museums and archives. Culturally-specific labels educate users about how to use the information appropriately, according to community norms. The labels distinguish between aspects of their heritage that can be widely and publicly used, and aspects of their heritage that need to be more sensitively handled.[[13]](#footnote-13)

Various UN agencies and international organizations have worked to support community-led commercialization in heritage-sensitive ways. The Traditional Knowledge Division in WIPO has been running a training and mentorship programme assisting Indigenous women entrepreneurs to develop strategies for using conventional intellectual property law alongside other means to better control and benefit from use of their cultural resources in the market.[[14]](#footnote-14) Access and benefit sharing agreements on traditional knowledge associated with genetic resources under the Nagoya Protocol of the Convention on Biological Diversity have also provided some possible models for ensuring communities benefit from commercial use of their heritage. The FAO has developed projects assisting communities and governments with the registration of geographical indications for traditional food products.[[15]](#footnote-15) The UNESCO World Heritage Centre has been training craft entrepreneurs working at World Heritage Sites under the UNESCO Sustainable Tourism E-learning Course for Artisans. A NGO advisory body to the World Heritage Centre, ICCROM, has a project on Cultural Heritage for Inclusive Growth in Southeast Asia, which ‘considers the inherent links between tangible and intangible dimensions of heritage through traditional crafts, socio-cultural practices and livelihoods’.[[16]](#footnote-16) UNESCO Bangkok has developed a cultural diversity programming lens to add an additional layer of cultural sensitivity in cultural programming.[[17]](#footnote-17)

Clearly, there is a role for the private sector in supporting community safeguarding, and the survey responses (Part 3b) show that more work needs to be done to identify and encourage good practices in this area. In Australia, for example, a protocol developed in a partnership between a multinational company, Aveda, and an Indigenous community established sourcing standards for sandalwood and a model for supporting sustainable Indigenous sandalwood-harvesting businesses (Aylwin and Coombe 2013).

**Developing multi-faceted strategies**

Communities and practitioners generally use multiple strategies simultaneously (using traditional means of transmission, community organizations, legal tools, marketing, etc) to protect their interests, exert control and reduce harms in regard to commercial use of their heritage. Using multiple strategies simultaneously may make them more effective. At the same time, a combination of government or third party interventions, as indicated above, can help to create an enabling environment for heritage safeguarding and risk mitigation in the commercial environment.

Many communities are already working on multi-faceted strategies for protecting and promoting their cultural resources in the commercial environment. The Maasai in Kenya have set up community organizations, registered trademarks, challenged third party trademarks using their name, and used media campaigns to persuade third parties to enter into licensing agreements (Leleto 2019). The Zia, an indigenous community in North America, have dealt with political and commercial misappropriation of their sacred sun symbol using multifaceted strategies: providing a public video on the history and meaning of their sacred symbol, lobbying commercial companies to withdraw trademark applications based on the symbol, and using an up an informal licensing system whereby commercial and governmental entities voluntarily seek the tribe’s permission to use the symbol, acknowledge their ownership, and make donations, e.g. to a scholarship fund (Turner 2012). Legal tools such as intellectual property rights and other *sui generis* rights frameworks, and contracts with third parties are often used alongside ethical guidelines or protocols (Lixinski 2020; Janke 2018; Ubertazzi 2017).

Wynberg and Laird (2018) argue that access and benefit sharing policies such as those developed under the Nagoya Protocol for use of traditional knowledge associated with genetic resources have lagged scientific advances, such as the use of digital sequences of genetic material, or parts of gene sequences in synthetic biology. This reduces the possible benefit of these policies to communities concerned. Srinivas (2012) argues that other initiatives can be combined with the Nagoya Protocol to fulfil the expectations of Indigenous communities. Laws protecting confidential information, equitable estoppel,[[18]](#footnote-18) statutory prohibitions against misleading or deceptive conduct, and unjust enrichment may provide some additional protection on top of access and benefit sharing (building on the position of Martin and Jeffrey 2007; Lingard 2015a and b; Lingard 2023 pers. comm.). As an alternative, several Latin American and African communities have developed biocultural protocols (based on community norms) to govern access and benefit-sharing for traditional knowledge associated with genetic resources.[[19]](#footnote-19) Biocultural heritage (BCH) indications[[20]](#footnote-20) have been developed for biocultural, heritage-based products. They can help to ensure ecological resilience, accurate marketing and equitable benefit for communities in commercial contexts, without registration of trademarks.[[21]](#footnote-21)

