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SAFEGUARDING TRADITIONAL TEXTILE KNOWLEDGE IN THE ALPINE CONTEXT FINDINGS FROM A FIELD EXPERIENCE IN VALLE CAMONICA

2025

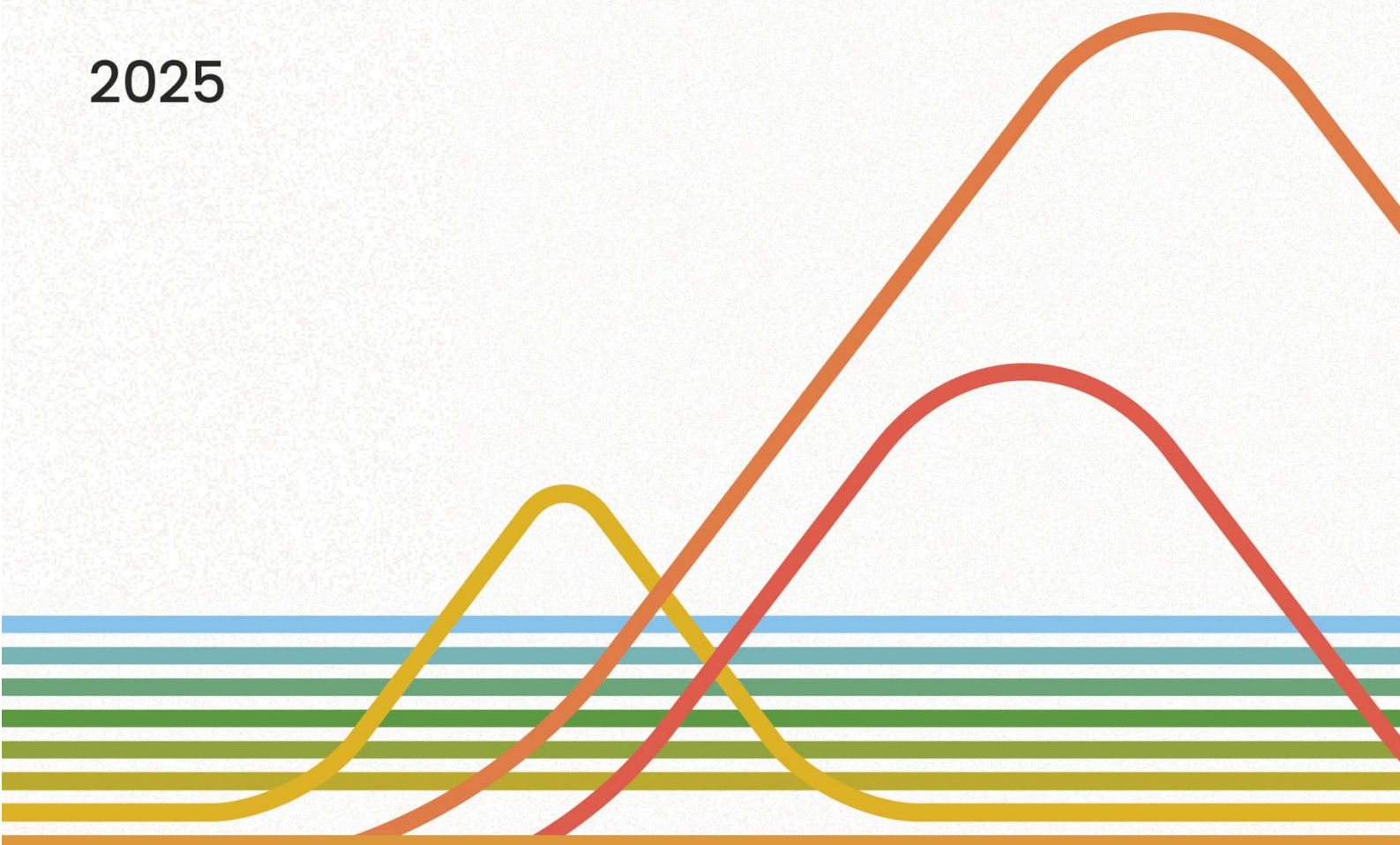


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CBD	Convention on Biological Diversity
CPI	<i>Codice della proprietà industriale</i>
EU	European Union
EUIPO	European Union Intellectual Property Office
FAO	Food and Agriculture Organization
ICH	Intangible Cultural Heritage
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
INMA	Institut national des métiers d'art
IPR	Intellectual Property Right
LDA	<i>Legge sul diritto d'autore</i>
NGO	Non-governmental organization
OD	Operational Directives
TCEs	Traditional Cultural Expressions
TK	Traditional Knowledge
UIBM	Ufficio Italiano Brevetti e Marchi
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
WIPO	World Intellectual Property Organization

ABBREVIATIONS

PART I

COMPARATIVE ANALYSIS

METHODOLOGICAL NOTE

The first part of this study offers a theoretical and comparative analysis of the principal legal frameworks currently available for the protection of traditional knowledge. While a more precise definition of this concept will be provided in the following section, the aim here is to establish the methodological premises that can guide readers in approaching the reflections that follow.

The overarching objective of this investigation is framed within a broader research project that combines theoretical inquiry with applied research. In its applied phase, the project engages directly with two Alpine communities that safeguard traditional textile knowledge: the association *Coda di Lana* (Malonno, BS) and the association *In-trecci* (Monno, BS). This dual perspective has shaped the study from the outset, influencing both its geographical scope and its legal orientation. Although international examples are considered, the analysis focuses primarily on the Italian regulatory framework and, where appropriate, the supranational legislation of the European Union, with the goal of building a reference framework capable of informing subsequent fieldwork.

At the same time, selected references to non-EU experiences are included for their particular relevance—either because they exemplify innovative protection mechanisms or because they address issues that extend beyond the Western legal paradigm. Indeed, as will become evident, many instruments for safeguarding traditional knowledge and cultural expressions are rooted in legal traditions and cultural worldviews that diverge significantly from those of Europe.

The analysis does not seek to provide a descriptive or exhaustive overview of existing legal regimes. Rather, it aims to explore selectively the potential and limitations of law—and of certain legal instruments in particular—in safeguarding and enhancing traditional knowledge. In this sense, the inquiry is conceived not as a comparison for its own sake, but as a theoretical foundation to guide subsequent work with local communities. The thematic structure reflects this applied orientation, designed to support the development of practical tools for the recognition and participatory safeguarding of traditional knowledge in two specific contexts of Valle Camonica, Lombardy. From this perspective, the legal analysis plays a preparatory and guiding role in relation to the community-based activities that follow.

Some of the material and reflections presented here build on previous studies and publications by the author, which in certain cases have been partially re-used and adapted. The main sources consulted include international academic literature on intangible cultural heritage and traditional knowledge, spanning public, international, and private law. Equally important has been the review of policy documents issued by leading international organizations in this field. Full references are provided in the attached bibliography.

PROTECTING TRADITIONAL KNOWLEDGE AT THE CROSSROADS OF INTELLECTUAL PROPERTY RIGHTS AND INTANGIBLE CULTURAL HERITAGE

According to the definition proposed by the World Intellectual Property Organization (WIPO), Traditional Knowledge (TK) includes skills, abilities, and practices that are developed, maintained, and transmitted within a community over generations, often forming an integral part of its cultural or spiritual identity. Despite the name, however, traditional knowledge should not be understood in a static sense or as an exclusively ancient heritage, but rather as a living and dynamic body of knowledge¹. What makes knowledge “traditional” is, above all, its connection to the community of origin. From this bond arise both the intention to transmit such knowledge and the capacity to adapt it over time, often through specific customary mechanisms.

In the absence of a single, internationally agreed definition—an intentional choice that reflects both the diversity of traditional knowledge forms and their bottom-up character, rooted in the self-determination of communities—the term *traditional knowledge* is generally used in two complementary senses. On the one hand, it designates the knowledge content itself, generated through intellectual practices embedded in traditional cultural contexts. On the other, it refers to the related *Traditional Cultural Expressions* (TCEs) through which this knowledge is conveyed and expressed.

Following WIPO’s approach, three key features can be identified as particularly relevant for the development of this study:

Traditional knowledge represents an **intangible form of heritage**, though it may also be embodied in tangible objects;

It is **collectively held** by a community, which both defines and determines its value;

Traditional knowledge is **dynamic and continually evolving**, sustained by intergenerational transmission and its inseparable connection to the social and cultural processes that nurture it.

In light of these premises, the integration of traditional knowledge into existing legal systems proves particularly challenging. Its intrinsic features—intangibility, collectivity, and dynamism—place it at the crossroads of heterogeneous regulatory regimes, which govern its identification, production, circulation, and attribution only partially and often in a fragmented manner. The plurality of legal references, and their mutual permeability, reflects the evolutionary trajectory that this field has undergone since the twentieth century.

During the twentieth century, numerous national legal systems—particularly in developing regions such as Africa, Latin America, Asia, and the Pacific—introduced regulato-

¹ WIPO, *Traditional Knowledge and Intellectual Property, Background Brief – No. 1*, 2023. Available at <https://www.wipo.int/publications/en/details.jsp?id=4688&plang=EN> (last access 31 Au

ry policies to govern traditional cultural expressions. These initiatives emerged in response to the urgent need to protect cultural heritage from growing risks of exploitation and misappropriation. Cultural heritage was increasingly recognized as essential to processes of cultural regeneration, the construction of collective identity, and the consolidation of the nation-state. In most cases, legal protection took the form of state ownership and control over elements of popular cultural heritage—such as traditional music, dance, or literature—through mechanisms inspired by copyright law.

However, the development of these legal tools did not follow a uniform trajectory. Differences between Western and non-Western legal traditions shaped the extent to which adequate mechanisms could—or could not—be established for the recognition and protection of collectively held traditional knowledge. Legal systems rooted in Western traditions often proved ill-suited to addressing the protection needs articulated by the communities themselves. This imbalance became a major obstacle to the creation of an international legal framework, contributing to the persistent delay in defining effective global regulatory instruments.

The heterogeneity of legal regimes dedicated to the protection of traditional knowledge remains evident in contemporary practice, as reflected in the slow pace of ratifications—and, in some cases, outright non-participation—by certain States with respect to the international agreements currently in force in this field.

At the same time, at the international level, Article 15 of the Berne Convention for the Protection of Literary and Artistic Works illustrates the persistent reluctance to recognize and regulate “hybrid” forms of expression, in which authorship is collective and intertwined with the generational continuity of a community. The article delegates the regulation of such forms to national legislation, thereby excluding them from the full protection afforded at the international level.

Within the current legal landscape, traditional knowledge finds only a partial place in two principal international instruments: the **2003 UNESCO Convention** for the Safeguarding of the Intangible Cultural Heritage and the more recent **2024 WIPO Treaty** on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge. The considerable temporal gap between these two instruments is not incidental. Rather, it reflects both the conceptual and legal transformations that have gradually reshaped the very definition of traditional knowledge, and the persistent challenges of situating it within coherent and widely accepted legal frameworks.

It is no coincidence that the two international organizations promoting these instruments—UNESCO and WIPO—were initially engaged in a joint process aimed at elaborating an international legal instrument for the protection of what was then generally referred to as “folklore.” Over time, however, a growing divergence emerged between two visions: on the one hand, an approach grounded in copyright law, centered on the logic of intellectual property; on the other, a cultural perspective oriented toward safeguarding intangible heritage within its social and community context.

This divergence has gradually translated into distinct institutional trajectories. On one hand, it led to the development of a specific international legal instrument dedicated to intangible cultural heritage (see [below](#)); on the other, it resulted in the creation, in 2000, of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) by WIPO, following the termination of its collaboration with UNESCO. Tasked with elaborating an international legal instrument for the protection of traditional knowledge, traditional cultural expressions, and genetic resources, the IGC's work culminated, after more than twenty years of negotiations, in the adoption of the 2024 WIPO Treaty.

Both instruments represent a significant advancement in the construction of a system for safeguarding traditional knowledge, each reflecting its own guiding perspective.

The UNESCO Convention emphasizes the active role of communities, groups, and individuals in the recognition and transmission of cultural heritage, promoting forms of direct participation in institutional safeguarding processes. The focus, however, remains on the object of protection.

By contrast, WIPO's approach is grounded in a conceptual framework more closely aligned with the logic of intellectual property, placing at the center the relationship between knowledge holders and the protected object, in a perspective that prioritizes the recognition of authorship and related rights. This represents a significant shift in the pivot around which the adopted perspective revolves, moving the focus from the "object" to the "person."

An example of this approach is provided by Article 3 of the WIPO Treaty, which introduces a binding disclosure obligation in patents, requiring applicants to indicate the country of origin of genetic resources and/or the Indigenous Peoples or local communities from which associated traditional knowledge was obtained, whenever such elements constitute the basis of the patented invention. The aim is to prevent the erroneous granting of patents in the absence of novelty or inventive step, in cases where these features are already evident in pre-existing practices or knowledge. The Treaty also encourages the development of information systems (such as databases) on genetic resources and traditional knowledge, to be established, where possible, in consultation with the relevant communities and taking national specificities into account.

Although formally focused on transparency and procedural safeguards, the Treaty reflects a key principle also shared by the UNESCO Convention: the **recognition of the dynamic and ongoing relationship between communities and cultural practices**, even in the absence of formal property rights. Just as the UNESCO Convention prioritizes safeguarding over the attribution of legal ownership, the WIPO Treaty establishes a regulatory framework aimed at acknowledging the cultural and knowledge value of communities, deferring more complex issues of ownership and benefit-sharing to future negotiations.

Taken together, these instruments outline a gradual path toward greater formalization of the protection of traditional knowledge and cultural expressions, while strengthening the active role of communities within a regulatory context that remains in flux.

In this perspective, alongside the legal instruments discussed so far, it is also essential to recognize the contribution of other international conventions that promote **cultural and biological diversity**. Among these, particular relevance is held by the Convention on Biological Diversity (CBD, 1992) and the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

The scenario, however, remains open, and at present **incomplete**. Today, communities have access to only a limited set of operational tools, largely derived from the two major regulatory models examined above.

The following sections aim to systematically analyze the main normative and procedural opportunities currently available for the protection of traditional knowledge and its related cultural expressions. Recognizing their heterogeneous and dynamic nature, deeply rooted in specific cultural and social contexts, it becomes clear that **no single model of protection can be applied uniformly at the national or international level**.

For this reason, it is useful to distinguish three main regulatory areas, reflecting the plurality of existing approaches:

1. The intersection with intellectual property instruments, assessing the possibility of extending or adapting their application to the specificities of traditional knowledge;
2. The creation of ad hoc legal instruments, through *sui generis* systems specifically designed for the protection of such forms of knowledge, complemented by good practices already tested at national or regional levels;
3. Safeguarding and valorization mechanisms derived from international law on intangible cultural heritage.

THE PROTECTION OF TRADITIONAL KNOWLEDGE UNDER INTELLECTUAL PROPERTY LAW

Intellectual property encompasses the **body of legal norms that recognize and protect intangible assets resulting from human creativity**. These include, for example, inventions, literary and artistic works, distinctive signs, industrial designs, and, more generally, any other creative or innovative expression that takes a recognizable form. In general terms, intellectual property rights (IPRs) grant the rights holder—typically a natural or legal person—**exclusive control over the use, reproduction, and economic exploitation** of these assets within their respective spheres of application: industrial, scientific, cultural, and commercial. They also confer so-called **moral rights**, namely the recognition of the authorship relationship linking the asset to a particular individual.

The main categories of conventional IPRs include copyright and related rights, patents, trade secrets, designs, individual or collective trademarks, and certification marks.

As noted in the [previous section](#), in recent years numerous communities holding traditional knowledge, together with the governments of countries often outside the Western legal tradition, have promoted the development of regulatory frameworks aimed at extending intellectual property protection to traditional forms of knowledge and expression. Indeed, their intangible nature makes them—at least in theory—compatible with classical instruments designed to prevent misuse or unauthorized exploitation.

Under the conventional framework, such knowledge would ordinarily fall into the so-called **public domain**, a legal space where content, not being protected by exclusive rights, may be freely used. To counter the risks of misappropriation and unauthorized use, the application of intellectual property tools has been progressively explored as a possible response, in an attempt to partially fill the protection gaps inherent in the public domain regime.

It is therefore important to ask what legal significance can be attributed to the concept of protection through IPRs.

As noted at the outset, this form of protection can be understood as the set of rules, principles, and mechanisms aimed at preventing the unauthorized, distorted, or inappropriate use of intangible assets by third parties.

Such protection can be realized either through the recognition of exclusive rights—which allow the rights holder to exclude others from performing certain acts with respect to the intangible asset and to benefit from its economic exploitation—or through instruments not tied to proprietary schemes, such as moral rights, equitable compensation mechanisms, or protection against unfair competition practices.

When extended to traditional knowledge and traditional cultural expressions, IPRs allow for the recognition of the innovation and intellectual creativity they embody. In other words, by adopting regulatory frameworks rooted in intellectual property law, foundational principles—primarily the prevention of misappropriation—are **adapted and redi-**

rected to apply to new categories of intangible assets and to benefit new subjects, such as Indigenous and local communities. Viewed more broadly, this approach can yield indirect benefits for the cultural heritage involved.

Specifically, protection in this context traditionally assumes two distinct forms, often used complementarily, each reflecting a different purpose:

- **Defensive protection** aims to prevent third parties from illegitimately acquiring intellectual property rights over traditional knowledge and the associated cultural expressions.
- **Positive protection**, on the other hand, involves the attribution of rights to the communities themselves, enabling them to exercise control over the use of their knowledge and potentially derive economic benefits from it.

In both cases, the concept of protection functions as a distinct role—or a different “stance” of the law—compared to the concepts of safeguarding or preservation, which occupy the opposite end of an ideal binary. These latter concepts, in fact, find their full expression within UNESCO’s operational context and, more generally, aim to counter the potential deterioration of such knowledge in relation to the cultural value it embodies for humanity as a whole.

