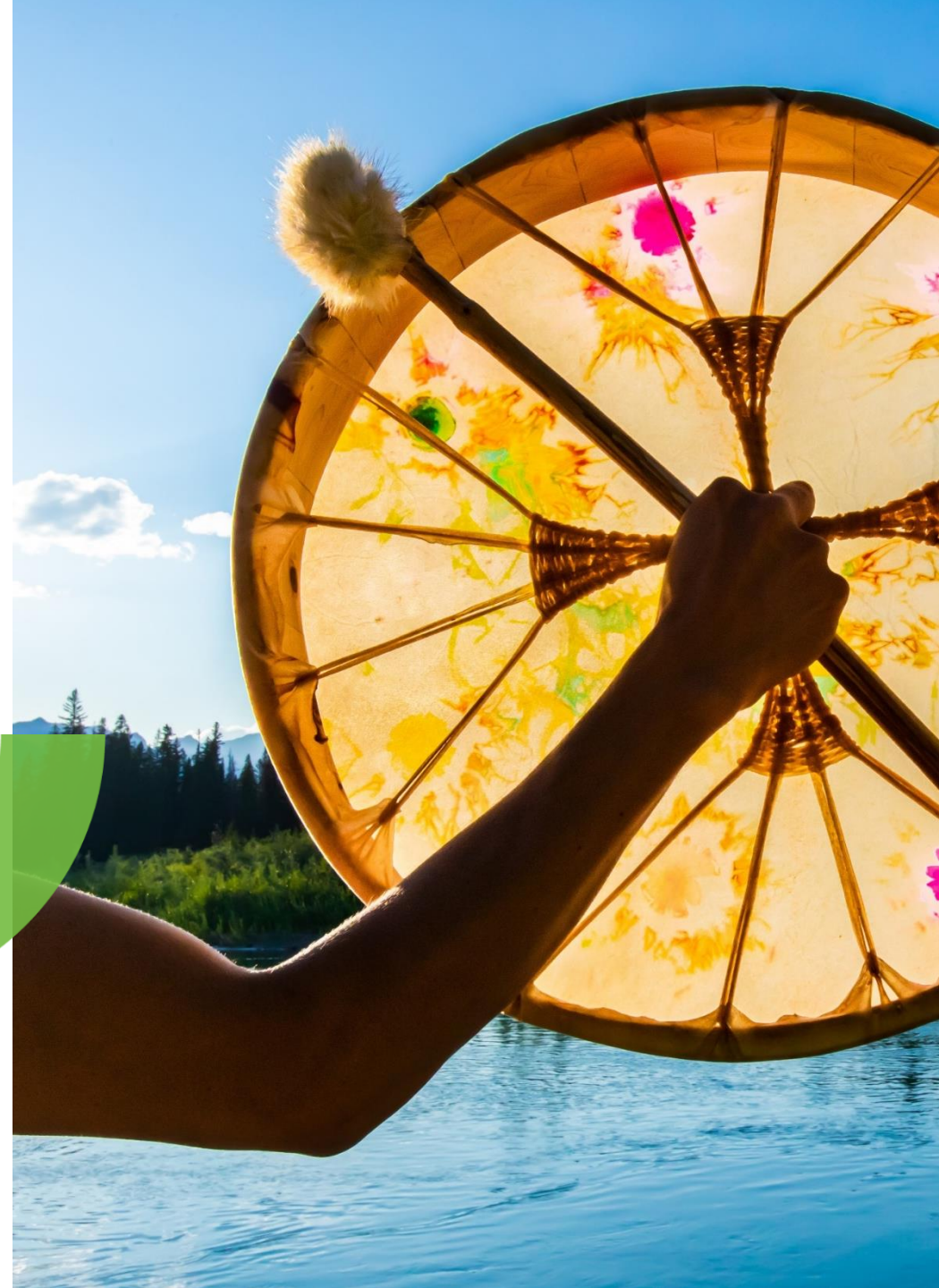




Possible routes to protect Indigenous knowledge and Indigenous cultural expressions through intellectual property

Canadian Intellectual Property Office



CANADIAN INTELLECTUAL PROPERTY OFFICE

WHO IS CIPO

Special operating agency of **Innovation, Science and Economic Development Canada (ISED)**