A central community organization may be useful for implementing complex multifaceted strategies effectively. Community businesses usually operate separately, and lack a central base for negotiations. The Sámi community in northern Europe is thus currently developing a community-wide approach to better supporting and controlling use of their cultural resources in the commercial context.[[22]](#footnote-22) They have also developed guidelines relating to use of cultural heritage tourism.[[23]](#footnote-23) Janke argues similarly (2019:349) that a centralized authority such as NICA, an Indigenous alliance organisation governed by Indigenous people, could help to address the problem of who represents the community in commercial negotiations in Australia. This is also important because it is sometimes ‘unclear who has custodianship of Indigenous cultural material or knowledge’. NICA could provide a centralized point for negotiations around commercial use of Indigenous cultural intellectual property (ICIP), ‘promulgate a set of national protocols, monitor compliance and manage disputes’. ‘Businesses who use the NICA ICIP protocols could be authorised to use a NICA trademark which, like the green labelling systems or the 100% wool mark, can be used to show that the ICIP standards are met. Arguably, the NICA system could increase opportunities for collaboration on terms that are acceptable and culturally informed.’ Such a model is currently being explored as a possible policy approach in Australia.[[24]](#footnote-24) Janke (2019) developed a set of principles for use by industries in Australia using Indigenous knowledge for commercial purposes, to address problems such as the lack of free, prior and informed consent; issues of integrity; the need for local flexibility; and the lack of robust information about how Indigenous knowledges are being accessed and used by others.

**True Tracks Principles Flowsheet (Janke 2019)**



In the fashion industry, the Cultural Intellectual Property Rights Initiative® (CIPRI), which acts as a mediator in relationships between different stakeholders in the fashion and craft ecosystem, has developed a kind of protocol in their 3Cs' Rule: Consent. Credit. Compensation©, a soft law framework for sustainable, fair and equitable relationships between creative industry stakeholders and the communities or practitioners of the ICH.[[25]](#footnote-25)

Janke suggests that protocols can be used to inform both the development of specific businesses relying on Indigenous cultural knowledge, as well as broader legal change creating enabling environments for this work. [[26]](#footnote-26) As entrepreneurs, individual community practitioners might sometimes have different interests from the community as a whole. Therefore, it may also be necessary to use protocols and other tools to regulate individual entrepreneurial behaviour to protect collective resources, such as the traditional plant knowledge on which products are based (Lingard and Martin 2016).

Of course, the existence of a legal or ethical framework does not mean it is automatically useful to communities. Riphagen and Stolte (2016 on Australia) noted that ethical protocols can raise awareness, instigate changes in behaviour, and operate as a conduit for correcting the unauthorized use of Indigenous cultural materials. However, they found that use of the protocols in existence did not automatically protect Indigenous individuals equally and that Indigenous people with cultural connections to contested heritage objects do not always have a clear voice in decisions made about their use, even when the protocols were invoked. Janke (2018) has suggested that while protocols can help educate the public, contracts with indigenous groups could help to enforce them, and to define ownership of ICH in a supply chain. Template contracts for indigenous groups are being supplied by The Federation of Aboriginal and Torres Strait Islander Languages for recording projects.

**Planning projects**

There are few generic models for community-led planning on heritage-sensitive commercialization of ICH, although communities are developing such plans, perhaps because needs are so specific. The Doughnut Economics Action Lab has proposed some general business design tools that consider the importance of considering both social obligations and environmental limits.[[27]](#footnote-27) Reviewing relevant projects funded under the Interreg Atlantic Area and Interreg Europe programmes, the Atlantic CultureScape project outlined some useful strategies for developing cultural heritage tourism projects in line with sustainable development aims.[[28]](#footnote-28) These are paraphrased and slightly amended below:

* Support local community leadership, participation and benefit.
* **Create strong partnerships** with other stakeholders: e.g. promote participatory governance that develops cooperation between local actors. Create local and transnational networks and foster collaboration between different economic sectors.
* **Understand the context**: do research, identify best practices in the region and share ideas.
* **Develop a plan**: involve communities, the private sector, professionals, tourist offices and other government stakeholders. Conduct a SWOT analysis to produce knowledge about the local strengths, weaknesses, opportunities, and threats that must be considered in tourism projects. Identify the ‘possible risks of touristification and acculturation’ from tourism projects and devise ways to mitigate them. Promote policies (e.g. private-public partnerships) and identify structural factors that support sustainable cultural tourism. Consider ways to address policy change and reduce structural barriers where they do not support sustainable cultural tourism. Cultural, social, economic and environmental aims have to be considered in the same strategy (see also (San Martin et al. 2021).
* **Raise awareness** about the value of the heritage locally and among visitors, and develop strategies for heritage safeguarding. Highlight the economic value of investments in cultural tourism and their contribution to local livelihoods.
* **Develop monitoring and evaluation tools** that consider social, cultural, economic and environmental aspects of cultural tourism, and a risk management plan.

A generic project management approach is clearly helpful, involving appropriate stakeholders, developing and implementing a plan, and evaluating its results to modify or adjust approaches. These steps could be applied to other kinds of economic development planning associated with ICH.

In Australia, work on assisting Indigenous businesses is fairly well advanced. Janke (2019) proposed a flowchart which could be used by a national indigenous cultural authority (NICA) to negotiate projects with third party commercial organizations on Indigenous cultural and intellectual property (ICIP). Janke has also developed business planning resources for Indigenous businesses in Australia that take account of ethical protocols,[[29]](#footnote-29) community consent (even when an entrepreneur is a member of a specific community) and appropriate use of secret traditional knowledge and other kinds of ICH.[[30]](#footnote-30) This can help mitigate harms in the commercial environment.

At the same time, it is important to understand how to develop ICH-related commercialization strategies that contribute to safeguarding. This may be more easily accomplished by looking at specific sectors, and particular contexts. Anika Valenti and Terri Janke and Company worked with the Department of Primary Industries and Regional Development (DPIRD) in Australia to develop guidance on setting up bushfoods businesses, for example.[[31]](#footnote-31) In the fashion industry, the Cultural Intellectual Property Rights Initiative® (CIPRI)[[32]](#footnote-32) (mentioned above) designs tools and strategies that foster socially and culturally sustainable collaborations based on a fair and equitable distribution of intellectual property rights and cultural intellectual property rights. This includes design and implementation of benefit-sharing business models, strategy design for culturally sustainable product development, supply chain mapping, and assessment of biocultural capital risks and impacts. The Initiative runs a training programme called The Cultural Sustainability Academy - The Knowledge Hub for Cultural Sustainability®.

It is difficult to find models for business planning approaches that could be applied to many different circumstances, and focus on ICH safeguarding as well as business development. One potentially useful planning approach is a ‘systems mapping’ model used by environmental law researchers to understand complex policy problems and to identify workable interventions in areas such as sustainable consumption. Systems mapping involves “visually mapping the system of interest” and identifying parts to change. This approach was adapted for a project supporting Aboriginal and Torres Strait Islander peoples to commercialize gourmet bush food products such as sauces, jams, pies, and chutneys (Lingard and Martin 2016). An academic team consulted with community members to identify interests and problems and develop a multifaceted strategy.

This involved the following steps:

1. identify the commercialization stages and actions;
2. identify the legal arrangements influencing each action;
3. assess the capacity of each arrangement to support community interests; and
4. identify the possible strategies to improve support for these interests.

Different stages of commercialization (e.g. sourcing of raw ingredients, product development, marketing, distribution and sales) involved different kinds of legal frameworks that could be used (such as regulations governing wild harvesting, contract law or trademark law). The study also identified practical barriers faced by some Aboriginal and Torres Strait Islander people who had limited access to buyers, online markets, technology, information, and business expertise. Different strategies to address problems could then be identified in each of the stages of commercialization. These strategies were multifaceted, including systems for data collection and management, developing and implementing legal, regulatory and ethical protections, and education and communication within the community.

