

# Tangible ethnicity: in search of traditional cultural expressions in Catalonia, Gunayala, Guatemala and Senegal<sup>1</sup>

The objective of this article is to present ongoing research on tangible culture and the intellectual property dilemmas that arise from their use and appropriation in different modern societies in America, Africa and Europe. Since 2015, anthropologists from the University of Barcelona, the Autonomous University of Barcelona and Sabhal Mòr Ostaig in Scotland have been studying the conversion of cultural artefacts into intellectual property, heritage or ethno-commodities in a range of ethnographic contexts, such as the islands of the Gunas peoples of Panama, the Mapuche communities of Chile's Araucanía region, the production centres of Scottish kilts, the fairs of Santa Llúcia de Catalunya, the Mayan peoples of Guatemala and the Joola and Manjack societies of Senegal. This field work has allowed us to perform a comparative study of tangible culture and its appropriation, both by local and external agents. In this article, we want to present the first sets of data and reflections that arise from the fieldwork performed among the Gunas people of Panama, as well as in Catalonia, Guatemala and Senegal<sup>2</sup>.

## The EtnoMAT project

What all this research has had in common is the EtnoMAT project: "Expressions Culturals Tangibles i propietat intel·lectual" (Tangible Cultural Expressions and Intellectual Property) directed by Dr. Mònica Martínez

Mauri and coordinated by Dr. Jordi Tomàs Guilera during the period between October 2015 and March 2017<sup>3</sup>. The project consists of a comparative investigation of so-called Traditional Cultural Expressions<sup>4</sup> (TCEs), in particular on the social, economic and political issues raised by their production, use and marketing and sale, as well as their conceptualisation as intellectual property (IP). According to the World Intellectual Property Organization – OMPI, the body that defines them –, TCEs include a wide range of popular arts, such as wood carvings, baskets, fabrics and typical costumes, and they can be both intangible and tangible. The proposed research is based on the axiomatic of the importance of tangible culture in the elaboration and expression of ethnicity, and focuses on the processes through which certain objects, but not others, are converted in a given context into ethnic markers. Some of these objects considered TCEs are involved in disputes over intellectual property rights and in some cases become protected by legal instruments at the state level.

The problem posed by the EtnoMAT project is of great interest for the cultural economy of the 21st century, dominated by growing globalisation and ethnicity. The commodification of products associated with certain cultures, as well as the demands to control the rights posed by these products, are rapidly expanding processes that are leading to heightened concerns regarding who should benefit from the exploitation of traditional

**Keywords:** Traditional Cultural Expressions, intellectual property, indigenous, tangible culture, heritage

**Paraules clau:** Expressions Culturals Tradicionals, propietat intel·lectual, indígena, cultura material, patrimonialització

**Palabras clave:** Expresiones Culturales Tradicionales, propiedad intelectual, indígena, cultura material, patrimonialización

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**2** This article does not include the case of Scotland or Chile, as it is a brief and exploratory text only. In 2018, the group will prepare a dossier on the subject in a specialist journal that will include all the cases studied.

**3** The project in question successfully passed the first and second assessment stage of the 2014 StG call (European Research Council, ERC), but faced with the ERC's budgetary constraints, it was finally partially funded by the *Ministry of Economy and Competitiveness*.

**4** According to the latest version of the "Glossary of the Most Important Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions" (2017, WIPO/GTRK/IC/34/INF/7), TCEs or "expressions of folklore designate the tangible and intangible ways through which traditional knowledge and cultures, as well as music and performances, narratives, names and symbols, designs and works of architecture of a traditional nature are expressed, communicated or manifested".



### Mònica Martínez Mauri

UNIVERSITY OF BARCELONA

Currently a professor attached to the Social Anthropology Department of the University of Barcelona (UB). Doctor in Social and Cultural Anthropology from the Autonomous University of Barcelona (UAB) and the *École des Hautes*

*Études en Sciences Sociales* (Paris). She has been a postdoctoral researcher on the Beatriu de Pinós programme at the University of Lleida and the Juan de la Cierva programme at the UB. Since 1999, she has carried out field work in Panama, but has also performed research in Chile and has contributed to ethnography in international political processes in Geneva and New York (IGC Committee of the World Organisation for Intellectual Property and the Permanent Forum on Indigenous Issues).



### Gemma Celigueta Comerma

UNIVERSITY OF BARCELONA

A doctor of Social Anthropology and Ethnology at the *École des Hautes Études en Sciences Sociales* in Paris, she has performed research among the Mayan peoples of the western plateau of Guatemala on subjects such as authority and indigenous political

representation, ethnicity, development and, more recently, tangible ethnicity and collective intellectual property. Since 2010 she has been a professor of anthropology at the University of Barcelona (UB) and a member of the research group CINAf (Indigenous and African-American Cultures) of this same University.



### Montserrat Clua i Fainé

AUTONOMOUS UNIVERSITY OF BARCELONA

Doctor in Social Anthropology and a Professor of Anthropology at the Autonomous University of Barcelona, she has studied nationalism and the construction of ethnic and political identities. She has performed research on the case of Catalonia,

on the discourses of ethnic inclusion and exclusion and on the independence process. She has also worked on the history of anthropology and the anthropology of the peoples of Spain.



### Jordi Tomàs Guilera

CENTRE FOR INTERNATIONAL STUDIES (INSTITUTO UNIVERSITÁRIO DE LISBOA) AND AFRICAN SOCIETIES STUDY GROUP (UNIVERSITY OF BARCELONA)

Doctor in Social and Cultural Anthropology, he has performed research in West Africa, especially in Senegal, on issues of identity and nationalism, royalty and traditional authorities, African religions and

education. He is currently a researcher at the Centre for International Studies (Instituto Universitário de Lisboa, in Lisbon) and for the African Societies Study Group (University of Barcelona). He has been a coordinator of the project *Etnomat: Cultura Material, Etnicitat i Propietat Intel·lectual* (Tangible Culture, Ethnicity and Intellectual Property), at the University of Barcelona. As an author and editor, he has published several books on Africa.

images, designs or knowledge. Various international players<sup>5</sup> are asking for research to be performed on these issues in order to have an empirical basis on which to develop IP policies. The project, designed to address this challenge (which interests academics, as well as politicians, technologists, communities, and other players affected by these issues) focuses on the study of the appropriation of various tangible TCEs on three continents, including the *mola* of the Guna people of Panama; the fabrics produced by the Mayan peoples of Guatemala; the so-called *pagne manjack* of Casamance, in Senegal; and the

*caganer* in Catalonia, all dealt with in this article.

