

ii. Spectrum of IP rights

Conceptually, **IP rights** fall along a **spectrum**, the **cornerstone** of which is **their degree of connection to the land**.^[71] Land is the **central element** of their existence.^[72] Civil law land titles do not exist in its economic and social system. The concept of individual land ownership under our civil law is different and distinct from their rules on land ownership.^[73]

Thus, normatively, under **IPRA**:

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SECTION 4. Concept of Ancestral Lands/Domains. — Ancestral lands/domains shall **include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas** which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

And:

SECTION 5. Indigenous Concept of Ownership. — **Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity....**

At **one end**, there are those **IP rights** which are practices, customs, and traditions integral to the distinctive IP culture of the group claiming the right.^[74] The "occupation and use of the land" where the **activity is taking place**, however, is **not "sufficient to support a claim of title"** to the land."^[75] Nevertheless, **these activities receive constitutional protection**.^[76]

In the **middle**, there are **activities** which, **out of necessity, take place on land** and indeed, **might be intimately related to a particular piece of land**.^[77] Although a particular indigenous cultural community (**ICC**) may **not be able to demonstrate title to the land**, it may nevertheless have **a site-specific right to engage in a particular activity**.^[78] Even where an IP right exists on a tract of land to which the ICC in question does not have title, that **right may well be site specific, with the result that it can be exercised only upon that specific tract of land**.^[79] For **example**, if an ICC demonstrates that **hunting on a specific tract of land** was an **integral part of their distinctive culture** then, even if the **right exists apart from title** to that tract of land, the IP right to hunt is nonetheless defined as, and limited to, the **right to hunt on the specific tract of land**.

At the other end of the spectrum, there is the IP title itself.^[80] IP title confers **more than the right to engage in site-specific activities** which are aspects of the practices, customs, and traditions

of distinctive IP cultures.^[81] **IP site-specific rights** can be made out even if **IP title** cannot; what **IP title** confers is the **right to the land itself**.^[82]

iii. IP right to preserve cultural integrity as a free-standing right independent of IP claim or title to ancestral domains or lands

An **IP right to preserve cultural integrity** is **manifested** through an **activity** that is an **element** of a **practice, custom, or tradition** that is **integral to the distinctive culture** of the IPs claiming the right. This requires establishing the **existence of the ancestral practice, custom, or tradition advanced** as supporting the claimed right; confirming that the **ancestral practices, customs, or traditions** were **integral to the distinctive culture** of the **claimant's pre-contact in Philippine society, i.e.,** prior to contact with colonizers and non-IP Filipinos, or **subsequent thereto**, to the **survival** of the distinctive culture of the **claimant's ICC in Philippine society**; and proving that **reasonable continuity** exists **between** the **pre-contact practice, or post- contact practice** for the claimant's ICC's survival, **and** the **contemporary claim**.

An IP right to preserve cultural integrity **entitles** the right holder **to perform the practice or custom or tradition** in its **present form**. This means that **the same sort of activity** is **carried on** in the **modern economy by modern means**. To illustrate, the **right to harvest wood for the construction of temporary shelters** must be allowed to evolve into a **right to harvest wood by modern means to be used in the construction of modern dwellings**. Here, petitioners strongly claim that their **IP right to preserve cultural integrity** entitled them to log the *dita* tree for building the communal toilet as a lawful exercise and manifestation of this IP right. As shown, this claim did not just come from thin air but from the bundle of their real constitutional and statutory right to cultural heritage.

iv. IP right to preserve cultural integrity in relation to or as a manifestation of IP claim or title to ancestral domains and lands

An **IP title** encompasses the **right to exclusive use and occupation of the land** held pursuant to that title **for a variety of purposes** including **non-traditional purposes**.^[83] **IP title** confers **ownership rights similar to** those associated with **fee simple**, including the **right to decide how the land will be used**; the right of enjoyment and occupancy of the land; the **right to possess the land**; the right to the economic benefits of the land; and the **right to pro-actively use and manage the land**.^[84]

These rights and the other rights concomitant to an **IP title** are specified in the *IPRA*: