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CULTURAL TOURISM AND TRADE IN INDIGENOUS PEOPLE'S ART AND CRAFT: A GAP ANALYSIS OF INTERNATIONAL LEGAL TREATISE AND NATIONAL LEGISLATION

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ABSTRACT - *The United Nations Declaration on the Rights of the Indigenous People, adopted on 13 September 2007, provides a clear support for the recognition of indigenous people's right over their cultural heritage, traditional cultural expression and traditional knowledge (Article 31). The Declaration which was supported by both Malaysia and Indonesia provides the framework for the evolution of laws, regulations and rules to maintain, develop the past and future manifestation of their cultural practices (Article 11). States are also expected to provide effective redress for the misappropriation of their cultural practices including restitution and repatriation of their ceremonial objects and human remains (Article 12).*

Indigenous culture is fast growing to be a major drawing appeal to global tourists. This paper commences with a brief expose on how the cultural practices of the indigenous people became a key attractions for tourist in Malaysia. The paper seeks to ask how cultural tourisms can pose harm to the cultural integrity of the indigenous people. The widespread sale of their arts and crafts and the lack of control over reproduction of cheap copies for tourists question the measures taken by the state to control the misappropriation of their cultural practices.

TCE has also been the subject of coverage in many other international treaties and domestic legislation. This paper examines the gaps between the various legal treatises on TCE and national legislation with the aim of fortifying the relevant rules for countries like Malaysia and Indonesia to emulate. The paper concludes with some suggestions for legislative reform for the effective control of trade in indigenous people's art and crafts.

keywords: cultural heritage tourism; indigenous people's art and craft; gap analysis

1. INTRODUCTION

Malaysia and Indonesia shares a common interest in their indigenous peoples. Whilst in Peninsular Malaysia, the indigenous peoples or *orang asli* constitute the minority in the total population, in Sabah and Sarawak the natives constitute the majority. The population of the indigenous peoples in Indonesia is larger. Out of its 220 million populations, the indigenous peoples or *masyarakat adat* comes up to 50 to 70 million[1] according to the estimates by the national alliance AMAN. The indigenous peoples are quite diverse in their ethnicity, languages, cultural practices and customary rights making them rich resources for cultural tourism. Peninsular Malaysia for example hosts more than 70 groups of indigenous peoples. Whilst, the official statistics by the Ministry of Social Welfare in Indonesia recognizes 365 groups as *masyarakat adat terpencil*, making them more diverse that the Malaysian counterpart.

Both countries also ascribe special position to the indigenous peoples in their constitutional law. The Malaysian Federal Constitution sets the special position of the natives in Sabah and Sarawak under Article 161A[2]. The Indonesian Constitutional Law goes further than that to not only recognize their customary rights[3] but also their cultural identities[4].

Against the dynamics and diversity of the indigenous peoples globally, the primary focus of this paper is their traditional cultural expression. Traditional cultural expression (TCE) includes any tangible or intangible forms of creativity including phonetic or verbal expressions, musical or sound expressions, expressions by actions and tangible expressions (WIPO)[5]. To constitute TCEs, the expressions must be unique to the indigenous people and form part of the cultural or social identity and heritage of a traditional

[1] http://www.iwgia.org/images/stories/sections/regions/asia/documents/short-country-profiles/indonesia.pdf

[2] See also Colin Nicholas, Orang Asli: Rights. Problems, Solutions, (2010), Suruhanjaya Hak Asasi Manusia (SUHAKAM)

[3] The third amendment of the Indonesian Constitution of 2001 recognizes indigenous peoples' rights in Article 18 Para 2 (concerning regional government) *"The State recognizes and respects indigenous communities along with their customary rights as long as they are still exist, in accordance to the society/cultural development and civilization within the Unitary State of Indonesia, and they are recognized legally by law". p. 378* http://www.iwgia.org/images/stories/sections/regions/asia/documents/short-country-profiles/indonesia.pdf

[4] Article 28I Para 3 (regarding Human Rights) of the Indonesian Constitution of 2001; at p. 378

[5] WIPO: The Protection of Traditional Cultural Expressions: Draft Articles, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/18/4Rev, available online at www.wipo.int

or indigenous community and are maintained or used by them (WIPO)[6]. Among the objects falling within this category would be objects originating from and created by indigenous peoples, such as masks, rattles, blankets, weavings, weapons, pots, bags, jewelry, clothing, totem poles, ceremonial houses, canoes etc.