In the context analyzed here, the protection of traditional knowledge and traditional cultural expressions requires a primary focus on the **relationship linking the collective subject—the community, in all its possible forms—to its knowledge and creative expressions**. The aim is thus to provide concrete tools that enable the assertion and safeguarding of this link, including in terms of exclusivity.

Far from being limited to a narrow perspective, protection under IPR standards also encompasses the implementation of broader policies aimed at valorizing this identity-based relationship and addressing the needs expressed directly by the knowledge holders. In particular, more sophisticated forms of recognition can play a strategic role in promoting sustainable economic development and the reclaiming of cultural resources by communities. The use of traditional knowledge and expressions as sources of contemporary creativity can indeed generate virtuous effects: the creation of local and community-based enterprises, the development of productive value chains, the enhancement of skills, as well as the strengthening of sustainability and circularity principles. Additionally, objectives such as safeguarding cultural identity, recognizing the human right to culture and heritage, and promoting cultural diversity can also be advanced.

Therefore, while a distinction remains between forms of public protection (understood as the broad collective interest in conserving cultural heritage) and forms of private protection (linked to the attribution of specific rights to community holders, in a narrow collective sense), significant **areas of intersection** persist and deserve to be highlighted. The development of value chains based on traditional knowledge and cultural resources also produces positive effects in terms of public recognition of their cultural value. From this perspective, legally and culturally valuing traditional practices allows

communities to engage as legitimate interlocutors in dialogue with creative industries, artists, cultural operators, and various institutions. These interactions, in turn, generate new forms of value—cultural, artistic, creative, and economic—that can enhance the visibility and vitality of the cultural heritage involved.

Within this framework, intellectual property instruments can provide useful support to facilitate and regulate these relationships.

At the same time, it is important to emphasize that these instruments were not originally designed to protect traditional knowledge and expressions—particularly in the Italian context, which follows the trajectory of the Western legal tradition. A notable example is the duration mechanism that governs most codified IPRs, which establishes a limited period of protection according to standard rules, after which the assets fall back into the dynamics of the public domain.

The intrinsic characteristics of traditional knowledge may therefore create **misalignment** with the immediate application of classical protection regimes. Moreover, there are cases in which practices, protocols, and customary uses are already applied within the community, potentially overlapping with—or conflicting with—the rules established by codified legal instruments².

Finally, it is crucial to keep in mind that **the legitimacy and feasibility of any legal intervention depend on the recognition of the inseparable relationship between knowledge and community**: effective protection cannot exist without first defining the intentions, needs, and expectations of the communities holding the knowledge with respect to its management (protection, circulation, use, and commercialization). Only on this basis can one subsequently assess whether and how to apply—or, if necessary, adapt—intellectual property instruments to the context under study.

A corollary of this observation is the recognition that, when a community seeks to assert claims for the protection of its traditional knowledge and expressions, it faces significant practical challenges: the intellectual, economic, and human costs of acquiring rights where registration is required, as well as those associated with judicial enforcement, can constitute substantial obstacles—particularly in local, fragile, or rural contexts—thereby limiting the community’s ability to derive meaningful benefits from these instruments.

Referring to [TABLE 1](#) for a concise overview of the main characteristics of traditional intellectual property instruments provided by codified regulations, we now turn to a more in-depth analysis of the legal institutions and the potential for extending existing regimes. **The analysis focuses on those instruments that, by their nature and flexibili-**

² In this regard, WIPO has reiterated that: “The protection of intellectual property recognizes and integrates traditional models of Traditional Cultural Expressions (TCEs) and Traditional Knowledge (TK), operating beyond the boundaries of the originating community: its purpose is not to replace or imitate the customs and practices of the community itself.” See *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, 2020, esp. 30.

ty, are potentially better suited to meet the protection needs of traditional knowledge³. The findings are summarized in TABLE 2, attached to this study.

Given the practical orientation of this work, aimed at operational application in the Italian context, specific legal references will, where necessary, be tied to national law. This clarification also highlights a fundamental point: IPRs are territorial in nature, meaning that protection is granted exclusively within the country in which the rights are registered or recognized. Each State regulates the matter through its own legal frameworks, established at the national level, governing areas such as copyright, patents, trademarks, industrial designs and models, and other related sectors.

³ The adaptation of such regimes is also recommended by WIPO, which cites as a notable example the adjustment by several countries of their intellectual property systems based on the so-called *Model Provisions* of 1982—a sui generis model for the protection of traditional cultural expressions through intellectual property instruments, developed jointly by UNESCO and WIPO, and subsequent to the well-known *Tunis Model Law on Copyright for Developing Countries* of 1976.

Copyright law

In Italy, the primary legal source on copyright is Law No. 633 of 1941 (LDA), which governs the protection of copyright and related rights⁴. This is complemented by numerous supranational sources, both European and international in nature, which help to shape the overall regulatory framework⁵.

In general terms, copyright protects **intellectual works that exhibit creative character** and belong to the fields of literature, music, visual arts, architecture, theater, and cinematography, regardless of the form or mode of expression adopted (Art. 1, LDA). It grants the rights holder exclusive economic rights—relating to the use, control, and exploitation of the work—as well as **moral rights**, which ensure recognition of authorship and the protection of the integrity of the work itself. In this regard, it should be noted that the recognition of such rights provides an additional interpretative key for issues related to misappropriation, improper use, or distorted representation of traditional knowledge and expressions. Moral rights, in particular, could potentially be leveraged to support claims for respect, recognition, and safeguarding of authenticity and continuity in their transmission. This topic will be revisited later.

The determination of the requirements qualifying the creative character of a work is the subject of extensive debate in both doctrine and jurisprudence, at national and supranational levels. Without delving into the various positions, it is useful for the purposes of this analysis to highlight that **originality** is considered the central requirement, albeit interpreted in diverse ways. Often, including at the European level, this requirement is understood as an expression of the author's personality, manifested through “free and creative choices” in the form of expression of the idea⁶. In some doctrinal and jurisprudential interpretations, the requirement of originality is sometimes accompanied by that of **novelty**⁷.

⁴ As recently amended by Decree-Law No. 113 of 9 August 2024, converted, with amendments, by Law No. 143 of 7 October 2024, and by Decree-Law No. 131 of 16 September 2024, converted, with amendments, by Law No. 166 of 14 November 2024.

⁵ At the European level, particular relevance is held by: Directive 2001/29/EC (“Infosoc”) on the harmonization of copyright in the information society; Directive 2019/790/EU on copyright in the digital single market (implemented in Italy through Legislative Decree No. 177/2021); Directive 2019/1024/EU on open data and the re-use of public sector information; as well as other sectoral directives, such as Directive 2006/115/EC on related rights and Directive 2012/28/EU on orphan works. At the international level, special significance is attributed to the Berne Convention for the Protection of Literary and Artistic Works (1886), the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994), and the treaties of the World Intellectual Property Organization (WIPO), including the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty of 1996.

⁶ See CJEU judgment of 1 December 2011, Case C145/10, *Eva-Maria Painer v. Standard VerlagsGmbH and Others*.

⁷ This is often rejected by those who correctly observe that, since no system of mandatory registration in public records is required for the existence of an intellectual work (see Art. 6), it would be very difficult to carry out such a verification

What is relevant here, in any case, is that the application of these criteria to the characteristics of traditional knowledge—as outlined in the introductory section—highlights certain elements of misalignment.

Traditional knowledge, by its very nature, is the product of collective and intergenerational transmission, shaped over time by cultural, social, economic, and political processes. In this context of collective adaptation and re-creation, it is not only difficult to clearly identify the requirements of originality and novelty, but also to pinpoint a subject who could claim an exclusive right based on a personal connection to the work. It is precisely this dynamic and collective dimension, which constitutes the very essence of traditional knowledge, that places it in a fluid space with respect to the classical parameters of copyright law.

From this viewpoint, it is important to recognize that modern reinterpretations of traditional knowledge or cultural expressions—often referred to as **derivative works**—can acquire independent significance and may qualify for copyright protection, as long as the author or authors are clearly identified and the work is fixed in a tangible and stable form. This consideration is particularly significant because contemporary adaptations of cultural traditions are often more accessible and commercially viable. As a result, they may present economic opportunities even for individuals or entities outside the originating community. In the absence of a dedicated legal framework for the protection of traditional knowledge, such external actors could legitimately assert copyright over the derivative work, provided that all legal criteria are satisfied.

Copyright also presents an **intrinsic limitation**, which is difficult to reconcile with the expectations of a collective entity seeking to protect its knowledge: its **temporary nature**. Once the statutory period of protection expires, the work enters the so-called “public domain,” according to a principle balancing the individual property right—based on the creative contribution of the author—and the competing interests of the broader community (Farah, Tremolada, 2015)⁸. The central issue lies precisely in the definition of the categories structuring this regime, articulated along the public-private dichotomy. A rethinking of the concepts of ownership, control, and cultural production, in relation to the public expectation of access and use, could facilitate a more coherent and effective extension of this framework to the protection of traditional knowledge and the related community holders.

⁸ As the same authors observe, the absence of an effective system for protecting intellectual creativity would lead to the creation and dissemination of a smaller number of innovative and socially desirable works, since the effort required to produce an original cultural expression is far greater than that needed to copy it. On the other hand, excessively strong or prolonged protection would have a negative effect on the availability of creative works to the public, given that authors and inventors rely on and draw inspiration from prior works. The ultimate goal of the intellectual property system is precisely to balance these two forces, so as to maximize the benefits derived from the dissemination of works to the public. See Farah, Tremolada, *Conflict Between Intellectual Property Rights and Human Rights: A Case Study on Intangible Cultural Heritage*, in *Oregon Law Review*, 94(1), 2015, 151.

Despite awareness of these structural limitations, there are certain institutions within the copyright regime that, in specific contexts, can provide useful tools for the protection and valorization of traditional knowledge and cultural expressions.

Collective works

Under current legislation, when a work is the result of the indistinguishable and inseparable contribution of **multiple individuals**, copyright is jointly held by all co-authors. Although the challenges previously highlighted—particularly regarding the precise identification of the group members, in light of intergenerational overlap and the difficulty of delineating the community in the present—remain, resorting to this legal configuration could represent a viable option, especially in **cases where communities already possess legal personality and are organized in structures dedicated to the production of specific creative outputs**.

Databases

In Italy, the regulation of databases is harmonized with European law through the transposition of Directive 96/9/EC via Legislative Decree No. 169 of 6 May 1999, which introduced certain amendments to the LDA. Italian law distinguishes, in particular, between two forms of database protection: one of a copyright nature, recognized when the database has an original structure (falling within the scope of collective works under Art. 3); and the other of a *sui generis* type, regulated separately (see [below](#)).

Indeed, when a **database constitutes an original intellectual creation**, the rights holder is granted an exclusive right encompassing the reproduction, adaptation, and distribution of the database and its variants. It is important to recall, however, that this protection concerns **only the structure** of the database and in no case extends to the contents included therein, which remain subject to any pre-existing rights.

This mechanism can be especially valuable for the **documentation of traditional knowledge and cultural expressions** (whose characteristics will be analyzed [here](#)). While the mere registration or cataloguing of such knowledge rarely constitutes an effective protection strategy on its own, the creation of digital databases can represent a significant tool for the holding communities (Boța-Moisin & Gujadhur, 2021). Through these instruments, communities can actively exercise control over the modalities of access, use, and potential commercial exploitation of their knowledge, including through the adoption of supplementary tools such as community protocols, contractual clauses, or specific conditions of access and sharing, defined autonomously by the knowledge holders.

Trademarks

The national regulation of trademarks is governed by the Industrial Property Code (CPI)⁹, Legislative Decree No. 30 of 10 February 2005, and the main supranational

⁹ Hereinafter also referred to as “the Code.”

sources on the subject¹⁰. A trademark is defined as **any sign capable of distinguishing the goods or services of one enterprise from those of others**. Registration is carried out through an administrative procedure at the Italian Patent and Trademark Office and can be extended at the European level via the European Union Intellectual Property Office, and internationally through the Madrid system (WIPO). Registration grants the rights holder an exclusive right to use the trademark, including the power to prohibit third parties from using identical or similar signs likely to cause confusion, as well as the ability to transfer, license, or authorize its use under specified conditions.

In the context of protecting traditional knowledge, certain types of trademarks provided for under current Italian legislation are particularly relevant.

Collective trademarks

Pursuant to Article 11 of the CPI, a collective trademark allows collective entities—public law legal persons and trade associations of manufacturers, producers, service providers, or merchants—to register a **distinctive sign usable by multiple members, provided that a specific set of regulations governing its use is respected**.

From the perspective adopted here, it is plausible to assume that such regulations could be “filled” with requirements linked to origin from a specific community, or with compliance with particular quality standards or traditional techniques established by the community itself. The collective trademark could thus serve as a certification tool for the geographical origin, shared characteristics, or quality of culturally rooted goods and services. Furthermore, paragraph four of Article 11 establishes that a geographical name used as a collective trademark cannot be prohibited in commerce if used in accordance with professional standards, thereby ensuring a balance between exclusivity and lawful use.

A particularly significant example comes from the Italian context: in 2001, the figurative collective trademark ‘Cremona Liuteria’ was registered by the Consorzio Liutai “Antonio Stradivari” Cremona, in collaboration with the Cremona Chamber of Commerce and the Associazione Liutaria Italiana. The trademark, consisting of a distinctive sign and a usage regulation, was initially registered in Italy and subsequently extended to 34 countries, guaranteeing production using the so-called “classical method” for the certified instrument. The trademark is directly linked to an element of intangible cultural heritage listed on the UNESCO Representative List—the “Traditional violin craftsmanship in Cremona.”

This case represents a paradigmatic example of the **overlap between different protection regimes and instruments**, operating at distinct but often complementary normative levels. Such an interplay aptly reflects the complexity of protecting traditional

¹⁰ Consider, in particular, the Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement and its Protocol on the International Registration of Marks (WIPO), the WTO TRIPS Agreement (1994), and the Nice Agreement (1957). At the European level, particular relevance is held by Regulation (EU) 2017/1001 on the European Union trademark and Directive (EU) 2015/2436, which harmonizes national trademark legislation

knowledge, particularly when economic and market dynamics interact with the needs of facilitating transmission and recognizing the communal value of specific traditional practices and techniques.

Certification trademarks

Introduced by Legislative Decree No. 15 of 20 February 2019 (implementing Directive 2015/2436), the certification trademark has the specific function of **attesting that certain products or services comply with predefined standards of quality, origin, or production techniques**. Unlike an ordinary trademark, it does not serve a business-distinctive function but rather a certifying function (for geographical origin, adherence to traditional methods, or use of specific materials). It may be requested by any subject, natural or legal, including institutions, authorities, and accredited bodies under current certification legislation, and requires the submission of a **usage regulation** containing the compliance criteria and control procedures.

As such, it can serve as a particularly useful legal instrument for the protection and promotion of cultural or artisanal practices specific to local communities, especially where there is an aim to ensure continuity and recognizability of territorial production. Furthermore, its adoption may result from shared initiatives between public and private actors engaged in cooperative efforts aimed at valorizing a territorial context and its products, goods, or identity elements.

Historic trademark of national interest

Introduced by Legislative Decree No. 34 of 30 April 2019, the historic trademark is intended for **marks that have been registered or continuously used for at least 50 years and are linked to excellence in national production**. Registration is carried out upon application to the Italian Patent and Trademark Office (UIBM) and includes entry in a dedicated public register maintained by the Ministry of Enterprises and Made in Italy. Beyond its function of enhancing industrial and cultural heritage, the historic trademark activates **safeguarding measures** in the event of business crises that could potentially compromise the productive continuity of marks of particular significance to the national economic fabric.

The historic trademark can coexist with ordinary forms of registration and represents an additional qualification that may facilitate protection and valorization actions.

Although it must be coordinated with the specific requirements of existence and duration of other trademarks, this instrument could serve as an additional and integrated resource, particularly when traditional knowledge has given rise to a recognizable product or production practice, transmitted over time and linked to a strong territorial identity. In such cases, obtaining recognition as a historic trademark could strengthen strategies for the protection and valorization of traditional knowledge, acting as a lever for the cultural and economic revitalization of a given product or territory, and facilitating cooperation among stakeholders, providing the holding community with a specific voice in dialogue with the various actors involved.

Patents

The patent for an invention is regulated in Italy by Article 45 of the CPI, which defines it as the exclusive right granted in respect of a new invention, resulting from inventive activity and susceptible to industrial application, regardless of the technical field concerned. Registration with the Italian Patent and Trademark Office (UIBM) grants the rights holder an exclusive right to economically exploit the invention for a period of twenty years from the filing date, non-renewable. Protection can be extended at the European level through the European Patent Office or internationally via the system managed by WIPO. In addition to the proprietary right, a moral right to recognition of inventorship is also granted.

Once granted, the patent confers on the holder the exclusive ability to produce, use, transfer, or license the invention according to conditions established by the holder.

A first potential application, to be verified and contextualized according to the specific characteristics of the community or individuals involved, may concern the **patenting of single, new, and industrially applicable techniques within traditional knowledge that has been transmitted over time**.

Beyond specific applications in suitable contexts, the patent system assumes particular relevance in light of the potentially significant relationship between traditional knowledge and the **state of the art**. For patentability assessment purposes, the state of the art encompasses everything made publicly accessible—whether in writing, orally, through use, or by any other means—before the filing date of the application, both in Italy and abroad, and which is relevant even partially to the claimed invention.