The starting hypothesis of the EtnoMAT project suggests that intellectual property issues related to TCEs respond to new ways of understanding tangible culture, property and rights, both at a global and local level. Although appropriate mechanisms for recognising and protecting TCEs have not been established, TCEs hold a prominent place in the transactions of goods, ideas and information in the global economy. Our hypothesis is that the majority of dilemmas surround-

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Entities such as the European Union, the World Intellectual Property Organization, the World Trade Organization and the United Nations Permanent Forum on Indigenous Issues raise the need for empirical studies on these issues.

The article presents the first results of ongoing ethnological research on Traditional Cultural Expressions (TCEs) and the intellectual property dilemmas that arise from their use and appropriation by external agents. The results from four case studies are presented: the conversion of the *mola* into collective property of the Guna people (Panama); Mayan peoples' identification with the indigenous *traje* (Guatemala); the use of the *pagne manjack* by fashion designers (Senegal) and the new types of *caganer* (Catalonia).

L'article presenta els primers resultats d'una recerca etnològica encara en curs sobre les expressions culturals tradicionals (ECT) i els dilemes de propietat intel·lectual que susciten el seu ús i la seva apropiació per part d'agents externs. Es recullen els resultats obtinguts a partir de quatre estudis de cas: la conversió de la *mola* en propietat col·lectiva del poble guna (Panamà), la identificació dels pobles maias amb el *traje* indígena (Guatemala), la utilització del *pagne manjack* pel món de la moda (Senegal) i els nous models de *caganer* (Catalunya).

El artículo presenta los primeros resultados de una investigación etnológica todavía en curso sobre las expresiones culturales tradicionales (ECT) y los dilemas de propiedad intelectual que suscitan su uso y su apropiación por parte de agentes externos. Se recogen los resultados obtenidos a partir de cuatro estudios de caso: la conversión de la *mola* en propiedad colectiva del pueblo guna (Panamá), la identificación de los pueblos mayas con el *traje* indígena (Guatemala); la utilización del *pagne manjack* por el mundo de la moda (Senegal) y los nuevos modelos de *caganer* (Cataluña).

ing the intellectual property of TCEs arise due to matters related to the control of their production. In other words, the aspects that raise controversy are: how they are made, who produces them and who benefits from their distribution and/or marketing and sale.

During 2016, in addition to carrying out exploratory field work in Panama, Senegal, Guatemala, Catalonia and Scotland, the EtnoMAT team has also followed the negotiations between Member States, industry representatives and indigenous delegates at the IGC Committee of the World Intellectual Property Organization (WIPO)<sup>6</sup>. The evidence that these field trips has provided us has allowed us to redefine the research goals for the period 2018-2022, to limit the number of ethnographic case studies (Guatemala, Senegal and Panama) and to appreciate the importance of following international debates on the subject matter of TCEs and intellectual property. There are four general objectives that currently guide our research:

- Study the conditions in which the TCEs included in a material product become relevant to the ethnic group and whether they are affected by intellectual property issues.
- Develop a comparable intercultural method for understanding the role of tangible culture in ethnic affiliation processes.
- Systemise data to help local communities, technologists and lawyers to improve the protection measures against the commercial exploitation of culturally valuable objects.
- Explore interpretations and protections of intellectual property – both state and customary – of TCEs and how they interact with current international models.

### The objects that define us

In recent years, many cases of misappropriation of indigenous tangible culture have come to light. One of the cases that has drawn the most media attention was the lawsuit filed in 2015 by the Mixe indigenous community of Santa María Tlahuitoltepec, Oaxaca, in southern Mexico, against the

French designer Isabel Marant for having copied their traditional dress in several pieces of her spring-summer collection<sup>7</sup>.

Because tangible culture formed by artefacts, fabrics or symbols is not clearly defined within the categories of cultural heritage created by organisations such as UNESCO, it is difficult to design policies that prevent them from being unlawfully appropriated by external players. According to current international legislation, tangible heritage includes architectural and/or unique assets (works of art), which by their nature are not highly movable, whereas intangible heritage, as its name suggests, seems to exclude artefacts, emphasising the knowledge and processes that allow them to be produced.

Although they are not officially protected, many objects – clothing, food, tools, or ornaments – are the tangible format that allows social and cultural identities to be asserted and materialised, which is why they can be considered cultural agents (Bennet, 2010; Braun and Whatmore, 2010; Latour, 2006; Miller, 2005). In situations where ethnic, social and cultural identities may seem fragile and attempts are made to defend them through giving them heritage status, the objects' tangible nature itself allows these identities to be presented as stable. Insofar as granting heritage status often involves showing “culture” to an external perspective, the artefacts' material nature can turn them into instruments that exhibit “culture” in a more visible and direct way than knowledge or techniques that have enabled their manufacture. Sometimes certain objects of a colonial origin, even those that were imposed as signs of marginalisation, can be adopted and claimed as heritage of the societies that were colonised, often transforming their original purpose. This is the case, for example, of the clothes introduced during colonial times to American indigenous societies.

In a way, all objects produced by members of a social or ethnic group are bearers of the group's culture. However, since the processes of building the ethnic border involve a synthetic presentation of culture, only certain

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Des del mes de setembre del 2016, EtnoMAT és una de les poques organitzacions acadèmiques acreditada per l'OMPI com a observadora al Comitè Intergovernamental sobre Propietat Intel·lectual i Recursos Genètics, Coneixements Tradicionals i Folklore (CIG).

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Per saber més sobre aquest cas, vegeu la notícia publicada al *The Guardian*: “Inspiration or plagiarism? Mexicans seek reparations for French designer's look-alike blouse” <https://www.theguardian.com/global-development-professionals-network/2015/jun/17/mexican-mixe- blouse-isabel-marant> (consulta: 29/05/2017)

objects are selected as emblems of identity, both within the group and by external agents (national or international institutions responsible for keeping an inventory of heritage, anthropologists, tourists, consumers of different markets, neighbouring ethnic groups, etc.).