As these cultural objects become the objects of tourist interests, questions arise as to whether there is effective legal framework to ensure the trade in these items would not compromise the cultural interests of their traditional knowledge holders. The paper examines this issue by focusing solely on laws regulating the sale of the arts and crafts of the indigenous peoples. For that purpose, not only the existing treatise relevant to TCEs, but also model laws and relevant national legislation is examined. The core focus of the paper is to identify gaps in the legislative framework in order to find proper solution to address the gaps. It is the belief of the author that there must be a concerted effort to sustain the commercial as well as moral value of the indigenous culture as a source of cultural tourism.

2. INDIGENOUS CULTURAL TOURISM.

Both Malaysia and Indonesia attracts a large number of tourists annually. In 2013, Malaysia witnessed the arrivals of 25.72 million tourists into her soil which brings in an income of RM65.44 billion. Initiatives introduced to attract tourism including cultural tourism through the designation of old buildings for cultural heritage for purposes of conservation[7].

In Malaysia, several policy initiatives have been framed to boost tourism beginning the Eighth Malaysia Plan. In the Ninth Malaysian Plan (2006-2010), the strategies earmarked are the development of craft industry and promote craft products for the world market and the conservation and preservation of heritage products[8]. In the Plan, the role of culture, arts and heritage related industries as sources of economics growths have been recognized. The Malaysian Government has also allocated significant fund to promote activities related to culture, arts and heritage.

The Ministry of Tourism has also organized if not supported annual festivals that draw heavily on indigenous cultural expression for tourism purposes. Among the festivals are Rainforest Music Festivals, Borneo Tattoo Festivals, the National Craft Fair, the Cultural Villages, Borneo International Beads Conference. Cultural centres have also been set up to showcase the aboriginal culture such the *Mari Mari* Cultural Village in Kionsom, Mosopiad Cultural Village in Penampang, Sarawak Cultural Village as well as *Mah Meri* Cultural Village. In these cultural centres, tourists can experience for themselves the traditional homes, life style and cultures of indigenous peoples as well as view the cultural artifacts are exhibited as well as a chance to sample the traditional delicacies

Indigenous cultural tourism is a subset of cultural tourism. In an Australian study, indigenous cultural tourism has been defined as the commodification of elements of Aboriginal culture for sale as products in tourism markets. In the context of Australia, four product categories have been identified as culture based. They are the manufacture and sale of aboriginal art and material culture, cultural tours, aboriginal small scale enterprises and cultural centres.[9] Most countries supports if not promotes indigenous cultural tourism as it brings significant benefit to the country including economic opportunities for indigenous groups, promotion of self determination, cross cultural exchange, preservation of traditional cultures and natural resource management.[10]

Realising the importance of indigenous cultural tourism, this paper turns into examining the legal landscape that regulates such activities. The paper commences with Malaysia first before looking at other national legislation, international treatise and model laws.

2.1 The legal framework of Indigenous cultural tourism in Malaysia

Three sets of laws are seen to have discernible impact on indigenous cultural tourism in Malaysia. They are laws pertaining to tourism, cultural heritage and aboriginal people. The two main legislations for tourism in Malaysia are the Tourism Industry Act 1992 and the Tourism Development Corporation of Malaysia Act 1972. The first Act provides the backbone of the tourism industry whilst the second is the oversight body in charge of the promotion of cultural activities and initiatives in Malaysia. Both sets of laws do not address indigenous cultural tourism in any manner. The Aboriginal Peoples Act 1954 is the overarching Act that provides for the protection, well being and advancement of the aboriginal peoples of Peninsular Malaysia. The Act mostly talks about aboriginal people's settlement, reserve lands, right to take forest produce, and matters concerning their livelihood. The Act has little to do neither with cultural rights nor with indigenous people's arts and crafts. This oversight is understandable as the main concern at that time is the welfare of the indigenous people. Later policy document has attested to the importance of cultural heritage of the indigenous people. The Strategic Plan of the *Jabatan Kemajuan Orang Asli (2011-2015)*, the governmental department in charge of the welfare of the indigenous people,

[6] ibid

[7] Badaruddin Mohamed, Cultural Tourism Promotion and Policy in Malaysia, available online at *www.hbp.usm.my/**tourism**/Papers/paper_**cultural***.