In a similar vein, another project involved the co-creation of tailored heritage-sensitive intellectual property and marketing strategies (HIPAMS) to address risks and maximize equitable benefits from ICH-market engagement (Waelde et al. 2021; Deacon et al. 2021).[[33]](#footnote-33) The project team worked with three heritage practitioner communities in India, Patachitra scroll artists, Baul singer-philosophers and Chau dancers and mask-makers. During strategy development, four action dimensions were explored: community empowerment (identifying priorities for community transmission, common marketing platforms, community intellectual property rights knowledge, ethics codes for third parties), heritage skills repertoire (training, incentives to learn the heritage skills); reputation (linking community-led digital storytelling to products, using a geographical indication) and innovation (packaging, developing digital services). Implementing the strategies helped artists to control use of their heritage in the market, to communicate more effectively about it, to inspire younger artists to learn heritage skills, and to generate more income.[[34]](#footnote-34)

The ‘roots and fruits’ tool was developed by the HIPAMS project as a consultative, consensus-building tool for safeguarding planning, used by practitioners to identify the characteristics of their ICH that linked to products and services they placed on the market. Practitioners used the tool to indicate key features or attributes of their heritage repertoire in regard to a specific ICH element (the ‘roots’ of a tradition). They then identified how these features are reflected in each ‘fruit’ from the range of products or services that the artists make. This helped artists both to consider how ICH-related products and services maintained heritage repertoire, and also how to communicate their meaning and value more effectively to consumers (Deacon et al. 2021; Waelde et al. 2021).

When refining such strategies, it is important to choose legal and regulatory tools carefully, so as to aid safeguarding. For example, even where intellectual property frameworks can be applied to ICH, community norms may diverge from legal norms. Introducing intellectual property protection can also have (unintended) negative effects on the context of ICH practice, as discussed above. To address this concern, Mattila (2021) has identified four possible considerations in choosing suitable intellectual property mechanisms for protecting ICH:

* APPLICABILITY - Does the intellectual property right apply to the cultural heritage? For example, copyright law usually only covers original works by identified authors for a limited time frame.
* EFFICIENCY – What is the scope of protection provided by intellectual property law? For example, trademark law usually only provides protection against unauthorised commercial use.
* ACCESSIBILITY – Can the community access intellectual property protection and ensure management of their rights? For example, are registrations cost-effective?
* USABILITY – How compatible is the management of intellectual property rights (which usually vest in individuals or organizations) with traditional ways in which the community manages rights, responsibilities and disputes? For example, do organizations that register the rights have an appropriate mandate from the community?

The same kinds of principles could be adjusted to help select other legal and regulatory mechanisms. Further work is needed to link such considerations to broader community concerns about ICH safeguarding.

Educating consumers is an important part of ensuring that the market supports ICH safeguarding, as indicated above. Responsible tourism,[[35]](#footnote-35) film[[36]](#footnote-36) and research[[37]](#footnote-37) guidelines already exist in some contexts. Community and ICH-specific guidelines may have relevance for ICH safeguarding in a context of commercialization, setting out issues such as principles of mutual respect, what can be bought and sold, how sensitive items can be transported and used afterwards, and so on. Structured discussions on the relationship between ICH value and meaning, practice and transmission, and the products or services generated from ICH work, can help ICH practitioners to identify what products and services should or should not be placed on the market, and what kinds of market engagement might have a positive feedback effect into ICH practice, or not. Methods can perhaps be found for remunerating ICH practitioners for their work without the sale of sensitive objects and images.

Unlike advertising on traditional media, which is expensive and beyond the reach of many ICH practitioners, digital marketing on websites and social media is cost-effective and does not necessarily require intermediation. Practitioners can thus establish direct interactions with online audiences and potential clients. The diffusion of ICH-related pictures and videos about ICH can however increase the risk of misappropriation. Moreover, content generated by third parties (including clients) is a mixed blessing, as it can raise awareness about ICH and improve the reputation of individual practitioners, but could also contribute to ICH decontextualization and misrepresentation.