In some cases, selecting emblematic objects of tangible culture is likely to be problematic. Internal conflicts may arise when not all members of the group possess the same mastery of the production of objects that can be recognised as “cultural”. The selection can also cause conflicts because it has been done by outside agents who do not usually share the same definition of what is “cultural”. They can also arise due to differences in the group’s view of their “culture” with that of the outside agents. In short, although apparently there is a certain agreement when it comes to choosing the objects that represent a group’s culture, the reasons for this choice may not be the same for all the players involved.

As part of these processes of selecting culturally distinctive and significant material elements, the commercial value that certain objects acquire outside of the group can be a factor to consider. Although there are objects that are preserved for internal use, others can be used for external circulation and become ethnic hallmarks. In these cases it is necessary to question how objects that retain an internal value (ritual acquisition and/or external origin, *cf.* Gordon, 2006) compare with those that have an external value (ethnic “authenticity”). It is also worth observing the methods used for the marketing and sale (commercial channels, labelling, direct sales, etc.) of these and other objects that can be acquired by the groups in order to transform them and “re-export” them, endowed with a sort of “heritage coating”. This process, which does not involve any material change, is an ontological transformation of the object into an “artefact” (Gell, 1998) that cannot be ignored.

Lastly, another point to consider in the study of the selection process is how per-

manent or temporary the objects selected appear to be. In the same way that knowledge and technical processes must be able to show a certain age or a certain stability over time in order to be recognised as “heritage”, “cultural” objects must be relatively durable and should not come across as recent collective inventions. This requirement can be difficult to accomplish in certain cultural contexts, such as in the indigenous Amazon (*cf.* Santos Granero, 2009), where certain objects (body ornaments, musical instruments, etc.) often have a brief existence (they are destroyed after being used in rituals, or after the death of their owner) or have value because they embody the uniqueness of the person that produced them, rather than a stable collective identity. The techniques for the production of these objects are transformed, sometimes to be recognised as “cultural” (which entails producing more of them to be marketed and sold). Similarly, the social, aesthetic or commercial showcasing of certain “cultural” objects within a group may involve them being adopted – or on the contrary, rejected – by a neighbouring group as a representation of culture. This is, for example, the case of crafts made with glass pearls or fabrics of European origin adopted as “cultural” emblems by certain Native American groups and rejected by others. In some contexts, the selection of an object as an incarnation of culture often implies attributing a particular history to it (for example, a mythological origin), and at the same time a specific future is outlined: to favour its perpetuation and to control the generational transmission of the knowledge necessary to produce it, among others.

Fully aware of the wide range of circumstances surrounding the conversion of tangible cultural elements into TCEs, and how this conversion can empower an indigenous people or ethnic group to identify and represent their culture, we will briefly present the cases of four objects classified as TCEs: The *mola* in Panama, the indigenous *traje* in Guatemala, the *caganer* in Catalonia and the *pagne manjack* in Senegal.

### The conversion of the *mola* into collective intellectual property of the Guna people (Panama)

The Guna people of Panama (also known as the Kuna, Cuna, Dule, Tule or Gunadule) are one of the few indigenous peoples who have been able to conserve and consolidate a certain political autonomy over the last few centuries. The autonomy achieved by the Gunayala region is particularly significant in today's world (Martínez Mauri, 2011). To talk about TCEs in Gunayala is to talk about the *mola*, a highly colourful textile composition that women and transsexuals (*omegids*) make to wear as an important piece of traditional clothing or to sell to tourists. The *mola* came into being during the colonial era, as a result of the contact that the Gunas' ancestors had with the Europeans who tried to dominate the Darien region and the Caribbean from the 16th century. Although the origin of their production can be traced to the 19th century, the *mola* became an identity emblem during the 1920s, when the

Panamanian government's assimilationist policies tried to eradicate it.

The traditional Guna dress is made up of several pieces: the *mola*, a navy-blue patterned fabric which serves as a skirt, a red headscarf with yellow-colour patterns, glass pearl bracelets adorning both forearms and legs, and the *oloasu* (a golden ring that women wear between their nostrils). Among the assimilation measures that the Panamanian government adopted in order to civilise the inhabitants of the Gunayala region was one forcing women to abandon their traditional dress. After years resisting the government's attempts to "civilise" the "Indians", in 1925 the Gunas revolted against the Panamanian police who imposed the assimilationist order on their islands. The revolt that ended the lives of more than 30 non-indigenous people led to the beginning of a new period of political relations with the Panamanian government, characterised by respect for the Guna territory, their forms of self-gov-

Guna women choosing rice (2009).

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ernment and customs (their dress was an important part of this).