[8] Economic Planning Unit, Ninth Malaysia Plan (2006-2010) chapter 23, available online at *www.epu.gov.my/.../**ninth-malaysia-plan**-2006*

[9] Tim O' Rourke & Paul Memmott, Sustaining Indigenous Cultural Tourism: Aboriginal Pathways, Cultural Centres and Dwellings in the Queensland Wet Trophics, CRC for Sustainable Tourism Pty Ltd (2005) at p. 5 available at http://www.crctourism.com.au/wms/upload/resources/bookshop/ORourke_IndigenousCulture.pdf

[10] Ibid at p. 8

highlights the lack of focus on TCE and Aboriginal Heritage and recommended (inter *alia)* Aboriginal Peoples Act to be amended and strengthen the rights of the aboriginal people over their TCEs.

Another set of laws that can play a major role in the promotion of cultural tourism in Malaysia is the National Heritage Act 2005. The Act was formulated to provide for the conservation and preservation of National Heritage. To be protectable, the cultural product must first be designated as national heritage. The ambit of the Act is rather wide as it covers natural heritage, tangible and intangible cultural heritage, underwater cultural heritage, treasure trove and for related matters. Within the scope of this Act, some indigenous culture that has been designated as national cultural heritage i.e. *Mayin Jooh* (the *Mah Meri* cultural dance), the art of land clearance (*Iban* Sarawak), the *Petudui* Culture (the marriage culture of *Melanau Sarawak*) and *Sogit* (the culture of paying compensation among the *Kadazan-Dusun*), *Ngajat* (cultural dance of Iban) and *Sumazau* (cultural dance of the *Kadazan-Dusun*) , *Pakaian Adat Kadazan Dusun*, *Datun Julud* (Cultural Dance of the *Kenyah* Tribe) and *Adat Mandi Anak Iban* (Bath Rituals for Ibanese Babies. By designating these indigenous culture as national cultural heritage, national countries will take the preservation of those cultural practices as national agenda and will priorities allocations in that endeavour. By viewing cultural practices as heritage rather than property, it signifies greater value to them, connoting collective and public character, and connotes legacy irrespective of ownership (Vadi 2011).[11]

A set of guidelines which were passed pursuant to Act i.e. *Garis Panduan Pemuliharaan Bangunan Warisan, Jabatan Warisan Negara* 2012, further provides guidelines on definition and concept of preservation of heritage, guidance of documentation and guidelines on preservation of heritage building. Despite that strength, the Act and the Guidelines do not address the illicit sale of fake of indigenous arts and crafts.

From the brief analysis, there is practically little regulation on the sale of indigenous arts and crafts in Malaysia. Such discernible gap provides ample avenues for opportunists to thrive on. With the lack of copyright protection on cultural expression in Malaysia, there is ample room for others to misappropriate the cultural expression of the indigenous people in Malaysia.

Importance of having a set of laws that targets the sale of indigenous arts and crafts cannot be undermined. Woltz (2006)[12] espouses that cultural heritage involves forms and notions not contemplated by traditional intellectual property regimes. Furthermore, intellectual property rights have practical application limitations on cultural heritage. He alludes to the importance of legislation to artisan production whilst punishing the production of counterfeit Indian art.

A summary of the relevant Malaysian legislation is represented in Table 1 below.