Rinallo (2020) proposes guidelines to exploit the power of storytelling in a heritage-sensitive and marketing-savvy way:

1. Conduct preliminary research to understand awareness and knowledge of ICH elements and possible misappropriation and misrepresentation issues. Findings from preliminary analyses can help set goals, identify relevant target groups, and develop resonant messages. For example, if superficial or incorrect knowledge about an ICH element is prevalent, a communication strategy can be developed to highlight those aspects that the community would like to be broadly circulated. Similarly, if most content is originated by third parties (experts, commercial intermediaries, consumers, etc.), a strategy can be put in place so that ICH bearers increase their share of voice.
2. Build capacity of ICH bearers. ICH bearers lacking the required aesthetic, technical and promotional skills should be empowered through capacity building interventions on social media use, persuasive communication, and storytelling techniques, with the goal of empowering them to create and diffuse their own promotional stories.
3. Encourage user-generated stories. Moments of interaction between ICH bearers and audiences (e.g., festivals and cultural events) can be used to stimulate the production of user-generated stories, which can raise awareness about the ICH element and its practitioners to new publics, generating additional interest and commercial opportunities. User-generated stories can however not only support and amplify community-generated stories, but also introduce divergent or unfavorable narratives (e.g., negative consumer reviews). Capacity building interventions should cover the mitigation of these risks and possible strategies to address fake news and misrepresentation issues.
4. Develop both individual and collective promotion. A balance needs to be found between the promotion of individual ICH bearers/groups and the collective promotion of ICH communities as a whole, so that individual and collective efforts can build on each other – for example, with collective marketing contributing to raising awareness of the ICH element as a whole, and individual marketing explaining how each practitioner or group interprets and adapts the common living heritage.

Heritage-sensitive marketing can contribute to awareness-raising and reduce risks of misappropriation, decontextualization and misrepresentation, which are important features of the work of safeguarding under the Convention. Communicating the social and cultural value of heritage can both potentially helps to retain social context and meaning, and justify appropriate remuneration for ICH practitioners.

In summary, many communities are already using multi-faceted strategies to protect their rights and interests in commercialization of their ICH. Some models or guidelines have been developed that could be provided as planning resources for communities that wish to use them. Further work is needed to refine these models, and to adapt them, as needed, to specific circumstances.

**Monitoring and evaluation**

Assessment tools for ICH viability that can inform community-led safeguarding strategies may find inspiration in the field of endangered language revitalization. UNESCO’s Language Vitality and Endangerment framework (2003)[[38]](#footnote-38) presents nine factors in the level of vitality of any language. Each factor is measured qualitatively (against the best-fitting description) and quantitatively (against a six-grade numeric scale, or in real numbers). The Music Vitality and Endangerment Framework (MVEF; first presented in Grant, 2014b) is based on this language tool. The MVEF identifies the following 12 factors that affect the vitality of a music genre all of which can be relatively easily used or adapted for other types of practices:

Factor 1. Intergenerational transmission
Factor 2. Change in number of proficient musicians
Factor 3. Change in number of people engaged with the genre
Factor 4. Change in the music and music practices
Factor 5. Change in performance contexts and functions
Factor 6. Response to mass media and the music industry
Factor 7. Availability of infrastructure and resources for music practices
Factor 8. Knowledge and skills for music practices
Factor 9. Governmental policies affecting music practices
Factor 10. Community members’ attitudes toward the genre
Factor 11. Relevant outsiders’ attitudes toward the genre
Factor 12. Amount and quality of documentation

Each factor is measured according to a graded scale from 0 (nonvital, inactive) to 5 (vital and vibrant). The scale is intended to be used by communities support their own music vitality assessment, as well as by other stakeholders. It is not clear how much the MVEF has been used, and the website is currently offline. The meaning, value and social function of ICH would need to be more fully elaborated in such a framework to be more widely used. Aylwin and Coombe (2013) suggest that rights-based sustainable development may be a useful framework within which to evaluate the use of intellectual property tools over cultural resources; these may also be worth considering in the context of ICH safeguarding alongside viability and transmission measures.[[39]](#footnote-39)

It is important to evaluate the outcomes of different interventions. However, it seems difficult to evaluate the impact of multi-faceted strategies, especially in regard to diffuse longer-term impacts. Grant (2014a) says that it is difficult to evaluate the efficacy of solutions to ‘wicked’ problems such as ICH safeguarding, because of their complexity, multi-causality, and interdependence with other problems. Addressing the problems faced by music heritage at a global level might be intertwined with migration or environmental issues, for example.