From this perspective, **traditional knowledge can constitute part of the state of the art if it has been disclosed**—written, public, or oral—accompanied by adequate evidence. This calls for reflection not only on the role of this instrument in preventing the misappropriation of community knowledge through third-party patents, but also on the **importance of documenting and making such knowledge visible**, so that it can serve as a reliable reference during examination procedures. Where appropriate, this documentation may also inform potential patenting strategies, provided they align with legal requirements and respect the cultural and collective interests of the communities concerned.

The patent could therefore be more effectively integrated within composite strategies that combine formal protection, documentation measures, and contractual instruments.

Geographical indications

Geographical indications occupy a hybrid space in a hypothetical taxonomy of legal classification: formally, they are recognized as a category of intellectual property rights (IPRs), but in many jurisdictions—for example, within the European Union with the PDO/PGI distinction—they are protected through *sui generis* legal systems, specifically designed to address the peculiar characteristics of certain goods. For this reason, the

analysis of recent legislative developments of particular interest to this study is deferred to the following section, which is dedicated to *sui generis* systems.

Designs

This type of IPR protects the **external appearance of a product** or a part thereof, with reference to elements such as lines, contours, colors, shape, materials, or ornamentation. Protection extends to any industrial or artisanal object, including components intended to be assembled into a complex product, as well as presentations, typefaces, packaging, or graphic symbols.

In order for a product to be protected as a design, two fundamental requirements must be met:

1. **Novelty**, understood as the absence of prior disclosure of the same visual appearance;
2. **Individual character**, i.e., the ability of the design to produce, on an informed user, a so-called “overall impression” different from that generated by previously known designs.

Registration of the design confers on the holder an exclusive right of use, thereby prohibiting third parties from exploiting the appearance without the consent of the rights holder. In particular, the production, offering, marketing, import, export, and use of products incorporating or applying the registered design are prohibited. This protection also extends to designs that, while differing in details, do not produce a different overall impression on the informed user.

The interaction between this form of protection and traditional knowledge, as well as the cultural expressions that concretely manifest it, is characterized by a **limited scope of application**, primarily due to the requirements mentioned above. Generally, community knowledge and expressions have already been disclosed and therefore do not meet the novelty requirement, making it difficult to prove prior non-existence or absence of circulation in the public domain.

However, by virtue of the principles of legality and individuality under Article 33-bis of the Italian CPI, traditional knowledge or expressions could serve an **oppositional function, if used to challenge attempts at improper registration by subjects outside the originating community** who have copied or misappropriated their appearance.

Finally, it is worth noting the potential to valorize traditional knowledge through **the creative re-elaboration of already disclosed elements**, provided that such activity results in designs that meet the criteria of novelty and individual character, thereby enabling derivative yet innovative protection.

Trade secrets

The regulation of so-called trade secrets applies to business knowledge and technical-industrial skills that are not generally known or easily accessible to operators and experts in the relevant field. For protection purposes, such information must possess eco-

conomic value by virtue of being secret and must be subject to appropriate measures to ensure its confidentiality.

In theory, the principles of this discipline could, at least partially, be extended to undisclosed traditional knowledge, i.e., local knowledge, artisanal practices, processes, or techniques that communities keep confidential and transmit orally or through internal custodial mechanisms.

Moreover, the protection afforded by trade secrets offers certain adaptability advantages compared to other forms of intellectual property: it does not require novelty or technical creativity; it does not involve formalities or registration procedures; and it can potentially last indefinitely, provided secrecy is maintained over time. These features make this instrument potentially well-suited to safeguard forms of collective, oral, and uncodified knowledge typical of traditional knowledge.

However, this form of protection has significant **structural limitations**. First, it is inherently **fragile**, as protection lapses in the event of disclosure, even if accidental. Furthermore, uncertainties remain regarding the **ownership of the information**, especially in relation to collective entities such as local communities, as well as the **difficulty of demonstrating its economic or competitive value** within a potential market.

This issue is closely related to the documentation of traditional knowledge and potential tools for controlling disclosure, such as the establishment of digital or physical archives with limited access, designed for preservation and protection purposes. Such strategies, however, must be considered in connection with the discussion below regarding *sui generis* protection systems and documentation, which is addressed in the following section.

SUI GENERIS SYSTEMS AND BEST PRACTICES FOR PROTECTION

The previous section highlighted how IPRs can constitute a potentially useful legal instrument for the protection of traditional knowledge and its associated cultural expressions. At the same time, it showed that this approach is often **complex and not fully aligned with the needs and expectations of the holders of such knowledge**, due to the original rationale underpinning the intellectual property framework. Even potential adaptations or extensions of existing mechanisms, aimed at better accommodating the specificities of traditional knowledge, are not always sufficient. In this context, the effectiveness of protection depends—as extensively argued—on the intended purpose of such protection: if the objective is to ensure legal recognition fully consistent with the collective, dynamic, and cultural nature of traditional knowledge, a structural rethinking of the regulatory instruments employed may be necessary.

It is precisely in this direction that legal systems have moved by introducing *sui generis* protection mechanisms—legal regimes specifically calibrated to address the peculiarities of traditional knowledge and cultural expressions.

Following the impetus provided by the 1992 Convention on Biological Diversity, which brought issues of consent and equitable benefit-sharing to the forefront, there has been a progressive development of new normative frameworks, independent from the traditional intellectual property system but capable of integrating its principles and tools. These models aim to include local practices and community customs, in order to respond more adequately and effectively to the specific needs of the holding communities.

Consequently, *sui generis* systems appear as highly **heterogeneous** legal instruments, shaped according to the characteristics of the national contexts in which they are adopted. In general terms, we can distinguish between two main approaches, which mirror the defensive vs. positive protection dichotomy discussed in the previous section.

The defensive approach encompasses *sui generis* systems aimed at preventing the misappropriation of traditional knowledge by third parties, through mechanisms that operate in an oppositional or invalidating capacity with respect to the recognition of intellectual property rights over pre-existing knowledge. Examples of this approach include mechanisms based on the formal documentation of knowledge, practices, and traditional techniques, used to establish the state of the art and thereby prevent the appropriation of already known content.

Positive strategies, by contrast, are those that recognize, through these *sui generis* systems, actual rights. These systems go beyond merely excluding inappropriate or harmful uses by third parties and actively promote the valorization of the community's

knowledge, including, among other things, through the commercialization of artisanal products or other tangible manifestations linked to their traditional knowledge.

In Italy, to date, there are few legislative *sui generis* interventions that could legitimately be considered aimed at protecting traditional knowledge and traditional cultural expressions. Indeed, in the WIPO Traditional Knowledge, Traditional Cultural Expressions & Genetic Resources Laws database¹¹, the only example of a *sui generis* norm within the EU is recognized as that of Portugal, which introduced a decree-law in 2002 for the protection of traditional knowledge.

The marked imbalance compared to non-Western legal traditions—which have, over time, developed various *sui generis* systems for traditional knowledge and cultural expressions—raises broader and more structural considerations regarding the recognition of legal subjectivity beyond the nation-state in the cultural domain. While a full discussion of these issues falls outside the scope of this analysis, it is useful to recall, at least, the ruling of the Milan Tribunal of 9 November 1992, which, in the context of a claim for the economic exploitation of an image of the Palio di Siena, established that the event belongs exclusively to the historical, cultural, and folkloric heritage of the nation, “without anyone being able to assert any exclusive rights over it” (*Tribunale di Milano*, 9 November 1992)¹².

At present, however, some legal solutions potentially relevant for the protection of traditional knowledge and its associated products deserve attention, even in the absence of a framework explicitly dedicated to these areas.

Using the Italian context as the primary reference point, this section will first examine the models and protection tools currently operative within the national and European legal systems. Attention will also be given, however, to *sui generis* systems and best practices identified in foreign national legal systems, including those outside the EU, in order to enrich the comparative perspective and identify potential alternative means of protection beyond the codified or more established solutions in positive law.

This approach aims to highlight, by contrast, potentially actionable pathways, existing best practices, and models capable of addressing protection needs that often escape the traditional instruments of industrial property law or cultural heritage law.

Geographical indications

To the general considerations developed so far, an important clarification must be added concerning the sector of geographical indications, whose hybrid nature was already highlighted in the previous paragraph dedicated to the classification of so-called traditional IP rights. As anticipated, within the European Union context, geographical indications constitute a *sui generis* protection system, particularly regarding

¹¹ <https://www.wipo.int/en/web/traditional-knowledge/databases/tklaws/index?type=4843818> (last access 10 May 2025).

¹² In *Giur. it.* 1993, II, 747.

the specific ways in which **agricultural and food products are protected under the PDO (Protected Designation of Origin) and PGI (Protected Geographical Indication) schemes.**

In Italy, protection is primarily based on the European regulatory framework, integrated with internal implementing mechanisms that strengthen its effectiveness at the national level.

What is particularly relevant for the present study is that recent years have witnessed a progressive regulatory consolidation around the protection and valorization of artisanal and industrial products linked to local contexts.

With the adoption of EU Regulation 2023/2411 on the protection of geographical indications for artisanal and industrial products, the EU extended the possibility of registering PGI marks—previously reserved for agricultural and food products—to non-food goods, provided they are characterized by a quality, reputation, or other feature attributable to their geographical origin. In particular, Recital 7 of the Regulation acknowledges that the **production of goods strictly linked to a geographical area depends on local know-how and is based on the use of production methods rooted in the cultural and social heritage of the region of origin.**

This represents a significant innovation. As has been noted, although natural factors beyond the soil, such as climate, the origin of raw materials, or environmental elements, may indeed influence the quality of the product in some cases of artisanal goods, the territorial link for non-agricultural products or for artisanal goods is primarily based on the know-how, skills, and practices of the producers—that is, on **human factors**¹³.

Starting from 1 December 2025, it will be possible to submit registration applications for artisanal and industrial products that meet these requirements, including those classified as “traditional”, i.e., produced according to a so-called “**proven historical use**” by the producers of a community, ensuring the intergenerational transmission of knowledge (Art. 4(5) of the Regulation).

In general terms, and taking into account the already existing regulatory framework for agricultural and food products, many elements of the same UNESCO intangible cultural heritage are protected through geographical indications¹⁴. It should nonetheless be emphasized that the **rigid definition of production standards**, which constitutes an integral part of this right, is not always compatible with the dynamic and evolving nature of traditional knowledge. In this respect, the introduction of specific clauses aimed at

¹³ Marie-Vivien (2016), 295.

¹⁴ Consider, for example, the element “Argan, practices and knowledge related to the argan tree,” inscribed by Morocco in 2014, which references the use of a geographical indication (GI) in the so-called nomination file for UNESCO inscription; or the Traditional Art of the Neapolitan Pizzaiuolo, which benefits from the European “Traditional Speciality Guaranteed” mark, whose emphasis on traditional production methods renders it an intellectual property right closely aligned with the context under study—i.e., extended beyond agricultural and food products (see Zappalaglio, Guerrieri, Carls, 2019, esp. para. 37). Similarly, the designations of origin of the wines associated with the Italian element concerning the cultivation of the vine using the Pantelleria bush vine system can be considered in this respect.

ensuring greater flexibility could help preserve this essential feature, which represents the very core of the processes of transmission and vitality of traditional knowledge.

The European impetus is accompanied by the national one, recently reinforced by Law No. 206 of 27 December 2023, entitled *“Organic provisions for the valorization, promotion and protection of Made in Italy.”* This law intervenes in a systematic manner, complementing the pre-existing regional legislation on traditional crafts and introducing tools and resources for the recognition of typical productions, including the drafting of technical specifications, the regional mapping of local excellences, and the direct involvement of local producers’ associations (in particular in Articles 42–46).

The legal framework offered by this multilayered normative system calls for a reflection on the **role of holding communities in defining criteria for production and protection**. Direct participation in the drafting of specifications (including the aforementioned flexibility clauses), in the identification of the distinctive features of the product, as well as in the potential collective management of trademarks—and thus in the sharing of profits—constitutes a concrete path to ensure that the conventional legal protection of geographical indications (PGI) translates into real (and economic) benefits for traditional knowledge and the communities concerned. It therefore becomes essential to establish **structures capable of regulating (and incorporating) participation, consent, and the valorization of the role of the communities holding such knowledge**.

Looking ahead, the effectiveness of these instruments will depend on the ability to shape the relationship between communities and knowledge, granting them voice, role, and space within public or private models of dialogue and participation among the various stakeholders involved.

Italian regional legislation on craftsmanship

In line with most European Union member states, Italy currently does not have a national system for the protection of geographical indications for non-agricultural and non-food products. As already noted, this framework is set to change starting December 2025, with the entry into force of the new European regulation on the matter.

Within the domestic legal framework, the economic value associated with cultural and artisanal products is regulated through broad regulatory systems covering the entire artisan sector, including both businesses and individual producers. These systems often operate around a logic of category membership and the identification of a distinguishing sign, generally implemented through a collective trademark (as previously discussed).

In Italy, this matter falls within the **legislative competence of the regions** pursuant to Article 117 of the Constitution. This has resulted in a fragmented and heterogeneous regulatory landscape, characterized by the adoption of regional legislative and admin-

istrative instruments. Despite the diversity of approaches, some recurring elements can nonetheless be identified¹⁵.

1. Reference to the **traditional dimension of artisanal techniques**, as an expression of local culture, territory, and history;
2. The importance of **intergenerational knowledge transmission**, with particular reference to established and predominantly manual practices;
3. Emphasis on the **typicality of raw materials**, often also linked to local traditions;
4. The establishment of **regional registers** and the regulation of requirements for the recognition of artisan enterprises and entrepreneurs, as well as protection consortia;
5. The preparation of **production specifications**, detailing the processes and techniques employed, along with the distinctive characteristics of traditional crafts, forming the basis for the possible issuance of labels or quality marks;
6. The adoption of various **cultural and economic enhancement measures**, including tax incentives, public contributions, or honorary recognitions.

As an example, one can refer to Regional Law of Lazio No. 3, dated 17 February 2015¹⁶, which at Article 11 defines artistic productions as “creations, productions, and works of high aesthetic value or inspired by forms, models, decorations, styles, and techniques that constitute typical elements of the historical and cultural heritage,” and traditional productions as “productions and service activities carried out according to established techniques, handed down through local or regional customs.” Both are characterized by a predominance of manual work and a balance between innovation and respect for tradition.

An example is Regional Law of Puglia No. 24, dated 5 August 2013¹⁷, provides a clear example of the typical objectives of such legislation. Article 1 states that:

“This law regulates the requirements for artisan entrepreneurs and artisan enterprises, their consortia and consortium companies, as well as the procedures for registration in the register of artisan enterprises, in compliance with the principles of administrative simplification and streamlining; it establishes rules for the creation of artisan enterprises, to support their growth and development, to facilitate business succession and generational transfer, and to safeguard and protect the values, knowledge, and crafts of Puglia’s artistic and traditional artisan sector.”

¹⁵ The characteristics outlined below are drawn from the reflections of Zappalaglio, Guerrieri, and Carls (2019, pp. 47 ff.)

¹⁶ *Disposizioni per la tutela, la valorizzazione e lo sviluppo dell’artigianato nel Lazio*.

¹⁷ *Norme per lo sviluppo, la promozione e la tutela dell’artigianato pugliese*.

Regarding distinctive signs and labels affixed to products, reference can be made to Regional Law of Veneto No. 34, dated 8 October 2018¹⁸, which established the title of “Master Artisan” and the Regional Register of Historic Artisan Enterprises, allowing the use of a graphic mark indicating the type of craft and the area of tradition. The legal effects of these initiatives primarily consist of tax incentives for enterprises and social security benefits for artisan entrepreneurs.

Similarly, the Region of Liguria, with Regional Law No. 3 of 2 January 2003, introduced the use of a geographical collective mark, which the Regional Commission for Artisans subsequently designated as “Artisans in Liguria.” This is regulated by a specific ordinance that defines the conditions for issuance, methods of use, controls, and applicable sanctions, aiming to ensure the reliability of the system and to protect high-quality artisan production.

The practice of documentation

According to the definition provided in the Toolkit on the Documentation of Traditional Knowledge made available by WIPO, such documentation constitutes a **structured process that includes the identification, collection, organization, recording, or annotation of knowledge according to specific criteria**. This process aims at the dynamic preservation, management, use, dissemination, and/or protection of knowledge, in accordance with defined objectives¹⁹.

However, this constitutes a heterogeneous and not uniquely defined set of practices, which cannot, in itself, be considered a fully-fledged form of protection. For this reason, documentation as a protective tool must be embedded within a broader legal and operational framework, structured around principles, criteria, and actions capable of guiding its objectives. Indeed, while it is true that documentation does not automatically guarantee the protection of traditional knowledge, it is equally true that specific documentation projects—through particular methods of classification, recording, and regulation of access and circulation of content—can **concretely contribute to protective goals**.

In a context characterized by mutability, fluidity, and intangibility—as highlighted in previous sections—the descriptive potential of documentation assumes a central role. From this perspective, documentation can perform **multiple strategic functions** for protection: it can be integrated into economic strategies to enable the recognition of material or immaterial benefits, thereby supporting the identification of positive IP rights over knowledge or products; it can serve as a defensive tool, preventing misappropriation by third parties; it can fulfill a conservation function for the benefit of future generations; it can act as a means of communication and engagement with external actors, including potential commercial or institutional collaborators; and it can help

¹⁸ *Norme per la tutela, lo sviluppo e la promozione dell'artigianato veneto*.

¹⁹ WIPO (2017) *Documenting Traditional Knowledge – A Toolkit*. WIPO: Geneva, 9.

with the identification, legitimization, and recognition of the communities holding and stewarding the documented knowledge.

Documentation can also take extremely diverse forms and expressive modes, especially considering the evolution of **digital technologies**, which significantly expand its applicability.