[11] Valentina S. Vadi, When Cultures Collide: Foreign Direct Investment, Natural Resources, and Indigenous Heritage in International Investment Law, 24 Colum. Hum. Rts. L. Rev. 797 2010-2011, at p. 806

[12] Jennie D. Woltz, The Economics of Cultural Misrepresentation: How Should the Indian Arts and Crafts Act of 1990 be Marketed, Fordham Intell. Prop. Media & Ent. L.J. Vol 17:443

Table 1: Relevant Law on indigenous cultural tourism

Statute	Strength	Constraints
Tourism Industry Act 1992 (Malaysia)	**- provide for the licensing and regulation of tourism enterprises in Malaysia**	**-silent on TCE** **-silent on illicit sales of arts and crafts.**
Tourist Development Corporation Of Malaysia Act 1972 (Malaysia)	- established the Tourist Development Corporation of Malaysia	-deals solely on tourism development but is silent on TCE
Aboriginal Peoples Act 1954 (Malaysia)	- provide for the protection, well-being and advancement of the aboriginal peoples of Peninsular Malaysia	-deals mostly with aboriginal people's settlement, reserve lands, right to take forest produce, and matters concerning their livelihood. -silent on TCE
Pelan Strategik Jabatan Kemajuan Orang Asli 2011-2015	-addresses the need to properly document TCE of aboriginal peoples in Malaysia -IP rights of aborigines in Malaysia are still ignored - recommends the Aboriginal Peoples Act to be revised	- may be challenging as mainly concern with development of aborigines in Malaysia. Whether has power over TCE
National Heritage Act 2005 (Malaysia)	- provide for the conservation and preservation of National Heritage -covers natural heritage, tangible and intangible cultural heritage, underwater cultural heritage, treasure trove and for related matters	-silent on protection against illicit sales of arts and crafts.
Garis Panduan Pemuliharaan Bangunan Warisan Jabatan Warisan Negara 2012	provides guidelines preservation of heritage	-silent on illicit sales of arts and crafts.

2.2 Gaps in the international treaties & Model laws on TCE

There is no single treaty that deals solely with traditional cultural expression. Equally missing is an acceptable definition of traditional cultural expressions (WIPO, 2008)[13]. The United Nations Declaration on the Rights of the Indigenous People contains a list of possible 'provision' or 'possibility' in relation to indigenous people. Being a Declaration, these 'possibility' consists of more of what ought to be the list of rights accruing to the indigenous peoples rather than hard law.

The existing model laws on TCEs are diverse in its objectives, beneficiaries and scope of protection. WIPO has conducted studies on the gap analysis of these various model laws.[14] Most fundamentally, these model laws seem to have different conceptions of TCE by offering different definitions to the term. The subject matter of protection and the obligations set therein, also varies from one model law to another. This paper examines each of these model laws focusing on the gaps in their provisions.

The Bangui Agreement is the foundation of the Organisation Africaine de la Propriete Intellectuelle (OAPI), an intellectual property organization consisting of 17 French speaking member states. The Agreement which was entered into in 1977, considers expressions of folklore to be of national heritage and sets up a collection mechanism for the usage of EoF that has fallen into public domain. The royalties collected is for the purpose of furthering the promotion of EoF either for welfare or cultural purposes. Rights given under the Agreement are also extended to works derived from folklore. Under the Agreement, Expressions of folklore" is defined to mean the production of characteristic elements of the traditional artistic heritage developed and perpetuated by a community or by individuals recognized as meeting the expectations of such community, and includes folk tales, folk poetry, folk songs and instrumental music, folk dancing and entertainments as also the artistic expressions of rites and productions of folk art.

Tunis Model Law on Copyright on Developing Countries which was formulated through collaboration between WIPO and UNESCO in 1976 was a brave attempt in assimilating TCE within copyright. Known as expressions of folklore (EoF), the Model law contains provision for the collection of royalty for the usage of EoF by the competent authority or by the community concerned[15]. Considering that some folklore would have fallen into public domain, it carries provision on *domaine public payant*, where a fee can be charged for use of artistic material in the

[13] WIPO, Protection of Traditional Cultural Expressions: Draft Gap Analysis, October 11, 2008, WIPO/GRTKF/IC/13/4/(b) Rev, available online at www.wipo.int

[14] See The Protection of Traditional Cultural Expressions: Draft Gap Analysis, Intergovernmental committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, WIPO/GRTKF/IC/13/4(b)