Priority 1

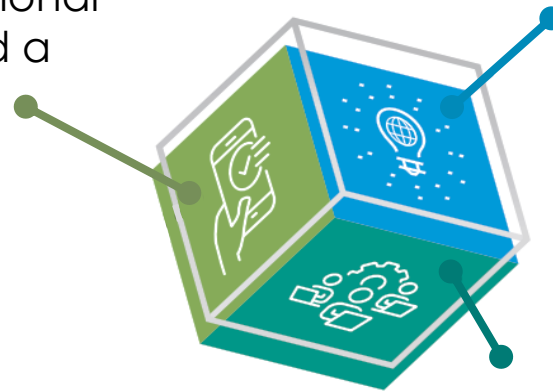
Deliver timely and quality IP services through operational excellence and a modern client experience

Priority 2

Foster innovation and competitiveness through leadership and education

Priority 3

Be a high-performing organization that is built for the future



Our ISO certification positions Canada as a global leader in the delivery of high-quality patents.

1,000+ employees
make up CIPO's highly skilled workforce

Source: CIPO Human Resources Plan, March 2017



WHAT IS IP?

Intellectual property (IP) is a **creation** of the mind.

Traditional forms of IP

TRADEMARK	PATENT	COPYRIGHT	INDUSTRIAL DESIGN	PLANT BREEDER'S RIGHT	TRADE SECRET
					
Brands: words, designs, etc. Geographical indications Certification marks	New or improved <ul style="list-style-type: none">• product• composition• machine• process	Creative works (literary, artistic, educational, or musical) Software	A product's unique appearance	New varieties of plants	Valuable information Lists or descriptions Social media accounts Customer lists

Non-traditional IP

- Fictitious names
- Domain names
- Social media accounts
- Customer lists
- Territory rights
- Publicity rights



INDIGENOUS KNOWLEDGE AND INDIGENOUS CULTURAL EXPRESSIONS

What is Indigenous knowledge (IK)?

Know-how, skills, innovations and practices developed by Indigenous peoples.

What are Indigenous cultural expressions (ICEs)?

Tangible and intangible forms in which IK and culture are expressed (e.g. **oral stories, artwork**, etc.) sustained and passed on from generation to generation within a community.

WHY IP MATTERS

HOW IP CAN HELP YOU

It is a valuable business asset to:

- give you an **edge over the competition**
- help build a **reputation and goodwill** with your partners and clients

You can use IP to:

- attract **financing**
- strategically **achieve business goals**
- secure your **markets**



HOW CAN I BENEFIT FROM KNOWLEDGE OF IK, ICES AND INTELLECTUAL PROPERTY?

Having knowledge of IK, ICES and the intellectual property (IP) system can provide **greater options to preserve and promote** Indigenous knowledge and culture.

Preservation

- IK is preserved through different means including through oral culture as the means of transmission.

Commercialization opportunities

- You can license your IK to others to create new products (i.e. pharmaceutical products, sporting equipment, clothing designs, etc.).








POSSIBLE ROUTES FOR PROTECTING IK AND ICES THROUGH IP

There are 2 main approaches:

- **Defensive protection:** Can be used to prevent others outside the Indigenous community from acquiring IP rights over IK and ICEs.
- **Offensive protection:** Obtaining IP rights can empower communities to promote their IK and ICEs, control their uses and benefit from their commercial utility.



TRADEMARKS

-  A **“sign”** that differentiates your products and services, includes symbols, words, colours, shapes, scents, videos, and sounds
-  Mix of automatic (use) and registration
-  **Right to exclude** others from using your mark
-  **10-year term** and renewable every 10 years
-  Use **™** before registration, and **®** after

Manitobah Mukluks

- Métis entrepreneur Sean McCormick grew his company from a small trading post to a fast-growing footwear brand.
- The company has filed registered trademarks and generates more than \$25 million in annual sales.

MANITOBAH
MUKLUKS



CERTIFICATION MARKS



A certification mark is used to distinguish goods and services based on:

- the character or quality
- the working conditions under which the goods or services are produced or performed
- the class of persons producing or performing the goods or services
- the area where the goods are produced or the services performed



Registration can be done only by an entity not engaged in the manufacture, sale, leasing or hiring of goods or services



The registered owner controls the licensing and “use” of the mark

Inuit Art Foundation

- The Igloo Tag Trademark was established to help protect Inuit artists from **copycats** by certifying items as being authentic.
- It was officially transferred to the **Inuit Art Foundation** in 2017.