Simultaneously, a plurality of actors may participate in documentation processes: private entities (including research centers, universities, NGOs, and cultural institutions), public bodies (primarily local administrations), and, above all, the local communities holding traditional knowledge. Given the structural and identity-based link between traditional knowledge and its originating community, it is essential that such communities be actively involved in all phases of the documentation process; at a minimum, they shall be ensured effective, continuous, and informed access to the documented material.

Consequently, the documentation of traditional knowledge ordinarily **entails a cooperative and integrated approach**, premised upon interaction among institutional, academic, and private actors, while ensuring due recognition of the central and primary role of the holding communities.

From this perspective, it becomes essential to delineate, with clarity, which rights are already guaranteed in relation to traditional knowledge and thus warrant protection from the very stage of documentation, as well as to identify which intellectual property rights may potentially arise from its fixation within collection systems. A particularly significant instance in this regard is that of **databases**, previously examined with reference to copyright protection and here further considered in light of the protection afforded under a *sui generis* regime. More broadly, the following sections will present concrete examples of the use of documentation as a flexible instrument of protection for traditional knowledge, together with best practices adopted in specific contexts, with the aim of providing greater analytical and comparative depth to this part of the study.

Protection of database content as a *sui generis* right

In addition to the observations already made regarding the protectability of databases under copyright law, it is important to recall Directive 96/9/EC of the European Parliament and Council on the legal protection of databases, implemented in Italy through Legislative Decree No. 169 of 6 May 1999. The Directive explicitly provides for the possibility of protecting database contents through a *sui generis* right (see Art. 7 Dir. 96/9/EC and Arts. 102-bis et seq., Italian Copyright Law).

This form of protection applies in cases where the database, unlike under copyright law, **does not meet the originality requirements necessary to qualify as a work of authorship**. In the present context, the object of protection is the **content** of the database itself, regardless of its originality. The key criterion for protection is the substantial investment—whether qualitative and/or quantitative—employed in obtaining, verifying, or presenting the content (see CJEU, C-604/10).

It remains possible, however, to combine *sui generis* protection with copyright protection, provided that the necessary conditions for both are met.

The creator of the database enjoys the right to prevent extraction and/or reutilization of the whole content or of a substantial part of it, including from a qualitative perspective. When the statutory requirements are satisfied, this type of protection is automatic and lasts for fifteen years from the date of creation of the database or from the date it was made publicly accessible.

A concrete example of best practice, described in the following paragraph, allows for a closer examination of the practical applications and potential of this instrument in the specific context of this analysis.

A Best Practice in Documentation via Database: the Oma Traditional Textile Design Database©

As anticipated at the beginning of this paragraph, documenting traditional knowledge alone is not sufficient to ensure effective and comprehensive protection for the communities that hold it. In particular, from the perspective of intellectual property law, protection against misappropriation—whether defensive or positive—does not automatically arise from the mere act of documentation.

However, to this legal framework must be added the specificities of the sector under consideration, where—due precisely to the inadequacy or inaccessibility of ordinary instruments—alternative claims for protection gain relevance. These may be founded on moral rights, alternative forms of recognition, principles of equity, and the requirement of free, prior, and informed consent.

In this context, the practice of organizing documentation within databases that allow for controlled access and usage of information represents a particularly relevant area of analysis. It is therefore appropriate to focus on a case study that, while not falling within the geographic scope of this research, offers significant critical insights and can be considered a potentially replicable model.

We refer to the case of the Oma Traditional Textile Design Database©²⁰, a digital database that documents, enhances, and protects the traditional textile cultural expressions and knowledge of the Oma community from the village of Nanam in Laos. The database belongs collectively to the Oma community and was developed thanks to the collaboration and support of the Traditional Arts and Ethnology Centre together with the Cultural Intellectual Property Rights Initiative²¹. The database is protected by copyright and falls within the definition of a “collection” under Article 2(5) of the Berne Convention, to which the Lao People’s Democratic Republic has been a party since 2011.

²⁰ Available at: <https://oma.traditionaldesigns.la/> (last access 7 March 2025). For a full description of the project, see the report by Boṭa-Moisin and Gujadhur (2021), *Documenting Traditional Cultural Expressions: Building a Model for Legal Protection Against Misappropriation and Misuse with the Oma Ethnic Group of Laos*.

²¹ More information here: <https://www.culturalintellectualproperty.com/> (last access 7 March 2025).

The database content includes photographic images, videos, audio recordings, and written texts that describe not only the decorative motifs and traditional textile items of the community, but also the production techniques, cultural uses, symbolic meanings, and taboos associated with each motif.

The platform's structure is **original both in terms of content selection and thematic organization**, divided into six main sections: a publicly accessible homepage; a *People* section containing information on the Oma community's culture, language, worldview, and beliefs; a *Textiles* section presenting 43 traditional clothing items, categorized by gender and age group, with audio recordings of the original names in the Oma language, descriptions of materials, techniques, and decorative motifs; a *Motifs* section documenting 22 traditional motifs, with explanations of their placement on garments, meanings, and associated taboos; a *Techniques* section showing production stages, with videos on materials and tools used; and a publicly accessible *Rights* section, explaining the philosophy of Cultural Intellectual Property Rights®, the project objectives, and the rules governing the platform's use in accordance with community protocols.

For protection and control purposes, **some sections are accessible only via credentials issued by the community and its legal representatives**. The entire content is available in English and Lao, ensuring both local and international accessibility.

The project was initiated by the Oma community itself in response to an urgent need to safeguard its knowledge and traditional cultural expressions, following a documented instance of misappropriation by an international fashion company that had employed Oma motifs without consent, recognition, or fair compensation. Its primary aim was to **establish a legal foundation for the protection of the community's knowledge and traditional cultural expressions**, both in a positive sense—through recognition and valorization—and in a defensive sense—by preventing unauthorized appropriation and use.

From a broader perspective, the project further sought to develop an instrument capable of supporting the creation of a sui generis system of legal protection. Complementary objectives included affirming the community's collective rights over its cultural heritage, ensuring the economic valorization of knowledge through equitable collaborations with actors in the textile sector, and securing community control over the management, use, and commercialization of the documented intangible heritage.

The project is based on an innovative operational model, built around the framework of the **3Cs Rule: Consent. Credit. Compensation**®²², an extra-legal tool developed by the

²² The 3Cs correspond to:

- (i) Consent: free, prior, and informed consent from the artisan, ethnic group, or Indigenous or local community;
- (ii) Credit: proper attribution of cultural authorship to the communities of origin of the traditional knowledge or expressions;
- (iii) Compensation: monetary or non-monetary compensation and sharing of benefits arising from the commercialization of derivative works.

Cultural Intellectual Property Rights Initiative® to promote best practices in collaborative activities with Indigenous peoples, local communities, and ethnic groups.

This approach draws inspiration from relevant international legal sources, such as Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2014), as well as from attribution and recognition principles derived from copyright law.

Through this framework, the Oma community retains full control over its cultural heritage, actively participates in decision-making processes, receives recognition and equitable benefits from the use of its designs, and can establish specific conditions for any collaboration with external actors, provided that these actors comply with the principles of the 3Cs.

The project thus represents a replicable model of a regulated and culturally sustainable database, designed to support other communities in the protection, valorization, and participatory management of their knowledge and cultural expressions.

Ultimately, the case of the Oma Traditional Textile Design Database© demonstrates how, when coupled with a clear and participatory legal framework, digital documentation can evolve from a mere descriptive tool into a tangible lever for legal protection, identity recognition, and sustainable development for communities holding traditional knowledge.

Labelling

Labelling occupies an intermediary position between the legal regulation of distinctive signs and a set of best practices that have not yet acquired full normative codification. Such practices are designed to foster, through processes of definition, description, and recognition of traditional knowledge and expressions, their correct identification and, more broadly, a form of positive—albeit limited—protection.

More specifically, these instruments lack binding legal force and remain external to the formal intellectual property system—particularly to trademark law—yet they are increasingly employed within cultural valorization strategies promoted by public bodies, foundations, and research organizations. Within this framework, labelling assumes an **extra-legal function: it does not provide formal protection but promotes ethical, responsible, and respectful approaches** to traditional knowledge, especially in contexts where conventional mechanisms of legal protection prove inadequate or inapplicable.

Academic literature widely acknowledges that institutional cataloguing practices often exclude holding communities from processes of defining, classifying, and archiving their heritage. This exclusion raises not only legal but also profound cultural and social concerns: the way a phenomenon is named shapes external perceptions, influences its uses, and frames potential claims. **Naming, therefore, is never neutral; it directly impacts recognition dynamics as well as political and cultural legitimation.**

The **amplifying effect of digital technologies** further complicates this scenario. While these technologies enable wider access to materials and knowledge—often originating from fragile, peripheral, or marginalized contexts—they simultaneously expose such content to heightened risks of distortion, decontextualization, or misappropriation. These risks arise both from improper or misleading descriptions and from the unauthorized dissemination of materials deemed sensitive or subject to specific access protocols by the holding communities themselves.

Consequently, particular attention must be paid to how cultural contents are named, classified, and disseminated. This awareness calls for a **reconsideration of existing models of cultural representation—including their legal dimensions**—and for an evaluation of whether, at national and international levels, normative effects might be attributed to forms of labelling that, while not legally binding, aim to restore control over knowledge assets to the communities concerned.

Indeed, there is growing international support for the adoption of labelling systems as instruments for returning decision-making power to Indigenous and local communities, particularly with respect to the management of digitized cultural materials. Although they do not amount to formal protection mechanisms, such tools contribute to **reinforcing the legitimacy of recognition claims** advanced by holding communities and to guiding policies on access, conservation, and valorization of cultural heritage in a manner that is both fairer and more informed

A best practice in labelling: the Local Contexts case

In this regard, it is worth noting that in 2012, scholars Jane Anderson and Kimberly Christen launched the platform Local Contexts²³, one of the first operational applications designed to integrate the so-called **Traditional Knowledge Labels** into digital cataloguing systems, this tool was created in response to the need, expressed by numerous Indigenous and local communities, to exercise greater control over how their cultural heritage is represented, described, and shared within archives, libraries, museums, and digital databases, even outside their original contexts.

The platform aims to strengthen the decision-making capacities of communities and to recognize their cultural governance systems, particularly regarding the definition of ownership, access modalities, and the ethical-cultural conditions for the dissemination of data and traditional expressions. The project seeks to **bridge the existing gap between institutional documentation practices and community values**, promoting the integration of community perspectives into information systems and data management policies.

The Traditional Knowledge Labels function as practical digital tools for communities, cultural and administrative institutions, and the academic world. While they do not carry legally binding authority, these labels serve an **informational purpose**, making ex-

²³ Here the webpage: <https://localcontexts.org/> (last access 7 March 2025). Information on this para are retrieved from D. Reijerkerk, (2020).

plicit the conditions set by communities regarding the use of specific cultural materials and highlighting access and usage protocols often overlooked in institutional contexts.

Visually, the Traditional Knowledge Labels appear as **graphic identifiers accompanied by explanatory texts** specifying the conditions for using the material they reference. These guidelines may include, for example, restrictions to non-commercial purposes, the need for attribution, or the existence of cultural constraints related to sharing. Through this system, Local Contexts provides an operational model aimed at embedding ethical principles of responsibility toward source communities within digital databases.

*A best practice in labelling: the case of *Maître d'art* and *Entreprise du Patrimoine Vivant**

In the European context, a particularly relevant case study for the objectives of this research is found in France, both for the comparative insights it offers regarding the development of similar protection models and for its potential to inspire forms of interaction between cultural policies and local administrations.

In France, the systematic use of labeling—particularly in the artisanal sector—constitutes an established tool for the promotion and safeguarding of traditional practices. These strategies simultaneously pursue cultural objectives, such as the protection of at-risk knowledge and techniques, and local economic development goals.

A prominent example is the *Maître d'art* title, established in the mid-1990s and inspired by the UNESCO-promoted model of Living Human Treasures²⁴ during the drafting phases of the 2003 Convention.

Awarded by the Ministry of Culture in collaboration with the Scientific Director of the Institut national des métiers d'art (INMA), the title is reserved for individuals or company leaders who distinguish themselves through exceptional skills—savoir-faire—in the production, transformation, or preservation of artisanal and artistic heritage. The technical quality and aesthetic refinement of their work justify **public recognition aimed at ensuring the transmission of these skills**.

A central element of the title is, in fact, the **formal commitment of the Maître to train an apprentice**; in return, the State guarantees financial support to ensure the material continuity and sustainability of these competencies.

Complementing this measure, the Ministry of Culture, in collaboration with the Ministries of Economy and Education and INMA, launched the three-year **Maîtres d'Art — Élèves** program, aimed at supporting highly personalized training pathways. Unlike the lifetime title, this initiative focuses exclusively on the educational dimension, with the objective of fostering apprenticeships and integrating technical skills with transversal knowledge (ranging from business management to art history), in order to ensure a sustainable future for French savoir-faire.

²⁴ <https://ich.unesco.org/en/living-human-treasures> (last access 18 March 2025).

This practice allows for an expanded research perspective, offering an additional point of observation: the collaboration between communities and public institutions in initiating projects that combine the public interest in the cultural valorization of traditional knowledge with the expectations—both economic and moral—of its holders. Within this framework, the *Maître d’Art* title functions as an enabling tool for the development of synergistic protection practices: it begins with the documentation and recognition of a holder’s knowledge—which establishes its cultural, moral, and economic value—and leads to the possibility of negotiating, from this recognized position, public valorization policies that serve both the interests of the community and those of the knowledge holders.

Finally, it is worth noting the *Entreprise du Patrimoine Vivant* label, an official recognition granted for five years to companies distinguished by the excellence of their techniques, the rarity of their skills, and a strong territorial rooting. The label enhances the economic and cultural role of high-quality craftsmanship, while simultaneously promoting the transmission of knowledge through tax incentives, international market visibility, and training support.

Further instruments exist that focus on the products deriving from such specialized skills, as well as on labelling strategies embedded within complex territorial ecosystems, such as the *Pôles métiers d’art*: regional hubs that bring together craft enterprises, training institutions, and public actors with the aim of fostering synergies, promoting specific traditions, and supporting the cultural, touristic, and economic development of the territories.

Moving beyond the French case, it becomes apparent that practices of documentation and description—starting with labelling but also encompassing the creation of archives and databases and, as will be discussed, the development of protocols for community interaction—constitute both a **preliminary and foundational phase for subsequent mechanisms of negotiation**. From this perspective, documentation assumes the role of a constitutive precondition for establishing stronger negotiating positions, from which contracts, agreements, or other *sui generis* practices for the safeguarding of traditional knowledge can more readily emerge. In contexts where ordinary legal instruments prove inadequate, **the definition and description of such knowledge, and of the actors who hold it, represents an indispensable step in shaping the operational categories of action**.

Protocols and ethical codes

Protocols, ethical codes, and codes of conduct represent increasingly widespread instruments for the protection and regulation of traditional knowledge. From a legal standpoint, they are generally classified as **guidelines**: they operate in a manner comparable to contracts, binding only those who voluntarily adhere to them. Consequently, **their effectiveness is only partially coercive** (Ubertazzi, 2022).

At the same time, these instruments derive legitimizing strength from international law—most notably the United Nations Convention on Biological Diversity (CBD, 1992), already referenced in this study, and in particular Article 8(j). The latter opened a space of growing recognition for the participation of local and Indigenous communities in decision-making processes concerning the conservation and sustainable use of biodiversity. Since the Convention's preparatory works, the importance of ensuring the effective involvement of these communities in policy definition, management activities, and environmental protection and restoration has been emphasized. This also extends to negotiations on access, benefit-sharing, and intellectual property rights.

In addition, for the specific context underlying this analytical section, reference may be made to the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (FAO, 2012). These guidelines integrate seamlessly within the adopted perspective, as they promote principles of **participation and inclusion in the governance of natural resources**: they highlight the value of customary and collective management systems, underscore the need to guarantee the free, prior and informed consent of individuals and groups involved (para. 3B.6), and affirm the necessity of respecting and protecting cultural and social rights connected to natural resources (para. 4.8). Applied to the case study, these guidelines provide further legitimacy to an approach that conceives **traditional wool-related knowledge as a collective heritage rooted in the territory, to be valorized through negotiated protocols, transparency in decision-making processes, and the concrete involvement of holding communities**.

Ethical codes may originate from a variety of sources: they may be promoted by supranational bodies, academic institutions, or emerge directly from local communities. Their primary function is to ensure a respectful and ethically grounded interaction with intangible cultural heritage and traditional knowledge, safeguarding their integrity and preventing potential forms of misappropriation or harm of a cultural, ethical, or economic nature.

Together with community-developed protocols, such codes may cover a wide range of issues: from access to traditional knowledge, to the methods for its collection and documentation, through to the regulation of its use and the distribution of resulting benefits. In many contexts, communities actively participate in defining rules of conduct, access, and dissemination, often referring to pre-existing cultural protocols rooted in customary law, which establish the actors, timings, and modalities governing the use and enjoyment of traditional knowledge.

There is today a **growing trend** towards collaboration between local communities, governmental institutions, public bodies, and international organizations with the aim of co-drafting formal protocols. These documents serve as operational tools to clearly define rights, responsibilities, and mutual expectations. They also provide external actors with concrete guidance on how to engage in ways that respect not only existing legal frameworks but also the cultural rights and identity-specific features of the communities concerned. Their adaptable nature allows the content to be tailored to differ-

ent contexts, sectors, or projects; in some cases, such protocols may even **acquire binding force when incorporated into contracts or formal agreements**.

A noteworthy example, although geographically distant, can be found in Australia. In 2020, the Australia Council for the Arts—the national government agency for arts funding and advisory—published the latest edition of the *Protocols for Using First Nations Cultural and Intellectual Property in the Arts*. These protocols aim to address existing regulatory gaps by providing forms of protection for traditional knowledge through the recognition and valorization of customary practices. Targeted at artists, creatives, and cultural operators working with Indigenous communities or drawing on their cultural heritage in funded projects, the protocols are mandatory for grant recipients.