[15] Section 6 of the Tunis Model Law on Copyright on Developing Countries

public domain[16]. EoF is considered as part and parcel of cultural heritage of the country, and is seen deserving of special protection from improper exploitation for its potential for economic expansion as well as cultural legacy.[17] The only drawback with copyright protection over EoF is the requirement of originality. EoF being cultural traditions that have passed down from one generation to another may no longer be considered as original expressions. Section 1 of the Tunis Model Law provides original literary and artistic work to be the domain of copyright protection. The only exception for FoE is in relation to fixation. Article 5 bis of the Model law provides that FoE is protectable even if they are not reduced in permanent form. Bearing in mind that most cultural practices are in oral form, such flexibility allows the application of copyright even if the rule in relation to fixation is not complied with.

Being drafted in 1976, naturally the provisions of the Tunis Model Law are outdated and need to be updated in terms of exceptions and limitations which are of special concerns to developing countries as well as for educational and research uses. The Model Provisions also establishes a "competent authority" responsible for the collection of fee for the usage of EoF. The "competent authority" is assumed to be the caretaker of the indigenous people's interest. By doing so, the indigenous people's are directly in charge of their own EoF. This runs the danger of sidelining the indigenous people in matters pertaining their own EoF.[18]

The WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, 1982 was formulated with the objective of framing a more refined intellectual property system for the protection of expressions of folklore. Under the Model, expressions of folklore" is defined as to mean productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of [name of the country] or by individuals reflecting the traditional artistic expectations of such a community, in particular:

(i) verbal expressions, such as folk tales, folk poetry and riddles;

(ii) musical expressions, such as folk songs and instrumental music

(iii) expressions by action, such as folk dances, plays and artistic forms or rituals; whether or not reduced to a material form

(iv) tangible expressions, such as:

(a) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes;

(b) musical instruments; [(c) architectural forms].

As the Model Provision targets illicit exploitation and other prejudicial actions, the Model Provisions subject all utilizations of EoF to authorization by the competent authority.[19] The legal norms promoted under the Model Provision are sui generis, rather than copyright. Further, it treats indigenous cultural expression as community heritage rather than national heritage. In addition, the subject of protection is artistic cultural heritage and not traditional heritage in the broad sense of the word.

The Model Provision has been criticized for bearing significant gaps in its legal framework. Most fundamentally, the Model Provision does not attempt to identify the beneficiaries who can claim entitlement under the law. The reason being is that the Model Provision perceives such issue as irrelevant as each national competent authority would be competent in dealing with the issues. Further, the Model Provision does not stipulate the optimum term for folklore protection. As it is a sui generis protection, could it be possible that EoF is treated as having perpetual protection under the Model Provision? Finally, even though the Model Law seems to elevate the entitlement of the community over EoF, it did not far enough to suggest the usage of customary laws and protocol to resolve conflicts

[16] section 17 of the Tunis Model Law on Copyright on Developing Countries

[17] See section 39 of the Commentary to the Tunis Model Law on Copyright on Developing Countries.

[18] Ragavan Srividya, Protection of Traditional Knowledge, Minnesota Intellectual Propery Review, Vol.2, Issue 2 (2001), pp [i]-60