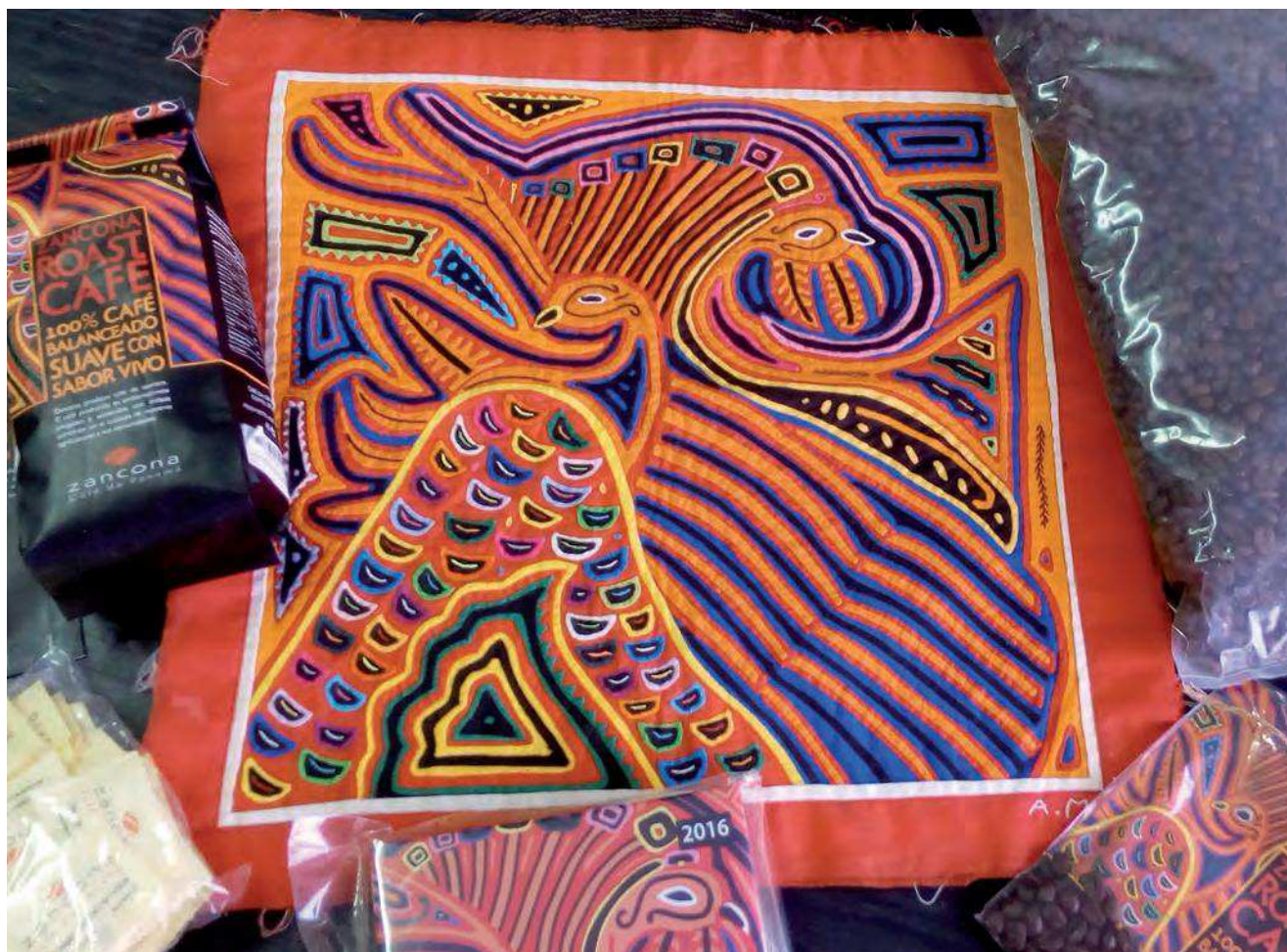
Panama is currently one of the few countries in the world that has adopted *sui generis* legislation to protect traditional knowledge and traditional indigenous expressions. In the year 2000, Panama passed Act 20 aimed at protecting and conserving indigenous peoples' collective rights over their cultural identity and their knowledge (Valiente, 2006). In 2016, it approved a new law, Act 80, with the aim of promoting and protecting traditional medicine. Seven peoples benefit from this particular legal framework.

The inhabitants of Gunayala, in addition to having a territory since 1938 and forms of government recognised by the Panamanian State (Act 16 of 1953), have been able to protect three TCEs. In 2001, the lawyers of the General Guna Congress (known as CGG, the highest authority in the Gunayala region) registered the *mola*, the ham-

mock and musical instruments as collective intellectual property in the Department of Colonial Rights and Folklore of the Ministry of Commerce and Industry of Panama. In doing so, as well as being a very important source of income through its sale to tourists and collectors, the *mola* has become collective property of the Guna people. Since 2006, the Gunas have received large sums from litigation for use of the *mola* in advertising campaigns, as a brand image or a part of commercial products. One of the most famous cases is the litigation initiated by CGG against the country's biggest rum company, Seco Herrarano, when it proposed to launch a campaign for the national holidays consisting of a limited edition of bottles decorated with designs of the *mola*. The company had to negotiate with the Guna congress and compensate the Guna people to avoid being forced to withdraw all the bottles from the market. Another source of income that comes from the collective intellectual property rights of the *mola* is the

Products of Zancona Coffee with designs inspired by the *mola* (2016).

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payment made by some companies to the Guna congress in order to obtain licenses to use the *mola*. This is the case, for example, of Franklin Panamà, a company led by a Panamanian lawyer which prints Italian silk scarfs with designs inspired by the *mola*, but redesigned to follow the latest trends on the international catwalks. Under the agreement that this businesswoman has signed with the CGG, a percentage from the sale of each scarf goes to the Guna congress. The other case is that of the company Zancona Coffee, which since 2016 has adopted a certain *mola* design as its brand image and uses it on its coffee and merchandise packaging.

The conversion of the *mola* into collective property of the Guna people is a process considered successful and exemplary by some international organisations, such as the WIPO itself. However, the process has not been free from controversy. At the internal level, there have been conflicts between the different groups, as until August 2016 only one group, the region of Gunayala, received the profits derived from the licenses for use and the various litigation cases with national companies. The General Guna Congress only represents 33,000 Gunas that live in the Gunayala region, but not those that reside in the Wargandi and Madungandi regions, or the Guna communities of Colombia or the urban areas of Panama. In other words, of about 80,000 Gunas, only the government of 33,000 of them was receiving the profits generated by this particular collective property. In order to put an end to this situation, the political authorities of all the groups organised a meeting in August 2016 and agreed to divide the profits between the three regions (Gunayala, Wargandi and Madungandi), the Guna communities of Panama represented by the Tagargunyala congress and the Guna communities in Colombia. Nevertheless, indigenous people living in urban areas were left out of the agreement.

The money generated by the *mola* and received by the Guna authorities becomes part of the regional funds. Although these funds are used to cover the costs of main-

taining the political structure of the Guna people, they are sometimes also used to fund small infrastructure or community projects. But the management of these funds is not free from controversy, nor is it beyond internal power struggles.

### Mayan identity and clothing in Guatemala today

In Guatemala, indigenous peoples represent a large percentage of the national population. In the 1980s, a large part of this indigenous population began to make demands as a Mayan people. The Mayans have been known since pre-Hispanic times for the quality and beauty of their fabrics, which they produce with a wide variety of techniques, materials, colours and designs. In fact, each community of the Guatemalan plateau identifies itself with a distinctive costume, or typical *traje*, that differentiates them from neighbouring communities (Hendrickson, 1995: 51). Some researchers point out that this diversity is due to the very colonial policy that forced the inhabitants of each town to dress in the same way to facilitate their control (Martínez Pélaez, 1998: 497), while others claim that the diversity is the product of a trend that can be traced back to the pre-colonial era (Otzoy, 1992: 97). Whatever the case may be, the fact is that the indigenous *traje* remains one of the main ethnic hallmarks of a Mayan person, not only identifying them with their community of origin but above all with their indigenous heritage. In fact, as well as being a fundamental element of the Mayan identity, the *traje* also forms part of the country's national identity. Although the State often acts against the interests of indigenous peoples, government institutions have appropriated some of their symbols to use in advertising campaigns or commercial products.