Image source: https://mangerensemble.mcq.org/croquer_son_territoire-biting_into_places/des_paysages_qui_ont_du_gout-savour_the_landscape/agneaux-lambs-eng



GEOGRAPHICAL INDICATIONS



A geographical indication (GI) is used on a product that has a **specific geographical origin** and possesses qualities, a reputation or other characteristics attributable to that origin



A request must be submitted to the Canadian Intellectual Property Office (CIPO) to have a GI entered on the list of protected GIs in Canada



GIs can identify wines, spirits, agricultural products or food of a category set out in the schedule (not all are included)



A GI has to be applied for by a responsible authority

Mais sucré de Neuville

- Neuville is a village on the north shore of the Saint Lawrence River, just west of Québec City.
- Particular geographical factors influence the ability to produce this quality sweet corn.



Image source:
https://www.mapaq.gouv.qc.ca/SiteCollectionDocuments/TransformationPortail/Fiche_Mais_sucre_de_Neuville.pdf



PATENTS



For **new, useful** inventions that are **not obvious**



Right to exclude others from making, using, or selling



Up to **20 years** from filing



Application (**full disclosure**), examination, grant



12-month grace period to apply after public disclosure in some jurisdictions

Asham Curling Supplies

- Métis entrepreneur Arnold Asham built his namesake company on innovations in the curling industry.
- The company has filed numerous applications to protect its innovative curling shoes and brooms.



Arnold Asham
CA2326254 C
granted 2002/04/14

**If an invention simply replicates IK,
it does not meet the requirement
of novelty.**



COPYRIGHT



Protects **creative, original works** in various forms including literary, dramatic, musical, or artistic



Exclusive rights to reproduce the work, and to publish, translate, perform, etc.



Automatic upon creation:

- registered = **certificate of ownership**



Duration varies by jurisdiction
e.g. Canada = **life of creator plus 50 years**

Protections under the *Copyright Act*

They have been widely used by Indigenous artists, performers, composers and writers of traditional-based creations:

- Pacific coast wood carvings, including masks and totem poles
- Haida silver jewelry
- Songs and sound recordings
- Inuit sculptures

INDUSTRIAL DESIGNS



The **unique visual appearance** of a product



Right to exclude others from making, using or selling the product



Registration in Canada; United States design patent



Up to **15 years** from filing



12-month grace period in some jurisdictions

West Baffin Eskimo Co-operative Ltd.

- The company filed more than 50 industrial designs in the late 1960s.
- These covered fabrics using traditional images of animals and Inuit people.



The West Baffin Eskimo Co-operative Ltd.
Registered: 1965/09/27



PLANT BREEDERS' RIGHTS

- 🛡️ Plant breeders' rights protect the propagating materials of **new plant varieties**
- 🚫 They give you the right to exclude others from using a protected plant variety
- 🕒 Registration is with the Canadian Food Inspection Agency, not CIPO
- 📄 Protection lasts up to 25 years for trees and vines and up to 20 years for other plant varieties
- 🕒 There is a 12-month grace period for selling the variety

White Flint Corn

- In the 1990s, the Indian Agriculture Program of Ontario (IAPO) researched White Flint corn, renowned for its flour and high protein content.
- The IAPO's goals were to develop new varieties of corn that could be registered in Canada and other countries, and to market them in North America and Europe.



Image source: <http://indianag.on.ca/>



TRADE SECRETS



Confidential information **that has business value**



Value is tied to your ability to keep it secret, and inability of others to replicate



No registration and no formal rights in some jurisdictions



Lasts as long as **confidentiality is maintained**



Never disclose without confidentiality agreements in place or a patent filed

Unaaq Fisheries

- It is owned by the Inuit people of Northern Quebec and Baffin Island.
- It regularly transfers proprietary technologies to other communities using its own experience in the commercial fishing industry.
- The techniques it develops are protected as trade secrets.

Laws on confidential information can be used by Indigenous peoples and local communities to protect their confidential IK and ICEs.



RECAP

- Preservation of IK is very important
- IP can be used to protect some types of IK
- Defensive and offensive protection



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