Another significant case comes from India²⁵, where the Chhau community—renowned for the traditional dance of the same name—developed the *Chhau Dance Code* in response to instances of misappropriation. Drafted in collaboration with the HIPAMS project (*Heritage-sensitive Intellectual Property and Marketing Strategies*), the code combines national legal provisions, universal human rights (including the right to culture), and the community's own customary rules. It sets out clear standards for how external actors may engage with or benefit from the tradition, serving as a reference framework to be applied in all future collaborations and events.

What emerges from these examples—and more generally from practices developing across diverse contexts—is the **strategic use and hybrid combination of heterogeneous legal tools**—such as moral rights, informed consent, privacy protection, or confidentiality—within contractual mechanisms or para-legal agreements. The innovative nature of these approaches lies not only in the plurality and interplay of the instruments employed, but also in their dual effectiveness: simultaneously safeguarding collective cultural interests while supporting economic objectives. At the heart of these practices is the need to regulate, in a conscious and respectful manner, the relationship between traditional knowledge and holding communities, by clarifying key issues such as cultural ownership, conditions of access and sharing, as well as the limits to dissemination and exploitation of such knowledge.

From this perspective, even in the absence of full legal enforceability, operational protocols and ethical codes may be conceived as **intermediate normative instruments**, capable of orienting external actors towards conduct that is ethical, sustainable, and culturally sensitive. Such instruments contribute to upholding the principle of **free and informed consent**, ensuring the **correct attribution** of cultural origin, preventing unauthorized commercial exploitation, and promoting the **equitable sharing of benefits** derived from the use of traditional knowledge.

Building on the earlier discussion of regulatory developments within the European Union, it can be observed, in conclusion, that the **integration of protocols and ethical codes with instruments such as certification and collective trademarks** could pave the way for self-regulatory mechanisms inspired by the model of production stan-

²⁵ Information retrieved in B. Ubertazzi (2022), 313 ff.

dards. In this way, diverse actors, organized within participatory governance frameworks, would have the possibility to grant a **shared territorial certification**, based on locally defined criteria and aligned with the cultural values of the community²⁶. Such a framework would serve a dual purpose: on the one hand, providing enhanced protection for traditional knowledge, understood as a collective heritage deeply rooted in local territories; on the other, fostering its valorization through processes of documentation, transmission, and, where deemed appropriate by the community itself, economic application in a commercial perspective.

In this way, a dynamic model of participatory protection would take shape, capable of combining cultural self-determination with sustainable local development.

²⁶ For comparative purposes, it may be useful to consider a model developed by the Californian NGO Fibershed: further information can be found here <https://fibershed.org/> (last access 28 May 2025).

PROTECTING TRADITIONAL KNOWLEDGE THROUGH THE SAFEGUARDING PRINCIPLES OF INTANGIBLE CULTURAL HERITAGE

According to the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (ICH), the latter is defined as the “practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (Art. 2).

This heritage is characterized by its intergenerational transmission and is “constantly recreated by communities and groups in response to their environment, their interaction with nature and their history,” thereby contributing to the consolidation of “a sense of identity and continuity,” while simultaneously promoting “respect for cultural diversity and human creativity.”

ICH therefore **encompasses**, among its forms of manifestation, traditional knowledge and the related cultural expressions, with which it shares multiple constitutive elements. At the same time, however, it is **distinguished** by the emphasis placed on the social process that sustains and gives meaning to the practice and the production of intangible elements, which thus assume a predominantly illustrative function.

The significance of intangible heritage does not lie so much in the cultural elements themselves, but rather in their role as representations of a living, shared, and dynamic expression of the social process through which a community constructs meanings, values, and collective identity.

The safeguarding of ICH is therefore not to be equated with the protection of its individual manifestations. Instead, its objective is understood as ensuring the vitality of this heritage, conceived as the capacity to regenerate itself on the basis of the values that the community itself elaborates, redefines, transforms, and renegotiates over time. Within this perspective, the activities set out in Article 2(3) of the Convention—identification, documentation, research, promotion, protection, valorization, and transmission—are not to be regarded as autonomous and distinct aims, but rather as complementary operational modalities through which the overarching safeguarding objective is pursued.

Similarly, the most well-known registration instruments—the two international lists (the Representative List and the List of Intangible Heritage in Need of Urgent Safeguarding) and the Register of Good Safeguarding Practices—should not be regarded as static archives with a merely identificatory function, but rather as dynamic mechanisms aimed at valorizing exemplary elements that contribute to the overall vitality of intangible cultural heritage. Alongside these are the national inventories, which are a necessary requirement for inscription on the international lists and an essential tool for anchoring safeguarding processes at the local level.

It follows that, starting from a general commonality of the object of safeguarding—a body of knowledge, a practice, a cultural expression—and of the relevant subject—the community that recognizes its value as part of its own heritage, recreating and transmitting it over time—the category of ICH **differs substantially** from the legal instruments examined thus far. The distinction lies in the **different purpose** characterizing the respective regimes: while the intellectual property system is oriented towards protecting the authorial link between subject (or subjects) and the asset, the UNESCO safeguarding regime focuses on preserving the vitality of heritage, by virtue of its **public and collective value**. What is recognized, therefore, is not a community interest in asserting legal ownership of the asset—whose collective belonging to the community is, in fact, emphasized—but rather a **shared commitment to its safeguarding, according to a non-proprietary approach** (Francioni, 2007).

We thus find ourselves at the intersection of multiple analytical perspectives through which to interpret the context under examination. TABLE 4, included in the documentary appendix, provides an overview.

More specifically, it should be noted here that, while recourse to intellectual property instruments may represent a concrete opportunity for protection to the benefit of communities holding traditional knowledge, the preceding sections have highlighted their numerous structural limitations. These criticalities stem from the peculiar nature of such knowledge, which is poorly suited to legal instruments based on criteria of temporality, formal fixation, and exclusive ownership. Their application risks compressing the “living” component of these expressions into rigid, exclusionary, and static frameworks, in contrast with the community-based and subjectively determined—hence changeable—dimension that defines such heritage in its very essence.

For this reason, it was considered appropriate to complement this comparative analysis with a conclusive look at the public regulation proposed by UNESCO. As previously noted, the interest does not lie merely in the overlap between the objects and subjects of regulation, but rather in the potential for an integrated approach capable of drawing on both regulatory poles.

In this sense, the protection offered by the UNESCO legal framework initially appears particularly suitable, as its operational architecture is based precisely on the recognition of these characteristics—subjectivity, mutability, and collective dimension.

At the same time, however, such a legal framework **does not provide robust normative instruments** to counteract misappropriation practices, nor does it allow communities full reappropriation of rights in terms of legal ownership, resulting in limited market positioning and restricted opportunities for the economic valorization of their knowledge and cultural expressions.

More broadly, this approach does not aim at the direct development of capacities and tools to support traditional creativity, nor at the strengthening of communities and social structures that ensure its transmission and regeneration. This is because, in the process of valorizing elements identified as intangible cultural heritage, there is often a

tendency to **“flatten” public value onto an abstract interest presumed to be shared by the civil collective**, which is then guaranteed by the international arena (or by the State, in domestic contexts). However, this approach risks obscuring the pluralism and internal tensions of cultural dynamics, hindering a more nuanced reading of public value as also community-based and potentially private—that is, tied to specific social groups carrying distinct interests.

By contrast, the operational instruments employed in this context include mechanisms of identification, registration, documentation, transmission, revitalization, and promotion—in other words, strategies oriented towards the circulation and valorization of knowledge, practices, and cultural expressions, with the aim of ensuring their vitality. The ultimate goal of this framework is thus to **promote a paradigm shift in public cultural policies, founded on the centrality of community participation, the promotion of cultural diversity, and the integration of sustainable development into the contemporary management of cultural heritage**.

From this perspective, the protection of ICH is situated within a different dimension of **safeguarding a public good**, one in which (i) the direct “private” ownership and responsibility of the community is recognized, and (ii) above all, its universal value is acknowledged by the global collective. Ratification of the 2003 Convention by Member States implies adherence to a fundamental principle: facilitating and nurturing the direct and voluntary relationship that links communities to their intangible cultural heritage as a living expression of their identity.

Nonetheless, in light of the historical evolution that saw an initial convergence between the regulatory efforts of WIPO and UNESCO around an embryonic notion of “folklore”—from which two distinct strands subsequently emerged, namely Intangible Cultural Heritage on the one hand, and Traditional Knowledge and Traditional Cultural Expressions on the other—significant points of contact are now observed, explicitly recognized in the operational documents of both organizations. This shared path of conceptual elaboration (see [above](#)) has indeed led to the definition of two distinct normative domains, which are often strongly complementary and reflect a growing interaction in contemporary safeguarding practices.

In particular, UNESCO has not overlooked the potential contribution of intellectual property rights within the safeguarding of ICH. **Certain mechanisms inherent to intellectual property are already employed as auxiliary tools**, enabling holding communities to retain a degree of control over their cultural practices, especially in contexts where such practices acquire economic significance.

A more explicit recognition of this interrelation is found in the Operational Directives (OD) of the Convention, where the application of IPRs is explicitly linked to situations in which ICH is treated as a **resource**, both within sustainable development strategies and through its inclusion in commercial circuits.

In this regard, paragraph 104 of the OD calls upon State Parties to ensure, in particular through the application of intellectual property rights, privacy rights, and any other ap-

propriate forms of legal protection, that the rights of communities are respected in the context of awareness-raising or commercial activities.

Similarly, paragraph 173(b) encourages State Parties to adopt legal and administrative measures—and in particular to make use of IPRs—to protect ICH as a strategic resource for sustainable development.

These provisions reflect the evolution of the Convention, which, in its practical implementation, has introduced complementary protection mechanisms to compensate for the absence of prescriptive measures in this area. In particular, where ICH **intersects with market dynamics**, it is progressively recognized not only as an element to be preserved, but as a living, dynamic practice that also holds economic relevance.

This perspective is also echoed in Ethical Principle No. 7 of the 2003 Convention²⁷, which recognizes the need for groups, communities, and individuals to benefit from the protection of both moral and material interests arising from their ICH, particularly when it is used, researched, documented, promoted, or adapted by knowledge holders or third parties. It should be noted, however, that although this principle is grounded in an established legal framework²⁸, the United Nations Committee on Economic, Social and Cultural Rights has reiterated that it possesses a nature distinct from the intellectual property system. In particular, the right to moral and material interests related to cultural heritage is recognized as a fundamental human right, conceived as a “timeless expression of the essential prerogatives of the human person.” It aims to promote the active participation of creators in the development of the arts and sciences and in the advancement of society. By contrast, intellectual property rights—as is now well established—are, by their nature, limited in time and scope, and primarily focus on the economic exploitation of the protected asset.

This distinction is further confirmed in the *Overall Results Framework for the 2003 Convention* (Resolution 7.GA 9, 2018), which introduced an evaluation criterion regarding the existence of “forms of legal protection, such as intellectual property rights and privacy rights, to safeguard ICH practitioners, knowledge holders, and their communities when their heritage is used by third parties for commercial or other purposes”²⁹. This provision is complemented by a broader indicator aimed at assessing the extent to which national policies and measures respect the rights and customary practices of communities, particularly regarding the exercise and transmission of ICH.

UNESCO’s Internal Oversight Service has also highlighted the growing relevance of intellectual property rights in this context, as well as the need to strengthen cooperation

²⁷ Following an expert meeting held in Valencia, Spain, between March and April 2015, the Intergovernmental Committee approved, during its tenth session in Windhoek, Namibia, twelve ethical principles for the safeguarding of intangible cultural heritage (Decision 10.COM 15.a).

²⁸ For example, Article 15(1) of the International Covenant on Economic, Social and Cultural Rights and Article 27(2) of the Universal Declaration of Human Rights.

²⁹ See especially the Annex, Table 2: Core Indicators and Assessment Factors, arranged by Thematic Areas.

with WIPO. The 2021 independent evaluation of the Convention's implementation³⁰ has in fact highlighted the interest, expressed by various internal stakeholders within the institution, in creating more structured opportunities for the exchange and sharing of knowledge on cross-cutting issues, including, in particular, intellectual property and the commercialization of intangible cultural heritage.

In response to these needs, Recommendation No. 3 of the same evaluation urged the Living Heritage Entity—the operational section within UNESCO dealing with ICH-related matters—to establish thematic working groups on priority areas requiring cross-sectoral and multi-convention approaches, among which intellectual property was explicitly indicated. Paragraph 176 of the report confirmed this urgency, noting that multiple contributions collected through interviews had identified intellectual property as a thematic area requiring greater attention and closer collaboration with WIPO activities.

Complementing this discussion, it is important to note that the relationship between ICH and intellectual property, as thus recognized by UNESCO's operational instruments, **inevitably implies a perspective of commercialization**, as well as a **system of potential commodification and consumption of traditions and knowledge**, which is often distant from the vision and dynamics promoted in this context. The tension between economic and cultural dimensions in safeguarding ICH has, in recent years, attracted growing attention from the governing bodies of the 2003 Convention. Indeed, placing the will of communities and groups at the center—recognizing their heritage and autonomously determining its evolution from a strongly identity-based perspective—inevitably entails engagement with contexts in which heritage itself assumes a strategic role in economic development and the material sustenance of the community.

In 2019, the fourteenth session of the Intergovernmental Committee, held in Bogotá, Colombia, reiterated in Decision 14.COM 10, paragraph 13, that “while recognizing the economic opportunities offered by certain elements of intangible cultural heritage, it is important to prioritize the safeguarding of their social functions and cultural meanings, clearly distinguishing them from product branding or labelling.” In line with this guidance, the Committee entrusted the Secretariat with the task of preparing a guidance note for communities and State Parties, aimed at identifying safeguarding measures and good practices capable of **addressing the risks of decontextualization and excessive commercialization of ICH elements** (paragraph 14).

In practical terms, numerous cases can be observed in which specific types of intellectual property rights are used to protect ICH or referenced in nomination dossiers. Although it has been repeatedly clarified that inscription on the UNESCO lists neither confers nor generates intellectual property rights, valorization frequently occurs through collective and certification marks, geographical indications, and other mechanisms not contingent upon authorship, originality, or fixation, which can potentially provide protection of unlimited duration. Nevertheless, there are also examples of copyright appli-

³⁰ UNESCO Doc, IOS/EVS/PI/200.

cation in the context of ICH, particularly in relation to the protection of elements inscribed on the relevant lists.³¹

It is also relevant to observe that, even in the absence of direct legal effects in the field of intellectual property rights, a UNESCO inventory can serve as a useful reference when a community seeks to claim protection for its traditional knowledge at the national level (Forsyth, 2012). In this sense, we refer back to the earlier observation regarding the practice of **documentation as a “site of discursive construction”** (Deacon & Smeets, 2018), capable of delineating the interpretative perimeter that identifies the subjects and objects of (future and potential) forms of full protection. Although documentation in the form of UNESCO ICH or traditional knowledge may serve distinct purposes (cultural promotion or the advancement of proprietary claims), interactions between the two regimes are visibly intensifying.

It is therefore appropriate to note that the original reservation provided in Article 3(b) of the Convention, intended to prevent overlaps between distinct legal systems, is only partially respected in practice. Normative models adopted at the national and regional levels demonstrate a **growing interaction** between ICH safeguarding and the protection of traditional knowledge through intellectual property rights. This interaction arises from the convergence of shared substantive elements and the flexibility with which both regimes adapt to specific contexts.

This last point leads us to a final consideration: the usefulness of adapting IP instruments to ICH safeguarding contexts, or vice versa, cannot be subsumed under a single rule or a univocal taxonomy of application. Their interdependence is closely conditioned by the specific case (for example, the existence of commercialized products as expressions of traditional knowledge—indeed, the UNESCO definition of ICH also includes “associated objects”); by the intentions of the community concerned; and by the characteristics of the relevant legal, political, and socio-cultural context.

The effectiveness of the interaction between the two regimes is conditioned by the very definition of the element, the practitioners, the beneficiaries, and the interests—in other words, what we have more broadly defined as documentation—and therefore by how the scope of protection is circumscribed and by whom (and how) the associated rights are exercised.

A successful adoption of hybrid solutions thus requires a constant capacity for negotiation and critical review of the meanings attributed to heritage, of mutual expectations, and of power dynamics between local communities, institutional actors, and civil society. The crucial point lies precisely in this principle: **recognizing—and elevating—the**

³¹ See paragraph 249 of the IOS' *Evaluation of UNESCO's Standard-setting Work of the Culture Sector*, 2013, prepared by B. Torggler, E. Sediakina-Rivière, and J. Blake, UNESCO Doc, IOS/EVS/PI/129 REV.

The topic has been extensively discussed in B. Ubertazzi, *Intangible Cultural Heritage, Sustainable Development and Intellectual Property*, cited above, to which reference is made for relevant examples and detailed reflections on the subject.

intimate connection that binds people to their traditional knowledge, and that knowledge to the cultural context from which it emerges. It is essential to remember that **protection can never be conceived as static or definitive**, but must remain open to change, reflecting the ongoing evolution of the practices, values, and relationships that sustain it.

National focus: ICH in Italy

With Law No. 167 of 27 September 2007, Italy ratified the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, giving it “full and complete effect” in its national legal system.

The actual integration of these principles into the Italian legal framework is currently in a phase of **temporal suspension**. Until recently, it was correct to assert that, despite the obligation arising from adherence to the 2003 Convention, the Italian legal system did not provide an autonomous and comprehensive legal definition of ICH. However, this statement is now becoming outdated in light of the approval of Law No. 152 of 7 October 2024, which introduces significant innovations in the field.