The indigenous *traje* or the Mayan clothing includes items such as the *huipil* or blouse, the *corte* or skirt, the *perraje* or shawl, the belt, apron, shirts and trousers, as well as necklaces, earrings and sandals. The indigenous *traje* is therefore an entire outfit, but how many items are necessary for an outfit to be considered an indige-

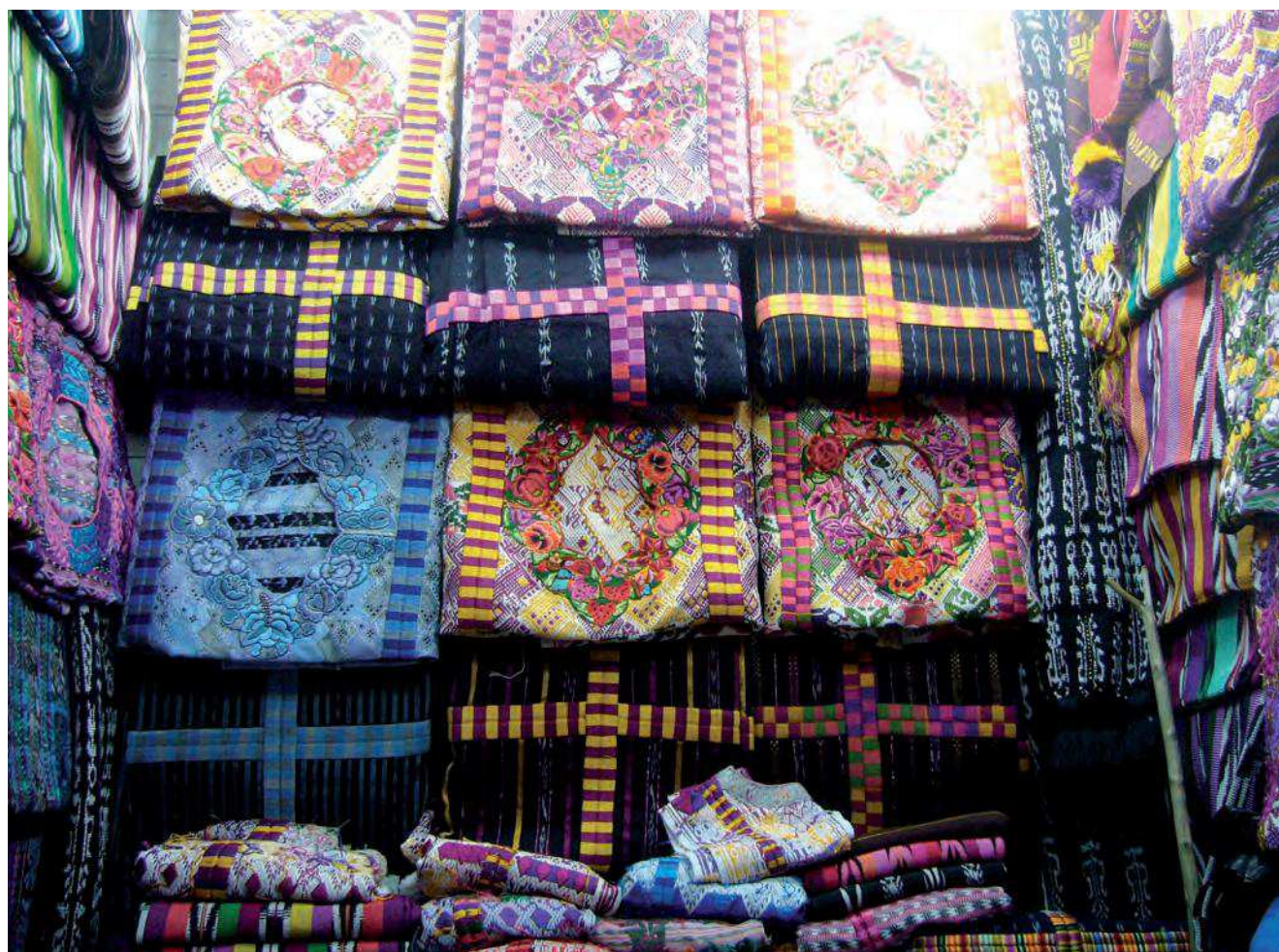
nous *traje* depends on the person and the indigenous group (Hendrickson, 1995: 33-34). Folk festivals, indigenous beauty queen contests, the Guatemalan institute of tourism itself and museums such as the *Museo Ixchel del traje indígena* of Guatemala have attempted to create and produce catalogues that define the precise clothing of each of these communities. For example, the *Museo Ixchel* exhibits 117 *huipiles* of everyday use from 117 municipal areas and 16 different linguistic groups. But the museum itself explains that some of these *huipiles* “are already assigned to history” or that they coexist with other *huipiles* in the same municipality. Indeed, the reality is much more dynamic, rich and flexible than we usually imagine when we think of a cultural expression labelled as “traditional”. For example, *huipiles* and *cortes* salesmen in the markets of Quetzaltenango are well aware of indigenous fashions; and although they identify each item with a particular community, this identification responds

more to a style than to a particular colour, design, technique or material.

We can therefore consider Mayan fabrics to be a central traditional cultural expression for this group, but despite their economic importance – as well as their importance as an expression of identity – there is no legislation that protects their production, marketing, sale and consumption. This is why, in 2016, a group of Guatemalan Maya-Kaqchikel women began a series of demonstrations which led them to file, firstly, a claim of unconstitutionality for the lack of rules protecting the intellectual property of Mayan fabrics and, secondly, a legislative proposal that has now been approved by the commission of indigenous peoples of the Congress. These legal actions, which both the Mayan women and their lawyers call *strategic litigation*, have been accompanied by demonstrations in the streets, the creation of a National Assembly of Weavers and extensive media coverage on both television and

**Quetzaltenango market (2016).**

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in the written press and in the digital media (blogs, websites of national and international activists, Facebook and YouTube).