[19] Section 3 of the Model Law

Table 2: Model Laws on TCEs

Agreement/Model Law	Strength	Constraints
Bangui Agreement (Africa)	-establishes the African Intellectual Property Organization (OAPI) -defined 'expressions of folklore' to include traditional artistic heritage and considered as national heritage - obligation to pay a fee to the national collective right for the use of EoF that have fallen into the public domain - Royalties collected will be used for welfare and cultural purposes.	- there are no special formal procedures or sanctions in relation to expressions of folklore (EoF) -does not make reference to customary laws and protocols
Tunis Model Law on Copyright for Developing Countries 1976	-introduced a folklore protection -leaves the administration of royalty collection for folkloristic expressions to ''competent authority'' at the national level or by the ''community concerned -address protection of folklore, and limitations and exceptions to rights, such as those in Section 7, entitled "Fair use," Section 3 on "Works not protected," or Section 10 on the limitation of the right of translation. -provides for a system of domain public payant in Section 17.	-need updates, legislation ages 39 years ago -the copyright limitations and exceptions that address the special concerns of developing countries need to be reexamined -should address copyright limitations and exceptions for education and research
WIPO-UNESCO Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, 1982	-provides protection for expressions of folklore against Illicit exploitation and other prejudicial actions. -protects verbal expressions, musical expressions, and expressions by actions.	-provides loose criterion for holder of folklore rights i.e. competent authority or relevant community -silent on the term of folklore protection. -silent on the issue of customary law and protocols for the resolution of conflicts
Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture (PRF)	- protect rights of traditional owners in their traditional knowledge and expressions of culture subject to prior and informed consent and benefit-sharing Focuses on cultural expressions, including names, stories, chants, riddles, songs in oral narratives, art and craft, instruments, pottery, jewellery, metalware, weaving, needlework, dances, textiles, ritual performances, cultural practices, designs and architectural forms. - establishes "traditional cultural rights" and "moral rights" in TK or expressions of folklore	- does not affect or apply to rights that exist before the commencement of this Act

2.3 Sui Generis Domestic Legislation on Indigenous Arts and Crafts

Production of original traditional arts and crafts would contribute to the economic as well as cultural sustenance of the indigenous people. Having a supportive landscape to support this process is therefore imperative. WIPO recommends for the adoption of some kind of domestic laws to stop trade in fake copies of traditional arts and crafts[20]. Unfortunately, not many national countries take that step. In this paper, three countries are studied; Panama, Philippines and the US.

The approach in the US is multi-prong. First, an oversight body was set up to be the certification body for an authentic mark for Indian Arts and Crafts. Second, the Act defines who is entitled to claim rights under the Act. The Act provides guidance as to who and which tribe can claim to be 'Indian' worthy of special protection under the Act. By so doing, the Act attracts criticism that the definition amounts to arbitrary restriction on ancestral claims. Thirdly, the Act has covers three broad categories of cultural

[20] WIPO, Draft Policy Objectives and Core Principles: WIPO/GRTKF/IC/7/3 available online at www.wipo.int

works, arts, crafts and handicrafts; both traditional and non traditional Indian style. The Act does not go further to suggest what would be considered as traditional or non traditional. By leaving it silent, the Act runs the risk of imposing vague standards. The Indian Arts and Crafts Act 2000 is supplemented with an earlier act, the Omnibus and Trade Competitive Act 1988. The OTCA requires that Indian-style imported products be indelibly marked with the country of origin. This provides the buyer clear evidence of where a product is made so as to facilitate informed decision making in reference to authenticity.

Panama and Philippines choose to confer the status of TCE as the communal property of the indigenous peoples. Panama Law 2000 provides extensive legal protection of traditional crafts by treating it to be part and parcel of traditional knowledge of the indigenous peoples. It protects authentic traditional arts and crafts through the creation of a National Register. The Act however suffers from lack of balance to the users by being heavily skewed towards the right holders.

The Philippines have three separate legislations that deal with indigenous arts[21]. The Intellectual Property Code sets up a register for traditional knowledge and cultural expression. Philippines Republic Act 7356 The National Commission for Culture and the Arts establishes a commission in charge of protection and promotion of Philippines cultural heritage including arts and crafts. The third piece of legislations the Indigenous Peoples Rights Act of 1997 (IPRA) Philippines has the objective of recognizing, protecting, and promoting the rights of Indigenous Cultural Communities and Indigenous Peoples. The Act has within its domain the past, present and future manifestations of indigenous cultures. Two perceivable gaps in the Act is that it does not in any way concern with the genuineness of the cultural products; unlike a system of certification in the US. Secondly, as the Act is meant to be read together with the Intellectual Property Code, it is totally silent on IP and access and benefit sharing.