In addition to Title I, which establishes “Provisions concerning historical reenactment events,” Title II delegates authority to the government to adopt regulations aimed at safeguarding intangible cultural heritage, with the objective of strengthening its protection and promoting the broadest possible participation of practice communities (Art. 11). With an 18-month implementation period, there now exists a concrete possibility that Italy will adopt a specific legislative framework for ICH—characterized, among other features, by appreciable adherence to the Convention’s principles on the central role of communities, as well as an important paradigm shift in the structuring of internal administrative processes for identification.

Pending these important developments, it remains true that, as of today, ICH does not possess full operative legal status at the national level.

Pursuant to Article 2 of the Cultural Heritage and Landscape Code (Legislative Decree 42/2004)³², Cultural heritage is, in fact, composed of both cultural and landscape assets. The former, which are more closely relevant to the subject of this research, are identified as the “immovable and movable things which, pursuant to Articles 10 and 11, are of artistic, historical, archaeological, ethno-anthropological, archival, or bibliographic interest, as well as any other thing designated by law or pursuant to law as a testimony to the values of civilization.” The **indispensable reference to tangible objects, stemming from a specific legal and historical conception of property** and its dominion regime, highlights the extent of the obstacle preventing the ICH paradigm from gaining full access within Italian legislation: cultural value has become so closely identified with the material in which it is expressed that it remains inextricably bound to it, becoming an object of legal protection inseparable from the thing that contains it (Alibrandi, Ferri, 2001).

³² In this section, also “the Code.”

Article 7-bis, introduced by Legislative Decree 62/2008, reinforces this approach: **expressions of collective cultural identity**—that is, the entities identified by the 2003 and 2005 UNESCO Conventions—are subject to the provisions of the Code only if represented by material evidence and within the applicability limits of Article 10.

Already significant, at first glance, is the **redefinition** of ICH as “expressions of collective cultural identity.” As clarified in the explanatory report to the 2008 decree, this formulation serves to distinguish cultural assets protected under domestic administrative law from objects safeguarded under UNESCO Conventions, which belong to international law. A recent ruling by the Plenary Assembly of the Council of State³³ confirmed the independence between the two domains: the reference to the 2003 Convention in Article 7-bis has only interpretative value. Only when intangible expressions take a material form that can be classified as a cultural asset can they access the protection provided under Italian law. Consequently, at present, for “expressions of collective cultural identity” to receive legal recognition and protection within domestic administrative mechanisms, two criteria must be satisfied: (i) the expression must exist within an entity that, in itself, qualifies as a cultural asset; and (ii) this entity must serve as the material container of the expression of collective cultural identity—that is, it must constitute the physical object, the means of expression, or the place in which the cultural practice is recreated, shared, and transmitted.

Further complicating the picture, a temporal constraint adds to the material and operational limitations that hinder ICH recognition under the Code, highlighting the distance between intellectual property law, addressed in the first section, and public regulation concerning cultural assets. Article 10, paragraph 5, prevents works created by living authors or produced in the last seventy years from qualifying as cultural assets. As is well known, this temporal limitation is in stark contrast with the very nature of ICH, which is, by definition, living and continuously evolving.

The primary form of protection for ICH, as understood at the international level, is instead found within **regional legislation**. This observation confirms what was already noted in the section dedicated to *sui generis* instruments and best practices adopted under regional legislation on craftsmanship, to which reference is made for a comprehensive analysis.

Under constitutional provisions, Italian regions have concurrent legislative competence regarding the enhancement of cultural and environmental assets, and the promotion and organization of cultural activities (Article 117, paragraph 3, Constitution). This competence is distinct from the protection of cultural assets, which falls under the exclusive responsibility of the State, as established by Article 117, paragraph 2, letter s).

It could therefore be argued that, compared to the protection of cultural assets—linked to a material conception of heritage both operationally (protection applies primarily to physical assets) and theoretically (the identification of a cultural asset remains anchored in a materialistic perspective)—the Constitution entrusts public authorities with

³³ Plenary Assembly of the Council of State, no. 5/2023.

a different approach in this area. Indeed, **many regional laws explicitly mention intangible cultural heritage, without referring to the “expressions of collective cultural identity”** of Article 7-bis. Regional legislation has often **anticipated** national law in this field—a trend that also reflects the strongly local character of Italian cultural reality, which at the national level is frequently understood as “a collection of regional and local traditions” (Corso, 2004).

Taking into account the different competences outlined above, regional cultural policies tend to fill the gaps left by national legislation on ICH along two temporal axes. On one hand, they pay particular attention to the past, especially to the safeguarding of linguistic heritage (minority or dialectal) and so-called historical reenactment events. On the other hand, they promote cultural activities oriented toward the future, enhancing expressions of human creativity and cultural innovation.

In the context under analysis, this rigid conceptual distinction risks producing an **operational paralysis**, as it creates a **divide between knowledge and practices connected to the past**—which are thus perceived as traditional—and **expressions and activities oriented toward the future**, often categorized as creative. This dichotomy results from a conceptual layering developed over time, which has seen, on one side, an interpretation of UNESCO ICH focused on the valorization of historically rooted popular traditions, and on the other, initiatives connected to a living, dynamic, and contemporary culture, frequently associated with forms of entertainment or cultural promotion.

This limitation, combined with the difficulty of situating intangible elements within traditional administrative frameworks, contributes to placing activities, practices, and cultural knowledge in an ambiguous legal and conceptual position: depending on the interpretation adopted, they may be read either as traditional expressions, primarily linked to a heritage of the past, or as living, contemporary cultural practices, aligned with the broader duty of the Republic to promote cultural development from a forward-looking perspective. The reconstructive challenge lies in the rigidity of legal-administrative classifications, which reflect different approaches to cultural protection and are themselves derived from the fragmented allocation of competences in this field, as outlined by the Constitution.

To ensure the effective operation of these safeguarding mechanisms, it is necessary to maintain an analytical perspective capable of integrating heterogeneous regimes and instruments. In the previous sections, we examined the expansive potential of certain protection models derived from intellectual property law, particularly in terms of a broader interpretation of authorship, exclusivity, and ownership. A **complementary movement** is now required, originating from public law, capable of developing protection systems more sensitive to the coexistence of different temporal and functional dimensions: between past and future, between tradition and innovation, and between cultural recognition and economic valorization.

PART II

FIELD PRACTICES AND EXPERIENCES



METHODOLOGICAL NOTE

The second part of this study represents the operational implementation of the reflections developed in Part I, which was dedicated to the comparative analysis of protection models for traditional knowledge safeguarded by local communities of practice.

Whereas the first phase relied primarily on documentary research—conducted independently but guided by the assigned case studies—the work presented in this section adopts a methodological orientation of an entirely different nature: empirical, participatory, and deeply rooted in context, grounded in direct engagement with the communities involved.

The fieldwork, carried out in Valle Camonica over a six-month period (January–June 2025), entailed a structured collaboration with two associations committed to safeguarding and transmitting traditional textile practices: the *Associazione **Coda di Lana*** (Malonno) and the *Associazione **Intrecci*** (Monno). Both were identified as exemplary communities of practice, emblematic of the cultural, social, and organizational dynamics that characterize the Alpine region, as well as of the challenges related to the valorization and protection of the intangible heritage they embody.

The methodological approach combined a range of qualitative tools (participatory meetings, prompt-based questions, guided discussions) with an orientation toward the **collective construction of the meaning of protection** and the identification of the communities' actual needs. The meetings—alternating between collective sessions and separate moments for each group—were not conceived merely as occasions for data collection, but rather as spaces for active listening and participatory dialogue, designed to highlight daily practices, individual narratives, and participants' forward-looking visions. The guiding objective of the discussion was to create a context in which such contributions could emerge authentically and be fully legitimized within the research process.

The process began with a theoretical and contextual introduction aimed, on the one hand, at illustrating the limitations of the current legal framework regarding the protection of traditional knowledge, and, on the other, at highlighting the opportunities offered by *sui generis* models and by exemplary practices already tested in other contexts. Building on this framework, a guided self-reflection exercise was proposed, structured around questions designed to elicit participants' motivations, priorities, and expectations concerning protection. In particular, the questions encouraged reflection along four main axes:

- **What** should be protected;
- **Why** such protection is considered important;
- **Who** the intended beneficiaries of protection would be;
- **What benefits** could derive from it, in terms of recognition, continuity, and openness to dialogue with external actors.

Based on the results of these meetings, **three** particularly significant **areas of evidence** were identified. These not only guided the development of the present section but also now serve as an interpretative lens for the overall analysis of the work conducted:

- (i) A recurring tendency in the perception of the purpose (and usefulness) of a legal framework for the protection of traditional knowledge;
- (ii) The existence of shared values and common constitutive elements, confirming the need to rethink certain categories of protection that are currently too polarized—an issue already emphasized in Part I of this study;
- (iii) The emergence of differentiated perspectives and development trajectories, closely linked to the evolutionary stage of each community, the maturity of their internal dialogue, the resources available, and the specific nature of their knowledge, materials, and territorial contexts.

These three interpretative axes will be examined in greater detail in the following section. At this stage, however, it should be emphasized that their emergence required a **recalibration of the initially envisaged operational pathways**, redirecting the work towards activities more closely aligned with the concrete conditions and events experienced by each community during the research period.

It also became evident, in both participating associations, that **a well-established process of internal reflection on the definition of core values was already underway**. This was facilitated both by their organizational form as associations—which entails the existence of collectively drafted internal documents—and by their parallel involvement in other strands of the AlpTextyles project. In some instances, this situation led to a degree of saturation with exercises centered on value-oriented self-reflection, and instead generated a stronger interest in the development of practical tools, project-based initiatives, and concrete strategies for safeguarding and valorization.

In this regard, the results of the dialogue highlight a high level of awareness, on the part of both communities, of the values guiding their collective action: the importance of knowledge **transmission**, the connection with the **territory** and its products, and the centrality of **interpersonal relationships** and local structures. Building on this foundation, the subsequent phase of the intervention was initiated, which is presented in the following sections through the description of the co-designed documents developed with each community.

RESEARCH FINDINGS ACROSS THREE AXES OF ANALYSIS

As anticipated, the fieldwork revealed three main areas of evidence, which proved valuable both for guiding the dialogue and activities with the communities involved and for defining the overall structure of this second part of the study.

Although rooted in the specific contexts under analysis, these three directions reflect a broader set of reflections on **dynamics and issues of cross-cutting relevance**. They offer insights of methodological and theoretical significance, which are further elaborated in the following pages and revisited in the concluding section of this study, also with a view to a potential generalization of the findings and their transferability to analogous contexts.

From this perspective, the first area of focus concerns a preliminary and general issue, which turned out to be decisive in shaping the work carried out with both communities.

Perceptions of legal protection: from exclusionary logics to descriptive practices

This finding is significant both for the practical implications it generated in the individual case studies and for the contribution it offered in bringing to light certain unresolved structural tensions between theory and practice in this field.

An in-depth examination of this first axis of reflection makes it possible to retrace the process that led to the collective reformulation of the meaning of “protection” in relation to traditional knowledge, thereby opening the way to forms of safeguarding more consistent with the participatory nature of local cultural practices.

During the meetings, an **initial attitude of skepticism** frequently emerged regarding the usefulness of a legal protection framework applied to traditional knowledge. Rather than being seen as a tool for valorization or safeguarding, protection was sometimes perceived as a potentially restrictive mechanism, associated with logics of exclusive ownership or with limitations of access considered incompatible with the inherently shared and relational nature of the knowledge in question.

In both communities, it became evident that textile knowledge is not experienced in terms of proprietary claims, but rather as an inherited and collectively shared heritage, situated within an intergenerational line of transmission that reinforces a broader sense of belonging. What prevailed was the idea of **responsibility for transmission and stewardship**, rather than a right of exclusion—an orientation that, in many respects, contrasts with proprietary logic and instead recognizes sharing and openness as central values of the practice itself.

This cultural orientation made it necessary to progressively shift the reflection on the meaning of protection, in line with what was already highlighted in Part I of this study. The term—often laden with defensive connotations and juridically oriented toward delimitation—was gradually reformulated through dialogue in a more positive and rela-

tional sense: as a possibility of recognition, continuity, and reinforcement of the bond between the practice and the community that safeguards it.

From this perspective, the focus shifted away from a dimension of “jealousy” or exclusivity. When asked, for instance, *“How much of my knowledge am I willing to share?”*—a question initially posed within the Monno Community—the response was telling: *“Everything, I am not jealous of it.”* What emerged instead was the need to render visible and recognizable the living relationship between people, knowledge, and territory, extending beyond the contingent presence of individual members. In this light, protection was no longer conceived as a barrier, but rather as a **means of strengthening the community’s collective responsibility**—one capable of sustaining the vitality of practices over time and of fostering greater awareness of their cultural significance.

The **descriptive practice** proved to be the most effective tool for reinforcing within the communities the idea that protection should not be understood as a mechanism of exclusion, but as a process of recognition, care, and valorization, rooted in the relationship between practice, territory, and people.

Once the notion of defensive protection was set aside—since neither community expressed a need to protect themselves from anything—it became possible, at least for the purposes of this research phase, to temporarily set aside the more rigid and prescriptive legal models, such as those derived from classical IP law (see [above](#)). These models were retained as a potential horizon, to be activated at a later stage when the communities’ pathways have reached a different level of maturity and formalization.

The descriptive practice—understood broadly to include various forms of documentation, labeling, narration, and the definition of shared protocols or models (as analyzed in [Part I](#))—was proposed, discussed, and ultimately adopted as the most suitable tool for outlining the contours of their knowledge, making explicit the guiding values, and systematizing activities in forms accessible to external audiences. In this sense, “describing to protect” meant not only making traditional knowledge more visible and communicable, but also consciously situating it within a dialogue with other external actors—institutions, commercial entities, cultural organizations, or future interlocutors.

Thus, description established itself as a fundamental strategic tool: it enabled the communities to define and strengthen their collective identity, clarifying purposes and perspectives, while simultaneously communicating to the outside world the most appropriate ways to engage with that heritage, in a **non-exclusionary yet respectful manner**.

Finally, the descriptive practice also assumed a symbolic and forward-looking function: it became a way to recognize the value of the work carried out up to that point and to lay the foundations for possible future models of protection, adaptable according to emerging needs and consistent with the internal evolution of the community.

“To protect is, for me, a way of rooting in the territory”: the emergence of shared constitutive elements calls for a rethinking of categories

The apparent ineffectiveness of current legal paradigms in addressing the needs of groups holding traditional knowledge stems from a structural misalignment: existing normative categories are often inadequate to capture the deep-rooted foundations that sustain the existence and cohesion of these groups.

As a result, responses are frequently approximate, applying operational models and tools developed in contexts where cultural practices serve to reinforce a fully-fledged ethnic and political identity. It is common, in fact, to associate discussions of traditional knowledge with the need to respect the fundamental rights of indigenous communities and ethnic minorities. In such cases, legal protection responds to needs of distinction, belonging, and recognition that extend to the safeguarding of fundamental personal rights, thereby shifting the interpretive focus to a different, yet equally central, plane of analysis.

Nevertheless, many local community experiences—such as those examined in this research—are founded on different and more moderated pillars. This requires a reconsideration of some assumptions that traditionally inform the relationship between legal protection and traditional knowledge, while also offering an additional explanation as to why protection itself was not considered central by the communities interviewed.

Specifically, recognition of a personal nature appears relatively marginal compared to other needs perceived as more urgent: the **protection of the territory**, the **care of public and community spaces**, the **valorization of wool as a local resource**, and the **artisanal production chain as a vehicle for cultural transmission**. What emerges as central is not so much the survival of the individual group, but rather the survival of the territory in its essence—its sustainable development, the continuity of social and productive ties, and the persistence of practices capable of generating meaning, economic value, and forms of care within a context of ongoing transformation. In this light, the value articulated by the Monno and Malonno communities is not one of ownership, but of **conscious circulation**, of **responsibility for stewardship and transmission**, and of the **ability to confer collective meaning** upon a heritage experienced as part of the material and human landscape.

From this perspective, the results of this investigation can easily be interpreted in light of the most authoritative international and national literature on cultural heritage, collective stewardship, and the commons. The challenge, if anything, is of an applicative nature: there is a lack of a shared taxonomy capable of rendering these experiences legible and translatable into flexible and relevant normative models.

For this reason, in dialogue with the communities, it was essential to shift the focus from the group itself to the common good—in this case, wool—and its connection with the

territory, recognizing that the **relevance of protection, in this perspective, lies precisely in its capacity to support a broader vision of sustainable local development.**

At the same time, the **need to occupy public spaces** emerged strongly as an expression of collective responsibility toward the wider community, beyond the associative boundaries. Knowledge transmission thus takes on a political and cultural dimension, implying the construction of meaning, care for the context, and the sharing of values.

From a theoretical and legal standpoint, these results call for a broader reflection on how law can intercept and support experiences of this kind. It is necessary to **move beyond the traditional polarization between private and public spheres in order to identify an intermediate collective dimension**, capable of integrating elements from both realms and responding more effectively to the complexity of community contexts.

Although exploring these implications in depth falls outside the immediate objectives of this study, the observations reported here provide concrete insights for future research and outline methodological directions useful for developing safeguarding tools better suited to the actual needs of local communities of practice.

Diverging development trajectories: the “right time” for the two communities

The six-month period of interaction with the two communities allowed for the observation of significant evolution in the pathways of both groups, providing a dynamic snapshot of associative life and the development trajectories matured over time. On the one hand, both groups entered this phase of the work with a well-established background of similar experiences conducted within the AlpTextyles project—experiences that had refined capacities for self-reflection and narrative elaboration, but which had also generated some fatigue due to the multiplicity of stimuli received. On the other hand, there emerged an increasingly clear tendency for the two communities to consolidate along divergent development trajectories, closely linked to their respective organizational conditions, ongoing decision-making processes, and the different “arrival” stages reached by the groups.