Further work needs to be done on assessment and evaluation models. There may be possible avenues to explore in this regard. Mergos (2017:92) suggests that using economic impact analysis combined with forecasting offers an excellent methodological approach for understanding impact of interventions. Bodle et al. (2018) have identified success factors for ICH-related businesses. Environmental and cultural impact assessment frameworks, such as carrying capacity and ‘limits of acceptable change’ (Coccossis 2009; Godwin 2011) may be used to inform risk assessment modelling for commercialization of ICH. This is only possible if there are better diagnostics on what is being safeguarded, and how any changes affect the context of practice and transmission in an ecosystem.

Conclusion

The market is likely neither super-hero nor super-villain for safeguarding or sustainable development. It may not be possible (or desirable) to ‘take the market out of the heritage’; what is often needed is to establish the right kind of market engagement, which may include setting limits or mechanisms of control.

Although some forms of commercialization of ICH are clearly inappropriate, many forms of ICH have been integrated with market forces since their inception, so commercialization is not always new. ICH practice, practitioner and community wishes, needs and norms, markets and consumers, and ways of engaging with the market, all change over time. New markets, with fresh risks and benefits may emerge. One of the major problems is not necessarily commercialization as such, but the fact that many communities and practitioners struggle, often due to structural power imbalances, to exert control over the process and its effects on safeguarding and economic benefit. Nevertheless, it is wrong to position communities as powerless over the market: many examples have been given above of those who, in spite of historical disadvantage, have been able to find ways to manage this process very effectively.

There is no ‘magic bullet’ available to address negative effects of engagement with the market, and contexts differ widely, and withdrawal from the market. Communities, with the support of other stakeholders, can however benefit from enabling environments. Effective interventions in this space are more likely to be found in practical and multifaceted strategies than in single-issue interventions. Further work is needed to identify, develop and share tools and methodologies for developing community-led strategies, enabling consideration of goals, resources, mitigations and trade-offs. More work needs to be done on supporting the development and implementation of tailored cost-effective community-led interventions, and assessment and evaluation tools. Rigid definitions of the problem, and fixed solutions, should not be imposed on communities concerned.