[21]Jocelyn L.B. Blanco, Harnessing Traditional Knowledge for Development and Trade: the (Bicol) Phillips Experience, paper presented at Expert Meeting on Systems and National Experiences for Protecting Traditiional Knowledge. Innovations and Practices, Geneva, 30 October – 1 November 2000, available online at ,http://r0.unctad.org/trade_env/docs/philippines.pdf,

Table 3: National Legislation on Sale of Arts and Crafts

Statute	Strength	Constraints
Indian Arts and Crafts Act 2000 (USA)	-created the Indian Arts and Crafts Board to devise Indian art genuineness trademarks - and created criminal penalties for misusing these trademarks - prohibits the offering or displaying for sale or selling of any good, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States (Section 104(a)) -defines the term "Indian product" to mean "any art or craft product made by an Indian." (Section 309.2(d) (1)) Indian products include art works, crafts and handcrafts. (Section 309.2(d)(2))	- any arts or craft products made before 1935 are not protected under the Act. (Section 309.2(d)(3), Implementing Regulations, dated October 21, 1996) - IACA defines who qualifies as an "Indian" and "Indian tribe". Confined to only federally-recognized and state-recognized tribes, - Neither the IACA nor the Code of Federal Regulations defines traditional or non-traditional Indian style
Omnibus Trade and Competitiveness Act (OTCA) of 1988 USA	- mandates that Indian-style imported products be indelibly marked with the country of origin.	
Panama Law 2000	-protect the collective rights of intellectual property and traditional knowledge of the indigenous communities upon their creations. (Article I, Law No. 20, Panama; Article 1 of the Panama Ministry of Trade and Industries, Executive Decree No. 12, March 20, 2001). - protect the authenticity of crafts and other traditional artistic expressions (Article 6, Panama Law). - employs the use of the register not only as a defensive strategy - caution against complete disclosure of TK (Articles 11 and 12)	- allows exemptions for folkloric dance groups (Panama Law, Article 16) and certain small non-indigenous artisans.. - does not provide for exceptions relating to education, "fair practice," "borrowing for producing original work," or for incidental uses in broadcasting or for reporting purposes
Republic Act No. 8293, or the Intellectual Property Code of the Philippines	-establishes national registers on plant variety, indigenous cultural heritage, indigenous inventions, designs and utility models which includes arts and crafts and traditional practices.	
Philippines Republic Act 7356 The National Commission For Culture And The Arts	-provides protection and promotion of Philippines cultural heritage including arts and crafts	
Indigenous Peoples Rights Act of 1997 (IPRA) Philippines	- recognize, protect, and promote the rights of Indigenous Cultural Communities and Indigenous Peoples - The subject matter includes "the past, present and future manifestations of their [ICCs'/IPs'] cultures" (Section 32)	-does not provide any procedures to ensure genuineness of TCK products -silent on IP and ABS rights

3. CONCLUSION

Tourism has contributed substantially to Malaysian economy and has been identified as one of the largest drawer of foreign exchange after the manufacturing sectors[22]. Indigenous cultural expression contributes to a certain extent to the burgeoning tourist industry in Malaysia. In order to sustain this continued interest, more should be done to regulate the promotion and

Siti Shuhada Ahmad Kosnan, Normaz Wana Ismail & Normaz Wana Ismail, Demand Factors for International Tourism in Malaysia: 1998-2009; PROSIDING PERKEM VII, JILID 1 (2012) 44-50, available online at http://www.ukm.my/fep/perkem/pdf/perkemVII/PKEM2012_1A5.pdf

marketing of handmade goods as well as the protection of handmade artisanal goods.

From the analysis of relevant model laws on TCEs and national legislations, four different approaches emerge; copyright, national heritage, indigenous people's right and sales of indigenous people's arts and crafts. Each approach has its own unique way of specifying the rights protected, the beneficiaries and the offences as well as the punishments imposed. No one approach is greater than the other leading to WIPO to recommend for the adoption of a mixture of approaches and not to rely on solely on a single approach. In Malaysia, unfortunately, not much has been done in copyright, and the indigenous peoples' law. The lack of regulation creates a lot of room for opportunist to maneuver. This is unfortunate as Malaysia is aiming to leverage on tourism as one of the income earners in our bid to reach a high income country in 2020.

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[13] www.wipo.in