In the case of the *Associazione Intrecci*, for example, a significant structural evolution was observed, represented by the transition from a less formal identity (“Donne dei Fili”) to a recognized associative configuration, with a consequent strengthening of institutional posture and internal cohesion. This transition was reflected not only in a greater ability to articulate needs and priorities, but also in the willingness to formalize certain aspects of collective work, indicative of an ongoing process of identity and operational consolidation.

Without delving into the documents produced with the two groups—which are analyzed in detail in the following section—one noteworthy element emerged transversally: a **partial reformulation of initially declared intentions**. Market-oriented expectations in some cases shifted toward a greater investment in internal values and group care; conversely, more “introverted” visions opened up to new opportunities for external en-

gagement. This reversal of initial positions strongly underscores a central point: the development direction of a community of practice is not predetermined, but is constructed through daily relationships among people, their desires, resources, and the conditions of the context.

Furthermore, this dynamic confirms one of the central conceptual points of this study: traditional knowledge, as an immaterial heritage of communities, is never static nor entirely predetermined, but is configured as a subjective, collective, and situated construction. Its evolution is closely tied to the awareness level of knowledge holders, their capacity for collective action, the material conditions of the territory, and the ways in which present opportunities and tensions are interpreted—what we refer to in the title of this paragraph as the “right time” of each community.

From this perspective, the observation of the two communities validates the crucial role of human and relational factors in the processes of protecting traditional knowledge. Without claiming generalizability, the resulting framework offers significant guidance for the design of more flexible and adaptable support tools, capable of accompanying communities along heterogeneous development trajectories while respecting their rhythms, priorities, and conditions recognized as essential by the communities themselves.

From this perspective, the observation of the two communities underscores the crucial role of human and relational factors in the processes of protecting traditional knowledge. Without claiming generalizability, the resulting framework provides significant guidance for the design of more agile and adaptable support tools, capable of accompanying communities along heterogeneous development trajectories while respecting their rhythms, priorities, and conditions recognized by the communities themselves as essential.

In particular, the usefulness of hybrid protection models with variable geometry is highlighted—currently weak from a normative standpoint but strategically valuable in the activation and consolidation phases of community processes. Among these tools are, as illustrated in Part I of this study, descriptive and documentary devices; participatory recording systems; and forms of local governance³⁴ or shared self-regulation, such as memoranda of understanding, codes of ethics, or identity labels.

What emerges strongly is a conception of legal protection that moves beyond purely defensive logics, framing itself instead as a **form of public recognition of the social function of private traditional knowledge**—particularly where such knowledge intersects with complex territorial and environmental dynamics, as well as plural intersubjective relationships. In this framework, safeguarding cannot be confined to mere preservation or the establishment of ownership; it must necessarily encompass the valorization of the **generative capacities of knowledge**—that is, its potential to trans-

³⁴ Regarding this particular aspect, attention is drawn to the work undertaken by the Kilowatt cooperative within the AlpTextyles project, specifically in relation to the Malonno community and the Coda di Lana association.

form, circulate, be transmitted, and, where appropriate, be deliberately discontinued in accordance with the conventions established up to that point.

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CODA DI LANA, MALONNO | MAPPING COMPETENCIES

The association Coda di Lana is based in Malonno (Province of Brescia) and was founded by a group of women with deep ties to the Camonica Valley. Its members are committed to safeguarding and enhancing traditional practices connected to the recovery and processing of local sheep's wool. The association's work is grounded in close collaboration and trust-based relationships with shepherds, and is articulated through a network of local-scale initiatives ranging from the organization of wool collection points to the management of specific processing phases, and ultimately to textile transformation. At its core, the project pursues a central objective: to **rescue wool from being discarded as waste and instead activate a local circular economy chain**, returning to the community—through everyday objects—a resource that is profoundly rooted in the territory from which it originates.

Coda di Lana's activities are based on traditional artisanal knowledge, orally transmitted and learned through observation and shared practice. In this sense, the association can be understood as a community of practice for traditional Alpine textile knowledge, where elements of **tradition and innovation intersect**, and where the **relational dimension**—founded on experience, trust, and reciprocity—constitutes a fundamental pillar of the project.

With regard to the issue of protection, discussions with the women of Coda di Lana revealed a clear position: **their primary concern does not lie in safeguarding knowledge per se, nor in its exclusivity or appropriation, but rather in preserving wool as a territorial and environmental resource, and in ensuring recognition of the social and economic value of a local recovery chain**. While traditional knowledge remains central to the practices and skills mobilized, it is regarded primarily as a means to a broader end: the regeneration of a material otherwise considered waste, and the promotion of a more sustainable local economy.

Over the course of the work, the community also developed an internal reflection that led to a **gradual evolution in its perception of its role within the value chain**. While reaffirming the idea that Coda di Lana's artisanal and relational expertise serves as a tool for broader aims—namely, the regeneration of a local resource and the promotion of sustainable models of territorial development—the association also gained a clearer awareness of its own structural and organizational limits in managing such a chain directly and on a continuous basis. As a result, the role of Coda di Lana has been re-framed as supporting participatory territorial governance policies, **without being assimilated to that of an entrepreneurial actor**.

As expressed emblematically in one of the interviews conducted during the research:
"Let me describe my dream: that someone takes the lead, works on it, and that we are

*there to provide support—in the human relationship with the shepherds, through our skills, and in the act of transmission.”*³⁵

The consolidation of this position, together with its shared adoption within the group, has prompted a **re-evaluation of strategies** for the protection and valorization of knowledge, specifically within the documentary-descriptive framework analyzed in the preceding sections of this study. The focus is no longer (or not exclusively) on the protection of knowledge as such, but rather on its recognition as a dynamic heritage—one that must be documented, transmitted, and shared within **more flexible frameworks of recognition**.

From this perspective, the skills-mapping process undertaken assumes a dual function: *Internally*, it operates as a tool to stimulate structured self-reflection on the group’s role, competences, and future trajectories;

Externally, it enables the formalization and visibility of these competences, thereby facilitating their transfer or availability to other actors—both public and private—who may be engaged in the development of local supply chains for wool recovery and processing.

The documentation of competences produced here thus constitutes a **hybrid model**, at once resembling an **operational protocol**, a **knowledge repository of local expertise**, and an **ethical code of transmission**. Although it lacks binding legal force, this framework is designed to serve as a foundation for future initiatives of recognition, transferability, and, where appropriate, certification of competences, while remaining sensitive to the fluid and relational identity of the community from which they originate. Potential future applications could be coordinated with collective trademarks, certification trademarks, community protocols, and labelling systems, as discussed in Part I of this study.

³⁵ Interview held on 17 February 2025.

Methodological premises

This categorization takes into account:

- the cross-cutting nature of the competences (not rigidly separable by phase);
- their relational, contextual, and territorial character, which requires practical transmission rather than theoretical standardization;
- the possibility of using them as a basis for community, territorial, or regional certification pathways, in line with models such as the collective mark, labelling, or community protocol.

Identified competencies

A. Relational competences and management of relationships with shepherds

- Building and maintaining relationships of trust and familiarity with local shepherds (often initiated by the farmers themselves).
- Knowledge of shearing methods and seasonal cycles.
- Ability to negotiate timing and modalities of shearing according to the expected quality of the wool.
- Knowledge of the main sheep breeds present in the area (Bergamasca, Corteno, and Finnsheep), along with the ability to anticipate the yield and characteristics of the corresponding wool.
- Capacity to carry out territorial mapping of farmers and agricultural enterprises in collaboration with technical services.

B. Technical competences in sorting and selection

- Ability to carry out qualitative selection of raw wool (length, softness, impurities, intended use).
- Recognition of the link between sorting and subsequent stages of the supply chain (washing, spinning, production).
- Capacity for strategic evaluation of the final destination of the product, orienting the type of processing already at the sorting stage.

C. Competences in supply chain coordination and management

- Ability to choose and propose the most suitable processing method based on the expected product.
- Knowledge of washing providers and operators, and ability to assess their technical compatibility with the selected material.
- Capacity to direct wool toward the most appropriate spinning processes or toward innovative artisanal experiments.
- Organizational competences in defining the logistical and production flow, including optimization strategies (e.g., direct transfer from washing to spinning).

D. Craft and production competences

- Mastery of processing techniques starting from post-spinning yarns (in-house production).
- Knowledge of the different transformative outcomes of wool: from raw material to semi-finished products, up to finished goods.
- Ability to evaluate the quality and aesthetic-functional coherence of the resulting artefacts.

E. Competences in artisanal collaboration and co-production

- Experience in involving local artisans in the creation of semi-finished and intermediate products.
- Experience in involving local artisans in the creation of finished goods.
- Experience in collaboration with local entrepreneurial and artisanal actors, including for the development of innovative products.

F. Competences in territorial networking and commercial development

- In-depth knowledge of the local productive and artisanal fabric, with mapping and analytical capacity.
- Experience in mediating between supply chain actors (shepherds, processors, artisans, designers, enterprises).
- Ability to identify and develop new production opportunities, enhancing the specific qualities of yarn or fabric (e.g., acoustic panels, industrial prototypes, etc.).

Declared objectives of the community

1. Valorization of local wool and its context of origin

- Promote the recovery of wool as a raw material of environmental, economic, and social significance.
- Support the territorial recognizability of wool, not as a heritage to be “musealized,” but as a resource for local development connected to the agricultural cultural landscape of the Camonica Valley.
- Encourage the activation of legal instruments for the recognition of the geographical and cultural origin of the material produced—such as collective marks, geographical indications, or other *sui generis* protection devices—capable of certifying the link between wool, territory, and traditional knowledge.

2. Transmission and sharing of competences

- Make the competences developed over time accessible through training and workshop activities, particularly regarding practical techniques of sorting, processing, dyeing, and spinning.
- Share the network of contacts and relational capital developed in the territory with actors wishing to participate in the construction of a local supply chain.
- Support the creation of replicable training pathways, contributing to the transmission not only of knowledge, but also of safeguarding practices.

3. Development of local micro-productions

- Develop artisanal micro-productions based on local wool.
- Promote shared experimentation between artisans, designers, and local enterprises to develop new prototypes consistent with the characteristics of the material.

4. Targeted and sustainable institutional collaborations

- Encourage collaborations with public and private entities at the local level, in particular with institutional or territorial bodies (e.g., the Municipality), provided they are consistent with the resources and values of the community.
- Limit participation in national or international institutional projects where these entail excessive organizational burdens or are not generated through participatory, bottom-up processes.
- Assess future collaborations on the basis of the community's actual operational capacity.

5. Acknowledgement of structural and organizational limits

- Explicitly affirm the voluntary, informal, and non-structured character of Coda di Lana, which is not currently intended to evolve into an entrepreneurial or cooperative form.
- Align all project, training, or governance activities with principles of sustainability in terms of time, resources, and internal capacity, avoiding workloads incompatible with the nature of the group.

INTRECCI, MONNO | THE CO-CREATION OF AN ETHICAL CODE

Intrecci is an association for social promotion, founded on **two fundamental pillars: a collective of women artisans and Ca'Mon**—the community center for arts and crafts in Monno (Province of Brescia).

Ca'Mon represents a **public space** restored to the community through the joint initiative of the inhabitants of Monno, the Mountain Community of Valle Camonica, the Municipality of Monno, and the social cooperative *Il Cardo* (Edolo, BS), with the support of Fondazione Cariplo. Housed in the former village nursery school—long a symbolic site for the local community—and reopened in 2021 following extensive renovation, *Ca'Mon* has since become an active hub for production, training, transmission, and experimentation. Within this space, artisanal and cultural knowledge—often tacit and uncoded—intersects with artistic practices and educational processes, thanks to the collaboration of artisans, artists, authors, researchers, schools, and young people from the territory.

It is within this setting that the experience of *Intrecci* took shape—initially as an informal network of women artisans connected to the space and its founding values, and subsequently as a formally constituted association. Its evolution has unfolded in parallel with the development of the present research.

This evolution made it possible to closely observe the transition towards a recognized associative configuration and to trace the shift in vision and intentions of the members regarding the issue of protection.

Indeed, during the interviews conducted with the members of the group—initially known as the *Donne dei Fili* (“Women of Threads”), now the founding members of *Intrecci*—articulated reflections emerged, highlighting a process of shared transformation concerning the perceived need for a form of legal protection. These considerations proved particularly significant and became an essential element in the drafting of this final output.

In the initial phase, the community emphasized the **centrality of the group’s collective dimension**, conceived not only as an operational unit, but also, and above all, as a relational model expressed through horizontal sharing, hospitality, and the practical transmission of knowledge. In this context, the perceived need for protection was not so much directed at safeguarding technical know-how in itself, but rather at protecting a specific way of “doing together” and of inhabiting, through artisanal practice, a public and shared space. Weaving was thus represented as an inherently inclusive, open, and deeply relational activity: “Weaving is something everyone can do—we are welcoming in our approach.”

With the consolidation of the association, the launch of continuous activities in the territory, and the intensification of external collaborations, a paradigm shift gradually took shape. **A new awareness emerged concerning the identity, cultural, and potentially**

economic value of the textile knowledge preserved within the group. The members of Intrecci have always recognized themselves as custodians of traditional techniques and know-how, often passed down orally and through shared practice within the group. Rather than asserting individual or collective ownership for the sake of formal recognition, the artisans progressively **attributed to the group a shared responsibility of transmission**, embracing it as an integral part of their collective identity.

However, this growing awareness—matured precisely around that identity dimension and the association’s potential for development—prompted the group, once again through collective reflection, to question the relevance of adopting a more traditional approach to protection.

In drafting the final document, it was therefore deemed essential to take into account the ongoing transformations, both at the organizational and identity levels. In particular, three priority areas of protection were identified, which the association has progressively recognized as fundamental to the safeguarding and continuity of its collective identity.

1. The founding values of the group, namely the **specific relational and educational approach** that characterizes Intrecci’s practice: knowledge sharing, collective work, intergenerational exchange, and collaboration with artists and artisans. This set of values is concretely expressed through the activities carried out (training courses, summer schools, school workshops, intensive courses) and represents the core of its identity.
2. **The connection with the public space of Ca’Mon**, an essential element of the association’s identity. Ca’Mon is not merely a logistical container for activities, but an integral part of its mission. From this perspective, legal reflection highlighted the need to regulate the relationship between the community dimension and the “private” cultural purposes of the association, by exploring the opportunity to design models inspired by the collaborative governance of the commons.
3. The rediscovery, development, and innovation of traditional techniques, considered in their **creative dimension** and therefore to be protected, in this case, from the perspective of **collective intellectual property**. This need emerged particularly in relation to the prospect of collaborations with local actors—artisans, designers, traders, and productive enterprises—which require a clear definition of the rights connected to the elaboration and sharing of knowledge.

Given the current stage of the association’s development, it was considered premature to proceed with the elaboration of intellectual property protection models referring to individual techniques or bodies of knowledge. Nonetheless, this direction represents an operational horizon toward which Intrecci shows growing interest, especially in view of future external collaborations and commercial valorization. Potentially applicable models include collective trademarks, certification trademarks, digital databases, documentary practices, and community protocols, as well as possible forms of patents and agreements or regulations with local institutional actors.

In this context, the drafting of an ethical code emerges as an intermediate regulatory instrument, conceived to accompany the group in its current stage of development. The code thus performs a **negotiating function**, serving as a point of reference in relations with both public and private actors. More specifically, the document offers a snapshot of the elements already consolidated within the associative trajectory, alongside the objectives still in progress: the articulation of founding values, the delineation of internal responsibilities, the intention to regulate modes of access to and interaction with the knowledge preserved, and the establishment of criteria for recognition and attribution in external contexts.

Methodological premises

This Ethical Code serves as an internal regulatory tool aimed at:

- Stating and safeguarding the values shared by the group;
- Ensuring transparency in both internal and external relations;
- Providing a common basis for negotiation with public and private actors;
- Supporting the development of instruments for the protection, valorization, and transmission of the artisanal knowledge it safeguards.

A. Fundamental values

A1. Responsible creativity and protection of knowledge

Every product is the outcome of artisanal knowledge handed down over time, of which the members recognize themselves as custodians and stewards. The elaboration of designs, models, and techniques is the result of collective processes based on listening, research, intentionality, and respect, and as such deserves recognition and protection.

A2. Living tradition and conscious innovation

Experimentation is an integral part of Intrecci's practice, but it is grounded in a constant dialogue with memory and with the custodians who personally transmit and disseminate the group's knowledge.

A3. Public space and collective responsibility

The work of Intrecci is rooted in a shared public space, Ca'Mon, which the association recognises as a common good. The occupation and care of this space entail a collective responsibility to generate and return value to the local community—not only economic, but also cultural and social.

A4. Teamwork and mutual recognition

Intrecci acknowledges the contribution of each artisan, valuing the diversity of competences as a founding resource. Collective action is based on principles of trust, respect, and shared responsibility.

A5. Care for relationships and open collaboration

Collaborations are grounded in transparency, equality, and respect for reciprocal roles. Every exchange (with schools, institutions, artisans, artists, local or international actors) must reflect the vision of the group and avoid misappropriation, exploitation, or conflicts of interest.

A6. Continuity and transmission

This Code is designed to also guide future generations of members. Intrecci is a living organism, welcoming new energies while maintaining continuity with its founding values, and capable of adapting and responding to the present.

B. Fields of application

B1. Production and protection of original designs

Every creation (designs, models, techniques, objects) is documented and archived.

Reconstructed techniques are considered collective heritage and, as such, are subject to protection and valorization.

Works produced by the group may be accompanied by recognition tools (labels, descriptive cards, certificates of origin), which the association undertakes to define.

B2. Educational and training projects

The educational dimension is central to the group's identity and is implemented through collaborations with schools, technical institutes, and training organizations.

Every training project must be consistent with the group's identity and aimed at the responsible transmission of knowledge.

Methods based on active learning, listening, and dialogue are particularly valued.

B3. Artistic and commercial collaborations

Collaborations with external actors (artisans, artists, local or non-local enterprises) are welcomed as opportunities for valorization.

Even in commercial activities, products must contain identifying elements (e.g., wool bands, marks, contextual narratives).

Projects are always collective, never individual, and non-competitive, unless the group decides otherwise.

International collaborations provide opportunities for mutual exchange and growth, to be conducted with respect and strategic enhancement of differences.

B4. Communication and Identity

Intrecci is recognized as an autonomous entity in communication, while maintaining a close connection with Ca'Mon.

Any use of the group's name, logo, or images must occur with prior consent from the association and in respect of the project's values and identity.

Public narratives about the group must be accurate, not oversimplified, and able to represent the complexity of the creative and social processes activated.

C. Relational principles

C1. Trust and clarity

Within the group, a principle of mutual trust prevails.

In external relations, transparency is required regarding roles, objectives, and responsibilities, through written agreements or other forms of negotiation.

C2. Sharing and transmission of knowledge

Knowledge is not the exclusive property of the group or its individual members; it is transmitted in ways that highlight the direct relationship with the custodians.

Teaching is considered an ethical practice: every traditional technique is shared with those who demonstrate attention, listening, and responsibility.

C3. Value of work and sustainability

Every activity—creative, educational, or productive—must be recognized as work.

Recognition of the value of work goes beyond mere commercial or economic quantification, taking into account time, skill, care, and the continuity of practice.

D. Strategic provisions

D1. Archiving and documentation

The documentation of techniques, creations, and work processes is promoted for purposes of memory, transmission, and protection.

To this end, the creation of a shared digital archive is being considered as a tool for active memory, with the association committed to defining the terms of access and use of its contents.

D2. Trademark and additional forms of protection

The registration of models or techniques, and/or the establishment of a collective or certification mark to ensure legal recognition and protection, is under consideration.

The possible filing of innovated traditional techniques is also being evaluated, both for valorization and preservation, and for protection of creativity.

Any decision in this regard will be consistent with the group's founding values and shared internally.

D3. Development of specific guidelines

The association commits to drafting operational guidelines for product development, modalities of collaboration with external actors, and the minimum conditions for attribution and recognition required in each project.

D4. Development of an agreement and regulations for the use of public space

Considering the central role of Ca'Mon in the association's identity, it is deemed essential to draft a specific agreement clarifying the association's rights and duties regarding the use of the space; defining the modalities of access and management by the association; taking into account the presence of multiple actors; and ensuring alignment between associative and public purposes.

D5. Revision of the Code

This document is subject to periodic review, based on the evolution of the association, its practices, and the context in which it operates.

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CONCLUSIONS

The principal lesson emerging from this research is a methodological one: law describes real phenomena and is therefore always situated *a posteriori* with respect to the critical observation of the contexts in which those phenomena arise. Recognizing this principle—far from innovative, yet too often overlooked—offers a clearer lens through which to approach a historically rooted subject such as traditional knowledge, which remains strikingly contemporary precisely because of the enduring absence of a regulatory framework capable of capturing its complexity.

Adopting such a perspective helps to avoid the mechanical—and ultimately unproductive—imposition of existing legal categories onto practices that resist rigid classification. Instead, it invites closer engagement with the nature of the observed phenomena, the principles that underlie them, and the most suitable forms of recognition and protection. This does not entail abandoning the use or potential of existing legal instruments—extensively discussed in the first part of this study—but rather calls for a deeper and more critical understanding of their operation, so as to better harness their inherent flexibility.

At the same time, one of the central conclusions of this study is the recognition of the urgent need for a shift in perspective—or more precisely, a reconsideration of how existing systems and instruments interact. What is required is the promotion of hybridization, the acceptance of overlaps and cross-contaminations between regimes, and the overcoming of rigid dichotomies between public and private spheres. Only through such an approach can regulatory frameworks begin to reflect the full complexity of reality.

That reality, moreover, presents increasingly clear and pressing demands: it calls for the centrality of environmental and human dimensions; the valorization of local skills; the safeguarding of cultural biodiversity; and the support and financing of production and relational models grounded in sustainability, equity, and social justice. This is accompanied by another key observation: every case is specific, and no single experience can be adequately captured by overly rigid or generalized schemes and categories. It is precisely within this irreducibility that the true value of the intangible resides—not as a mere set of assets or knowledge, but as a fluid space for transformation, adaptation, and ongoing change.

It is here that law faces its most significant challenge: to adopt approaches that are more attentive, contextually grounded, and capable of restoring form and dignity to the very complexity it seeks to govern.

Complementing these general and forward-looking considerations, a set of guiding indications can be derived that synthesize the main findings of this study and may serve as a foundation for initiating similar, derivative, or integrative projects. Within its necessarily limited scope, this contribution positions itself within a broader body of scholar-

ship that increasingly underscores the need to develop specific legal protections for the traditional knowledge of contemporary communities of practice.

1. **Recognize the legal dignity of collective dimensions.** Traditional knowledge does not fit neatly within either the public or private sphere. It embodies an intermediate, autonomous form of collective subjectivity that requires theoretical analysis, legal recognition, and adequate protection.
2. **Promote nuanced forms of ownership.** Moving beyond the rigid dichotomy of public versus private property, models grounded in custodianship, care, and shared responsibility better reflect the relational and intergenerational nature of traditional knowledge. These models should recognize rights of use, transmission, and management without relying solely on exclusionary logics.
3. **Develop flexible and adaptive legal instruments.** Ethical codes, community protocols, and internal regulations can serve as intermediate tools to support communities in transitional phases. They should provide spaces for reflection, dialogue, and the gradual formalization of shared rules—rules that remain open to modification and sensitive to changing contexts.
4. **Shift the focus from content to context.** Protection should encompass not only the knowledge itself but also the conditions that ensure its continuity: human relationships, everyday practices, learning processes, rituals, and environmental elements that sustain and regenerate it.
5. **Valorize community spaces as sites of identity.** Places where knowledge is transmitted—such as workshops, cultural centers, or shared public spaces—are not mere containers but essential components of collective identity. Safeguarding and enhancing these spaces is crucial for the preservation and continuity of cultural and artisanal practices.
6. **Recognize the political value of shared spaces.** Beyond their material function, community spaces play a political role: encouraging custodianship and collaborative governance inspired by the commons strengthens inclusive, participatory, and sustainable models of heritage management.
7. **Acknowledge the intangible, collective, and dynamic nature of traditional knowledge.** By its very essence, such knowledge is fluid, evolving, and open to innovation. It should be treated as a living heritage—capable of creative transformation and, where appropriate, protected under intellectual property regimes that admit forms of collective ownership.
8. **Balance openness, circulation, and exclusivity.** Protection must reconcile the free flow of knowledge with the right of communities to set boundaries on access and dissemination. Communities themselves should define these limits, mindful of the cultural and economic value of their knowledge, while also exploring the opportunities and challenges posed by digital technologies.
9. **Affirm the principle of cultural self-determination.** Communities that hold traditional knowledge must be recognized as entitled to full cultural, identity-based,

and organizational autonomy. This recognition legitimizes their right to negotiate with external actors from a position of equality and mutual respect.

10. **Value the practice of description as a foundational act.** Practices of describing, documenting, and narrating knowledge are not mere technicalities; they constitute its legal existence. Description represents the first step toward recognition and provides a fundamental resource for defining, negotiating, and legitimizing the use of knowledge within institutional and contractual frameworks.

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NORMATIVE REFERENCES

WIPO Paris Convention for the Protection of Industrial Property, 1883

WIPO Berne Convention for the Protection of Literary and Artistic Works, 1886

WIPO Madrid Agreement Concerning the International Registration of Marks, 1891

UN Universal Declaration of Human Rights, 1948

WIPO Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957

UN International Covenant on Economic, Social and Cultural Rights, 1966

WIPO Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989

UN Convention on Biological Diversity, 1992

WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994

WIPO Copyright Treaty, 1996

WIPO Performances and Phonograms Treaty, 1996

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003

UN Declaration on the Rights of Indigenous Peoples, 2007

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits, 2014

FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, 2012

WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, 2024

Directive (CE) 96/9

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Regional Law Veneto no. 34 of 8 October 2018

ANNEXES

TABLE 1 – IPRs IN ITALIAN LAW

Type of right	Subject of protection	Duration of protection	Requirements	Mode of protection	Territorial scope	Additional notes
Copyright	Intellectual works of a creative nature in the artistic and literary fields, regardless of the manner or form of expression	Author's life + 70 years	Creativity (originality)	Automatic, no registration required	National, EU	Also protects moral rights
Trademark	Distinctive signs capable of distinguishing goods or services	10 years, renewable indefinitely	Distinctiveness, lawfulness, non-deceptiveness	Registration with UIBM/EUIPO	National, EU, WIPO	Registration is optional but necessary to obtain full, certain, and enforceable protection against third parties
Patent	New, inventive, and industrially applicable solutions	20 years from the filing date	Novelty, inventive step, industrial applicability, lawfulness	Registration with examination	National, EU, WIPO	<ul style="list-style-type: none"> • Requires filing and approval • Non-renewable • Subject to prior art examination
Design	External appearance of a product (shape, color, texture)	5 years, renewable up to a maximum of 25 years	Novelty, individual character	Registration with UIBM/EUIPO	National, EU	Protects only the aesthetic aspect

Trade Secret	Company confidential information with economic value (know-how, formulas, methods, etc.)	As long as secrecy is maintained	Confidentiality, economic value, adequate protective measures	No registration required	International	Protection against unauthorized use and disclosure
Geographical indication*	Distinctive signs identifying agricultural, food, wine, artisanal, or industrial products whose qualities, reputation, or characteristics depend exclusively or predominantly on the geographical environment of origin, including natural, human, and cultural factors	Unlimited (if requirements are maintained)	Link between quality/reputation / characteristics and geographical origin. For PGI industrial products: at least one production phase on site	Registration and recognition	EU, international	<ul style="list-style-type: none"> • Regulation (EU) 2023/2411 has extended PGI protection to non-food artisanal and industrial products, managed by EUIPO • Protection always extends throughout the EU

**Sui generis IPR, see text above*

TABLE 2 – APPLICABILITY OF IPRs TO THE CONTEXT OF STUDY

Type of right	Specific instruments	Possibility of extension/integration
Copyright	<ul style="list-style-type: none"> • Collective works • Databases 	<ul style="list-style-type: none"> • More extensive use of moral rights as a tool to prevent unauthorized appropriation or use • Possible protection of so-called derivative works • Use of databases as a form of control
Trademark	<ul style="list-style-type: none"> • Collective trademark • Certification trademark • Historic trademark of national interest 	<ul style="list-style-type: none"> • Use as a tool for cultural and territorial identification • Usage regulations shaped by traditional practices and techniques • Promotion of quality linked to community identity
Patent	Specific inventions within traditional technology	<ul style="list-style-type: none"> • Enhancement of innovative traditional techniques (if they meet patentability requirements) • Documentation of traditional knowledge as “prior art” to prevent appropriation by third parties
Design	–	<ul style="list-style-type: none"> • Undisclosed traditional knowledge/expression • Possible protection of creative adaptations based on traditional elements • Used as a tool to oppose unauthorized appropriations by third parties
Trade Secret	–	<ul style="list-style-type: none"> • Protection of confidential knowledge through agreements and controlled-access archives (linked to documentation/access limitation issues) • Potential protection not subject to time limits, provided secrecy is maintained
Geographical Indication	Geographical indications for artisanal and industrial product	<ul style="list-style-type: none"> • Participation in the definition of production specifications • Drafting of community protocols

TABLE 3 – APPLICABILITY/REPLICABILITY OF *SUI GENERIS* MODELS AND
BEST PRACTICES OF INTEREST

Category	Instrument/ example	Type	Strengths	Limitations
Geographical indications	DOP, PGI EU Regulation 1151/2012; EU Regulation 2023/2411; Law 206/2023	<i>Sui generis</i> regulatory instrument	<ul style="list-style-type: none"> • Strong legal recognition at EU/national level • Extension to artisanal and industrial productions • Enhancement of local know-how and the cultural and social heritage of the territory • Possibility of protection for “traditional” products (proven historical use) • Involvement of communities holding the knowledge in defining production specifications, with potential material benefits 	<ul style="list-style-type: none"> • Procedural complexity • Rigidity of specifications/incompatibility with the dynamic nature of traditional knowledge • High organizational capacity required from local communities • Risk of exclusion if there is no collective management structure or procedures/agreements ensuring participation

Regional legislation on craftsmanship	Regional laws on craftsmanship (e.g., Lazio 3/2015, Puglia 24/2013, Veneto 34/2018, Liguria 3/2003)	Regional regulatory instrument / sectoral regulation	<ul style="list-style-type: none"> • Recognition of the cultural and identity value of local artisanal techniques • Promotes intergenerational transmission, typicity of raw materials, manual skills, and historical continuity • Establishment of registers, titles, and regional marks (e.g., "Master Artisan," "Artisans in Liguria") • Provision of production specifications and labeling systems • Measures for economic valorization (e.g., tax incentives) 	<ul style="list-style-type: none"> • Fragmented and uneven framework across regions • Lack of a national protection system for non-food products (until December 2025) • Regional marks with legal value limited outside the local area • Complex implementation and governance (need for coordination among authorities and consortia) • Limited recognition in the global market
Documentation practices	WIPO toolkits, databases (e.g., Oma Traditional Textile Design Database ©)	Descriptive/management instrument (not strictly legal)	<ul style="list-style-type: none"> • Flexible tool, adaptable to different cultural contexts • Can integrate protective functions (defensive and positive) if embedded in an appropriate legal framework • Can serve as a basis for collective claims, economic valorization projects, and assertion of moral rights • Databases can benefit from <i>sui generis</i> protection (Directive 96/9/EC) 	<ul style="list-style-type: none"> • Does not constitute an automatic or standalone form of legal protection • Risk of appropriation if documentation is accessible without limits or controls • Requires technical skills, financial resources, and institutional support • Legal protection only if accompanied by specific mechanisms (e.g., regulated access, licenses, copyright) • Need to clearly define the role and rights of the involved communities

Labelling practices	Local Contexts, TK Labels, Maître d'art, Entreprise du Patrimoine Vivant	Extra-legal good practice / symbolic and cultural recognition	<ul style="list-style-type: none"> • Promotes visibility, recognition, and respect for traditional knowledge • Restores symbolic and intellectual control to communities over content and representations • Encourages transparency and informed consent in the use of cultural materials • Can reinforce subsequent or parallel legal protection mechanisms (e.g., protocols, agreements) • Enhances skills, training, and intergenerational transmission • Integrates knowledge into cataloging, archiving, and valorization systems 	<ul style="list-style-type: none"> • Lacks binding legal effect; value is primarily symbolic or moral • Risk of instrumentalization or superficial application • Requires shared governance between authorities and communities • Limited bargaining power if not embedded in broader protection and participation strategies • Institutional recognition needed to maximize effectiveness
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Protocols and ethical codes	Protocols for Using First Nations Cultural and Intellectual Property in the Arts (Australia), Chhau Dance Code (India)	Guidelines / para-legal instruments	<ul style="list-style-type: none"> • Promote cultural self-determination and community participation • Flexible, adaptable to different contexts and sectors • Strengthen moral, identity, and ethical protection of traditional knowledge • Guide responsible conduct and collaborative relationships among stakeholders (institutions, public, communities) • Can be integrated into contracts or agreements to acquire binding value • Explicitly define culturally sensitive access, sharing, and usage protocols 	<ul style="list-style-type: none"> • Not legally binding unless voluntarily adopted • Depend on the willingness and capacity of external actors to comply • Risk of fragmentation and inconsistency if not institutionally recognized • Can be ignored in the absence of enforcement or sanction mechanisms
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TABLE 4 – COMPARISON BETWEEN IP AND ICH APPROACH

Comparison category	IP approach	ICH approach
Subject of protection	Identifiable and isolable objects; works of authorship, inventions, trademarks, designs, know-how, etc. Can sometimes incorporate traditional knowledge	Practices, representations, expressions, knowledge, know-how, and related tools, objects, artifacts, and cultural spaces recognized by social groups as part of their cultural heritage. Integrates traditional knowledge
Reference subjects	Formal recognition of the rightsholder; collective ownership is often absent	Community-centered as the active subject, with the right to participate in the actions of the State and international institutional bodies. Ownership is collective
Aim of protection	Private value of the asset: exclusivity and commercial exploitation of the intangible good. Emphasis on authorship linking the individual to the intellectual expression	Public and shared value of the asset, protection of vitality and transmission for a collective interest in cultural diversity, sustainable development, and grassroots participation
Conditions for protection	Originality, novelty, inventiveness, distinctiveness (depending on the IP right involved)	Cultural value, continuity, intergenerational transmission, recognition by the community
Protection procedure	Formal registration or automatic protection; legal-technical assessment	Identification through national inventories; UNESCO designation (Representative Lists, Urgent Safeguarding, Register of Good Practices)
Duration of protection	In most cases, limited in time	Unlimited – as long as the practice remains alive by the will of the community
Legal effects	Exclusive right of use; right to prevent unauthorized use by third parties; moral rights	No exclusivity; symbolic, cultural, and political recognition. However, possible intersections with IP schemes
Access and sharing	Limited access, mechanisms in place to restrict circulation	Promotes transmission, promotion, and dissemination (while respecting customary practices and any relevant protocols)

Risks	Exclusion of traditional knowledge holders; misappropriation; disconnection from cultural context	Folklorization, cultural appropriation, lack of effective legal protection of the relationship with the holding community
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