1. This document was prepared by the consultant Harriet Deacon, in collaboration with the UNESCO Living Heritage Entity and with inputs from the Peer Review Panel on economic aspects of intangible cultural heritage safeguarding. It is presented as a preliminary draft for the purpose of discussion and review. The content does not necessarily reflect the institutional views of UNESCO and is subject to revisions based on peer feedback. [↑](#footnote-ref-1)
2. The survey did not ask about positive impacts of economic activity on the context of ICH practice, so it was not possible to compare data on that metric. [↑](#footnote-ref-2)
3. See <https://textilefocus.com/the-glorious-fabric-of-bengal-jamdani/> [↑](#footnote-ref-3)
4. See [www.hipams.org](http://www.hipams.org) [↑](#footnote-ref-4)
5. See for example this primer on community-oriented business planning: <https://www.colorado.edu/lab/medlab/sites/default/files/attached-files/exittocommunityprimer-book.pdf> [↑](#footnote-ref-5)
6. See <https://www.kulturradet.no/kalender/hendelse/-/practitioners-experiences-in-the-traditional-arts-economy> [↑](#footnote-ref-6)
7. See Rittel and Webber 1973 and Conklin 2006, 2009, cited in Grant 2014. [↑](#footnote-ref-7)
8. See <https://artesaniasdecolombia.com.co/PortalAC/General/template_index.jsf> [↑](#footnote-ref-8)
9. Artesanias de Chile travel guides <https://artesaniasdechile.cl/category/revista-digital/guias-de-viaje/?v=5bc574a47246> [↑](#footnote-ref-9)
10. See <https://banglanatak.com/home>; <https://artsandculture.google.com/story/rgXBXxjVOWEHFw> [↑](#footnote-ref-10)
11. [https://artjameel.org/](https://artjameel.org/about/history/) [↑](#footnote-ref-11)
12. See <https://whywecraft.eu/> [↑](#footnote-ref-12)
13. See <https://localcontexts.org/> [↑](#footnote-ref-13)
14. See for example the case of Theresa Secord’s business <https://www.wipo.int/pressroom/en/stories/theresa_secord.html> [↑](#footnote-ref-14)
15. See for example <https://www.fao.org/geographical-indications/projects/en> and <https://www.fao.org/giahs/news/detail-events/en/c/1330212/> [↑](#footnote-ref-15)
16. See <https://www.iccrom.org/projects/cultural-heritage-inclusive-growth-southeast-asia> [↑](#footnote-ref-16)
17. See <https://bangkok.unesco.org/content/cultural-diversity-programming-lens-introduction-toolkit>, but it seems that the toolkit itself is no longer accessible online. [↑](#footnote-ref-17)
18. Equitable estoppel, sometimes known as estoppel in pais, protects one party from being harmed by another party's voluntary conduct (which may include silence or acquiescence that indicates acceptance of a specific set of facts). [↑](#footnote-ref-18)
19. See <https://biocultural.iied.org/community-biocultural-protocols> [↑](#footnote-ref-19)
20. See <https://biocultural.iied.org/> [↑](#footnote-ref-20)
21. See <https://biocultural.iied.org/indigenous-biocultural-heritage-sustainable-development> [↑](#footnote-ref-21)
22. See IMKAS study, <https://sametinget.no/_f/p1/i318e80f8-0075-4ec3-9dfe-0c2a6301ff3e/the-project-intangible-cultural-heritage-in-sapmi-short-report-2021.pdf> [↑](#footnote-ref-22)
23. See for example <https://www.samediggi.fi/culturally-responsible-sami-tourism/?lang=en> [↑](#footnote-ref-23)
24. Fact sheet, Stand-alone legislation for Indigenous Knowledge consultation 2022, See <https://consultation.ipaustralia.gov.au/policy/stand-alone-legislation-for-indigenous-knowledge/user_uploads/stand-alone-legislation-for-indigenous-knowledge---updated-2022-sept.pdf> [↑](#footnote-ref-24)
25. See <https://www.culturalintellectualproperty.com/> [↑](#footnote-ref-25)
26. See also NintiOne’s guidelines for bush foods research, industry and enterprises, <https://www.nintione.com.au/resource/NintiOneResearchReport_71_BushFoodGuidelines.pdf> [↑](#footnote-ref-26)
27. See <https://doughnuteconomics.org/tools/191#tool-overview> [↑](#footnote-ref-27)
28. Atlantic CultureScape, 2021. Intangible Cultural Heritage as an economic driver: insights from existing projects: See <https://atlanticculturescape.eu/project-reports/intangible-cultural-heritage-as-an-economic-driver-insights-from-existing-research/> [↑](#footnote-ref-28)
29. Including Protocols for using First Nations Cultural and Intellectual Property in the Arts <https://www.terrijanke.com.au/australia-council-for-the-arts-prot> [↑](#footnote-ref-29)
30. See Terri Janke and Company website, resources on the Law Way <https://www.terrijanke.com.au/_files/ugd/7bf9b4_58fd0e828c964f57b16f1ae86530c83f.pdf> [↑](#footnote-ref-30)
31. See Terri Janke and Company website, Setting up for success: bushfoods <https://www.terrijanke.com.au/setting-up-for-success-bushfoods> [↑](#footnote-ref-31)
32. See <https://www.culturalintellectualproperty.com/> [↑](#footnote-ref-32)
33. See [www.hipams.org](http://www.hipams.org) [↑](#footnote-ref-33)
34. See [www.hipams.org](http://www.hipams.org) [↑](#footnote-ref-34)
35. For example, UNWTO responsible tourism guidelines <https://www.unwto.org/responsible-tourist> [↑](#footnote-ref-35)
36. For example, <https://onscreenmanitoba.com/wp-content/uploads/2020/07/OSPP_Guide-FINAL_ENG.pdf> [↑](#footnote-ref-36)
37. For example, <https://guides.library.ubc.ca/IndigResearch/researchethics>; <https://indigenousx.com.au/the-importance-of-ethics-in-indigenous-research/> [↑](#footnote-ref-37)
38. See <https://ich.unesco.org/doc/src/00120-EN.pdf> [↑](#footnote-ref-38)
39. This would include principles of equitable participation, accountability, non-discrimination, empowerment, and linkage to international rights instruments. [↑](#footnote-ref-39)