The organisations involved note significant grievances such as state racism, which turns Mayan women and their clothing into folklore symbols at festivals and in advertising campaigns for tourist purposes, the economic exploitation of craft weavers or a lack of respect for indigenous peoples, since ritual fabrics that are only used by brotherhoods as part of religious events are marketed and sold. Among the threats identified in these legal actions, we find domestic and foreign companies that use Mayan fabrics in their products without paying any kind of royalties. In particular, in recent years, companies that produce bags and designer shoes have proliferated, selling them in boutiques or exporting them to Europe and the United States as luxury products. As an example, one of these bags made with a *huipil* by Santiago Atilán costs 600 dollars, while the *huipil* is

bought from an Indian woman for about 70 dollars.

Another of the identified threats is the use of new techniques to design and produce fabrics using computers that reduce the production costs, which are damaging to handicraft producers, almost always women. Handicraft production includes old techniques such as the use of the waist loom of pre-Hispanic origin or the pedal loom introduced during colonial times and dye techniques such as *jaspeado*<sup>8</sup> (Miralbés, 2003) or decorative techniques such as hand or machine embroidery and brocade<sup>9</sup> (Knoke and Senuk, 2010). Some of these techniques are mostly employed by women, such as embroidery, brocade and use of the waist loom (although there are also men who perform them) while others, such as the pedal loom – and now computer fabrics –, appear to be dominated by men. Lately we find so-called *computerised fabrics* that require investment in machines imported from Asia,

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Successió de nusos practicats al fil abans del tint, que després formaran figures amb el teixit final.

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Teles que s'adornen formant figures amb fils addicionals, que s'entrellaçen amb la trama bàsica mentre es teixeix la tela.

**Santiago Ixcot at his Quetzaltenango workshop in front of his pedal or foot loom (2016).**

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which use computer programs to reproduce the designs of *huipiles* and *cortes* that were previously woven in looms. *Computerised* fabrics cost four times less than handcrafted fabrics, bringing down the prices of the national market which until now were in the hands of the weavers. Women fear that the indigenous population, characterised by low purchasing power, prefer to buy the cheapest fabrics, putting at risk a production process they performed in their home, which could be combined with other production and reproduction tasks and which served to supplement household income.

It is interesting to point out that although some laws in force in Guatemala (such as copyright law or industrial property law) allow designs to be registered, and the Ministry of Culture has declared indigenous *trajes* national cultural heritage, these are not the forms of recognition and protection sought by the Mayan people of Guatemala. By filing the claims of unconstitutionality and the legislative proposal, these groups are seeking the recognition of their collective authorship as a people, vindicating not only their political recognition but also a more autonomous management model for these groups. In this regard, lawyers recognise that they have in mind a model similar to that of the Gunas of Panama, although they state that it will need to be adapted to the reality of indigenous peoples in Guatemala, which is much less centralised. In fact, the great challenge of these actions is to apply them in such a way as to protect and benefit indigenous producers.

### **Traditional, popular and famous: caganners for all tastes**

Catalonia is a land with a rich tangible and intangible heritage. It is also a land with a strong differentiated cultural identity which, due to various historical and political circumstances, ended up generating a nationalist political claim in the 19th century, which has experienced varying levels of intensity up to the present day. In this context, it is not surprising that the cultural heritage has received particular attention, given its relationship with the construction and representation of

the Catalan identity. From the first more or less ethnographic collections of 19th century folklorists to the debates on popular and traditional culture of the anthropologists of the years of the transition to democracy in Spain (Llopart *et al.*, 1985; Prats, 1996), the study and protection of traditional Catalan cultural expressions has been part of the Catalan academic debate due to their relationship with the ethnic-national identity. But it has also attracted the interest of the local administration. Since the reintroduction of the Generalitat de Catalunya (Catalan regional government) in 1980, the various governments have devoted public resources to the promotion and protection of cultural heritage, under different names reflecting the academic debates that have taken place over time, under the umbrella of the department of culture. Some TCEs, both tangible and intangible, have also been the subject of specific legislation that complements or falls under the laws on the protection of national or international cultural heritage.

Given this context, it was decided to include Catalonia in the cases analysed in the project, although from the beginning it was clear that it was not easy to determine which TCE would be chosen for analysis. Unlike the other three cases studied, here we cannot find the effects of a colonial context or, for the time being, any kind of public (political or media) grievance regarding the defence of any collective intellectual property rights of any TCE in particular. This may be precisely because of the existence of legislation on cultural heritage that we discussed above, which provides a legal and institutional framework for the recognition, protection and dissemination of cultural heritage, and which provides protection and a framework of reference for the reproduction of TCEs. This does not mean that within the scope of so-called popular or traditional Catalan culture there have been no controversies about the “right” way to reproduce TCEs in order to meet criteria of remaining faithful to the tradition or of authenticity to give them meaning. Having confirmed that in Catalonia there were no TCEs linked to fabrics that could be compared to the other three cases

studied, finally it was decided to analyse the figure of the *caganer*.

The *caganer* may not be the TCE that Catalan people would mention first as the one that encompasses and expresses today's Catalan identity, where other elements of traditional culture such as the *casteller* human towers, dances or fire beasts have played the leading role as emblems of public expression of Catalan identity in the hegemonic statements of identity. It is, however, indisputably recognised by Catalan people as a home-grown and distinctive element of Catalan culture. It is a TCE that plays a full role in Catalan Christmas celebrations and which in recent times has been enjoying great popularity, especially among children, who play the biggest role in creating the nativity scenes where *caganers* are placed (Wormsbecher, 2015; Carbó, 2016). The iconographic representation of the traditional figure of the *caganer* can be found, during the Christmas period, not only in the nativity scene but elsewhere: in stories, in painted murals on the streets, in nativity scene competitions or supermarkets, as well as all year round at the Museu del Caganer and at the events organised by an association dedicated exclusively to the study and dissemination of this figure (known as the Associació Amics del Caganer, with its magazine and a prize for “*Caganer* of the year”).

