




Review of the Book *The Protection of Traditional Cultural Expressions in Africa*, by Enyinna Nwauche

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Review

Nwauche, E. (2017). *The protection of traditional cultural expressions in Africa*. Springer Publications Inc.

The book is a foray into intellectual property (IP) rights in Africa. It seeks to identify and clarify the laws and policies related to traditional cultural expression. Enyinna Nwauche presents an admirable effort at bridging the knowledge gap on traditional cultural expressions in Africa and their protections. The work focuses on four countries (namely, South Africa, Kenya, Nigeria, and Ghana), which the author examines using legal comparison. It is a practical approach since Nigeria, Kenya, and Ghana are former British colonies and have retained the common law legal system. The South African legal system is comprised of both the remnants of the British common law system and Roman-Dutch law. All of these countries recognize customary law and have constitutional frameworks that include a bill of rights. These commonalities make it easier for a comparative discourse to take place.

Nwauche provides a detailed explanation of the challenges faced in addressing the protection of traditional and cultural expressions (TCEs) in Africa, including the scant use of protections offered in *sui generis* provisions available within the copyright and neighboring rights legislation enacted after the United Nations Educational, Scientific and Cultural Organization and World Intellectual Property Organization (UNESCO & WIPO, 1985) created and adopted a document known as the “Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Forms of Prejudicial Actions”. Nwauche also discloses that many African countries have yet to prioritize or engage in the use of intellectual property in the protection of TCEs.

Abiola A. A. Inniss is executive director and co-founder of the Caribbean and Americas Intellectual Property Organization (CAAIPO). She holds a PhD from Walden University, United States, and is a graduate of DeMontfort University School of Law, United Kingdom. Inniss is a leading analyst and author on Intellectual Property in the Caribbean and the founder of the *Caribbean Law Digest Online*.

TCEs take on different meanings within various settings and this can create difficulties in reconciling a common understanding across the countries discussed as to what the term folklore means. Kenyan law references expressions of culture as inherent to “traditional cultural heritage,” the Nigerian law refers to expressions of folklore as part of the “cultural and social identity” of the community, while a definition seems to be fluid in the Ghanaian law, and the South African Swakopmund Protocol describes traditional and cultural knowledge as a context within which expressions of folklore may be identified.

It is noteworthy that the author suggests that while the countries have engaged in *sui generis* law to protect traditional and cultural knowledge, such law is negative; while intellectual property law, described as positive law, has not been engaged. This indicates that the *sui generis* or unique laws created for the purpose of IP protection have not had the desired effect, while the standard IP laws that apply principles common to IP law have not been used effectively. Nwauche also posits that the effectiveness of IP rights is impacted by the ways in which judiciaries interpret and apply the legislation and provide access to justice for those who wish to enforce their IP rights, particularly with respect to folklore. The author suggests that the reason for the ineffectiveness of the IP rights legislation and the *sui generis* laws is the lack of awareness and inappropriate recognition of the customary norms from which the protection of TCEs is derived. This is discussed in some detail and presented with cogent argumentation.

A detailed overview of the taxonomy of TCEs is provided as well as a discussion of some principles, issues, and concepts that are inherent in the concept and protection of TCEs. This discussion is augmented by a comprehensive examination of selected traditional cultural expressions as well as a discussion of the communities and their unique means of expression. The differences among the Kente, Akwete, and Aso-oke cloths, their origins, and their cultural significance within the indigenous groups as well as issues related to their protections using IP rights are discussed.

The book is arranged into six chapters and moves through key issues in the protection of TCEs to the negative model for protection of cultural expressions and then discusses tangible ways of protections for the area of focus. The final chapter presents a framework for the protection of TCEs in Africa. Nwauche posits here that if such protections were to be created within the context of human and “peoples” rights, there would be greater leverage of communities that are the progenitors of cultural expressions. This theory is expounded in some detail; specific human rights, property rights, the right to life, and dignity, as well as privacy are discussed.

The strengths of the book lie in the high level of scholarship and research that has been utilized in providing both practical examples and theoretical explanations of the issues surrounding the recognition of TCEs in four major African economies. The author also provides a lengthy discussion on the possible approaches that can be taken to help resolve some of the issues, thereby making TCEs more valuable to the communities from which they originate. The author acknowledges the limitation of restricting the work to four countries and, given that the continent of Africa is comprised of 54 countries with varying levels of IP rights and thousands of indigenous groups, this is a strategic decision that permits in-depth discussion of a complex subject.

I can recommend this book for students and scholars of international IP law and policy, social scientists, researchers in the field of international IP, IP lawyers, and others with interest in African intellectual property.

Reference

UNESCO & WIPO (1985). *Model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions*. WIPO.
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