The case of the *caganer* is interesting because it allows us to observe a particular expression of a phenomenon present in Catalonia, namely eschatology, which for some is a distinctive cultural element of the Catalan people and is expressed in other TCEs, such as the *Tió de Nadal* (Christmas log) or linguistic expressions (Cardín, 1990), where the *caganer* would become the carnival counterpoint of a sacred representation (Roma, 2006). On the other hand, it is a good case to analyse the relationship between tradition and modernity: how does the maintenance of a traditional cultural form relate to its adaptation to the modern world. By this we are referring to the emergence, from the 2000s, of a new form of *caganer*: “celebrity *caganers*” – figures representing public or

popular figures (politicians, actors, sport personalities, television or film characters, etc.) reproducing the bodily position of the traditional *caganer*. These figures have become well-known and popular not only at a local level but also internationally, increasingly becoming a gift item, both for collectors and tourists<sup>10</sup>.

The study of the *caganer*, therefore, allows us to observe the current tension between local production and globalisation, expressed in this case with the impact of tourism in Catalonia and especially in the city of Barcelona. The “traditional” *caganer* is therefore maintained as a TCE produced by local craftsmen and sold in a highly limited local area and time period in the calendar (at the Santa Llúcia Christmas fair, for a local consumer who will exhibit it in the nativity scene only during the Christmas holidays), while at the same time an industrial production has been developed for “celebrity *caganers*”, which are sold throughout the year as international consumer merchandise for tourists and collectors in souvenir shops (including the stalls on the Rambles of Barcelona) and over the internet.

The most interesting part of the case are the paradoxes that this dual production generates. On the one hand, tourists buy the *caganer* figures with the idea that they are buying a genuinely traditional and typical product of the area they visit, in a context where the globalisation of tourism makes it increasingly difficult to find non-globalised souvenirs. But both how they are produced and their use have little to do with the original traditional figure and its use by Catalan “natives” (Amades, 2009 [1946]). On the other hand, despite being a TCE that is confronting a new form of production that goes far beyond the original form, apparently the appearance of the contemporary version of “celebrity *caganers*” has not generated any debate regarding intellectual property, neither on the part of the craftsmen involved in the production of the traditional figure, nor on the part of the large multinational corporations that hold the copyright or image rights of many of the characters (whether

## 10

Cf. la notícia “L'escatologia nadalenca catalana s'escampa pel món”, VilaWeb, 24.12.2015: <http://www.vilaweb.cat/noticies/lescatologia-nadalenca-catalana-sescampa-pel-mon/> (consulta: 29/05/2017)



Shop window in Tossa de Mar, August 2016.

MONTSERRAT CLUA I FAINÉ

real or fictional) that are reproduced in this kind of *caganer*. As such – paradoxically and in contrast to the other cases studied – the *caganer* would enter the debate over intellectual property not so much as a TCE but precisely based on the new forms it has taken, which have less to do with the protection and reproduction of forms of traditional culture.

### Identity, ritual and commerce: the *pagne manjack* of Casamance (Senegal)

Nestled between Gambia and Guinea Bissau, the region of Casamance, in southern Senegal, is one of the most culturally diverse areas in the country. Populated by Joola (or Diolá), in Lower Casamance (in the Atlantic area), by Manding, in the Mid-Casamance area, and by Fula (or Pehl) in the Upper Casamance (the most Eastern area), we also find in this region, with the river Casamance constituting its backbone, small groups made up of a few thousand people such as the Manjack, the Mancanya, the Balanta and the Banyunk. Many of these groups are also found in northern Guinea Bissau. The region is known throughout the country for its strong identity, for the maintenance of different traditions and institutions of pre-colonial origin and especially

for its traditional religions, which coexist with Catholicism and Islam (the majority religion in Senegal). In colonial times, Casamance was one of the last areas in Senegal to be colonised and anti-colonial revolts took place up until World War II. In the 1950s, several Casamance autonomous movements emerged to claim a distinct identity from the southern zone and to counteract the centralism of the so-called *Quatre Communes* (Dakar, Gorée, Rufisque and Senegal) in the north of the country. These movements would disappear in 1960 with Senegal's independence.

Since 1982, a political-military conflict has been ongoing in the region between different factions of the Movement of Democratic Forces of Casamance (MDFC) and the Senegalese government. In 2004, some of these factions signed a peace agreement with the government, but others maintained their ideas of independence and did not abandon their weapons. In 2012, the new president resorted to international mediation to find a definitive solution to this conflict – which after 35 years has become one of the longest on the continent. During his mandate, the government has promoted a series of policies to unlock the region and to showcase the cultural wealth of the south<sup>11</sup>.

### 11

Per saber més sobre el conflicte, es poden consultar Marut (2010) i Evans (2013).

Besides promoting handicraft products from the region for tourism – since Casamance is one of the most important tourist regions of Senegal – , while emphasising the link between traditional culture, commerce and innovation, the government also decided to investigate what were the Casamance region's TCEs. Thus, in 2013, it began carrying out research at sites such as Oussouye, Sédhiou and Bignona, in order to find ten TCEs that the population considered representative. Among the most popular cultural expressions were dances, masks, musical instruments and, above all, a king and a fabric. While in Oussouye (in Lower Casamance), the most voted element was the figure of the king – an institution of pre-colonial origin that anthropologists classify as a sacred royalty –<sup>12</sup>, while in Sedhiou (in Mid-Casamance) the element chosen was the so-called *pagne manjack*. The *pagne manjack* is a cotton fabric, usually woven in black and white geometric figures, which many Casamance societies use for different ritual events, such as births, weddings and initiations, and particularly during funerals. Among the families of the south, having many fabrics is considered a sign of wealth – both economic

and social – because when a relative dies, if they are loved by the population, on the day of their funeral the family will receive dozens and dozens of fabrics. It is a fabric that has historically been produced by the Manjack in an artisan manner, but also by the Joola, the Bainunk and other peoples of the region, as well as various societies of Guinea Bissau (Andrewes, 2016; Saraiva, 2003; Pink, 1999).

For three decades, this fabric has been gaining presence in the world of Senegalese fashion, and has been appropriated by various Senegalese artists, producing it in creation centres in Dakar and other parts of the country. One of the best-known cases, although not the only one, is that of the Franco-Senegalese dressmaker, Aissa Dione, who early in her career decided to learn the art of weaving in the local manner. As she explained to Forbes magazine in 2016, she learned thanks to her grandmother's tailor, a Manjack man who originated from Casamance. According to her: “*La fabrication de ces pagnes est un savoir-faire ancestral commun aux peuples d'Afrique de l'Ouest. Au Sénégal, c'est la spécialité des Manjacks de Casa-*

12

Cf. Thomas (1959) i Tomàs (2005a i 2005b) sobre la reialesa d'Oussouye.

Traditional Joola weaver in the village of Eloubalir, Senegal (2016).

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*mance*<sup>13</sup>. Dione extended the length of the strips of the fabric from 15 to 60 centimetres and began to be inspired by Manjack motifs to create her own designs. The success of this dressmaker was overwhelming and soon she went from the shops of Dakar to exhibiting and selling in different parts of the world, in Africa, America, Europe and Asia. She went from selling dresses to creating accessories of all kinds, from shoes and hats to table cloths and computer cases.

The *pagne manjack* has gone in a few years from being an important ritual fabric for many groups in the region to appearing as a manjack symbol and having an economic value that it never had in the past<sup>14</sup>. In addition, it has caused a certain discomfort among some people because it is considered that dressmakers from the north have appropriated sacred designs that can only be used by those who have been initiated. Meanwhile, Senegal's government is increasingly committed to intellectual property defence policies. In this regard, it has signed various international treaties in defence of intellectual property and has approved several laws on the subject, such as Act No. 2008-09 of 25 January 2008 on Copyright and Related Rights, which gives more protection to the rights of the population over their creations.

Specifically, in its section four, "Folklore et domaine public payant", in articles 156 to 160 it is stated that the illicit exploitation of folklore will be punished with very high economic fines of up to half a million CFA francs (about 15,000 euros)<sup>15</sup>.

The *pagne manjack* is, therefore, at the heart of a debate in the political, social, economic and ethical fields. Following the fieldwork, everything seems to show that a debate is gradually beginning to appear in some areas of Senegalese society that highlights the tensions between reciprocity and capitalism, between tradition and modernity, between customs and the law, and between the local and the global. We will have to monitor it closely.

### Conclusions

The cases presented in this article allow us to reflect on the choice of objects that identify ethnic groups or indigenous peoples, their conceptualisation as TCEs and the controversies that arise from their use or marketing and sale by third parties. As we have seen, there is a wide range of processes for selecting culturally distinctive tangible elements. Sometimes an object becomes a TCE through the action of an outside agent that wants to eliminate it, while in other

**Fabrics donated by friends and relatives on the occasion of the death of a woman from the village of Oukout, Senegal (2016).**

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### 13

Podeu veure l'entrevista a [http://www.forbesafrique.com/Aissa-Dione-la-reine-du-tissu-africain\\_a1308.html](http://www.forbesafrique.com/Aissa-Dione-la-reine-du-tissu-africain_a1308.html) (consulta: 29/05/2017)

### 14

Cal recordar que alguns grups del sud, i especialment les generacions més grans, no veuen el comerç com una forma moralment acceptable de guanyar-se la vida (cf. Tomàs, 2007).

### 15

Tot i que està encara lluny de dur a terme polítiques com les que han tingut lloc en altres països com Ghana (cf. Boateng, 2011).

cases they are elements which, despite having colonial origins, recreate local identities, and sometimes their marketing and sale in tourist markets places them ahead of other cultural elements. Only in one of the cases, that of the Gunas, have *sui generis* laws been approved that recognise collective ownership rights over certain TCEs produced by indigenous peoples. Nevertheless, in the case of the Mayas of Guatemala they already consider this to be a “strategic” path, because of their demands as a people, and in three of the four cases there is talk of misappropriation and third parties, usually government agents or companies outside the local cultural context, are accused of inappropriate use and exploitation. In the case of the *caganer*, there is no talk of misappropriation or any claim of intellectual property rights, but there are certain groups that reject the celebrity *caganer* insofar as it does not represent the traditional figure, since they consider it to be a business – in this case of a local company – based on the trivialisation of the authentic TCE.

These demands highlight that at present, human groups maintain a relationship of ownership with traditional cultural expressions, whether they are objects or intangible elements. This may be one of the many consequences of the heritage policies implemented in different parts of the world in recent years. If, as Cabanellas does, we understand misappropriation as the incorporation, by a spontaneous act, of something from our heritage into another item without having the right to do so (Cabanellas, 1981), we can understand that the appropriation of designs, clothing or textiles by people outside the group can be considered an infringement of property rights, since in most cases the incorporation of these elements into commercial objects has not been negotiated with the indigenous or ethnic group. However, as recent ethnographies carried out in the Amazon show us (Brightman *et al.* 2016), we must not even assume that private property is universal, nor that in egalitarian indigenous societies property does not play an important role. In fact, what Brightman *et al.* show us is that, in order to understand the appropriation of things and people in the Amazon,

we have to see how upbringing (*nurture*) interacts with property (*ownership*). Only in this way will we be able to understand that the asymmetrical relationships between humans and non-humans, such as objects, not only imply care and protection but also involve very complex control and dependency relationships.

The examples of the *mola*, the indigenous *traje* and the *pagne manjack* show us that these fabrics are more than just things. They are objects that represent identity and transmit messages. They serve as a means of communication between humans and, in some cases, also a means of communication with a world that is often not perceptible to all humans. The use of these objects in contexts marked by commodification creates new tensions between human societies and raises new global challenges: finding legal mechanisms to protect certain TCEs from voracious commercialisation is one very important challenge.

In the Catalan case of the *caganer*, the appropriation by part of a group or nation is not entirely obvious. In this example, at first glance there do not seem to be any intellectual property dilemmas. In fact, current heritage laws do not provide for the protection of these figures, but intellectual property right laws regarding the image rights of the celebrities who are caricatured in “celebrity *caganers*” could well be applied. We could say that in the case of the *caganer* – as also occurs with Easter cakes – , tradition hampers the strict application of copyright and image right laws regarding these popular creations. No doubt the companies that control these rights at the global level have already assessed this situation and have come to the conclusion that starting an aggressive campaign against the incorporation of iconography with copyright or image rights<sup>16</sup> in these TCEs would not favour their popularity. We can therefore conclude by stating that the *caganer*, as a TCE, does raise intellectual property dilemmas, but in a rather different way to the previous cases. ■

## 16

Exemples de violacions d'aquests drets són la reproducció de figures inspirades en produccions de la factoria Disney, com Star Wars o Frozen, o en futbolistes mediàtics, tant en els caganers com en les mones de Pasqua.