



TERMS OF REFERENCE (TOR)

Consultancy: Assessment study on Intellectual Property Rights (IPR) for creative industries in Mekong Countries.

Type: Individual and/or Team of Consultancy Services

Duration Mid-August – Mid-October, 2024

Location: Homebase and fieldwork

Project: Promoting Creative Industry for Heritage Tourism Development in the Mekong Region.

1. Introduction

Mekong Institute (MI) is seeking a consultant or a team of consultants to conduct an assessment study, in consultation with and working closely with MI Project Team, on the landscape of legal, regulatory, and institutional arrangements regarding Intellectual Property Rights (IPR), including Geographical Indications (GIs), in the creative industries sector. The expected outcome of this study is to gain understanding of current situation, gaps and to propose appropriate measures to safeguard the project pilot's creative/cultural products and services (see annex document). The consultancy assignment is scheduled to commence from Mid-August to Mid-October 2024.

2. Brief Background of the Project

MI is implementing a three-year project on '**Promoting Creative Industry for Heritage Tourism Development in the Mekong Region**' so called '**Creative4Mekong**' from March 2024- February 2027, funded by the Mekong – ROK Cooperation Fund (MKCF). The project focuses on strengthening creative industries, cultural heritage conservation, tourism development for socio-economic recovery with digital platform in selected five World Heritage Sites of Mekong countries namely Ayutthaya (Thailand), Siem Reap (Cambodia), Hue (Viet Nam), Luang Prabang (Laos), and Bagan (Myanmar).

The creative industries play a vital role in boosting the cultural tourism sector in the Mekong countries, significantly contributing to their economies. However, the COVID-19 pandemic has severely impacted this sector. Heritage sites, in particular, are experiencing slower recovery compared to other areas and varies among the countries due to differences in economic development levels and their ability to respond and recover. This has put cultural skills and knowledge at risk, as workers leave in search of new opportunities, taking with them their local artisanal skills and cultural knowledge, potentially leading to the disappearance of traditional heritage and the foundation of cultural knowledge associated with key heritage

monuments. Heritage locations are crucial to the tourism sector as they uniquely contribute to the Mekong countries’ cultural identity.

Micro, small, and medium-sized enterprises (MSMEs) are one of the biggest economic contributors in all the Mekong countries. Most of the MSMEs in Mekong countries do not have a clear classification as to which businesses are labeled as creative industries or MSMEs that do not belong to the creative sector. The classification is important due to the creative industries require specific policy design approaches that cannot be generalized to most MSMEs. Hence, creating a regionally agreed taxonomy and definition of creative and cultural industries are priorities particularly for support policies and incentives because of the uniqueness of the businesses. However, MSMEs in the creative sector have not received due attention as an economic vehicle, so there is a lack of inadequate policy support and technical assistance for improving their competitiveness.

Equally important is the safeguarding the MSMEs’ works and products. Most of the Mekong countries, remains nascent in comparison with more developed Intellectual Property (IP) protection regimes and it will take some time before laws governing IP are in full World Trade Organization compliance. Intellectual Property Rights (IPRs) is a broad term used to cover patents, trademarks, origin’s rights, copyright, and other types of rights that the law gives for the protection in creative effort and knowledge creation. These rights play an important role in supporting a thriving creative economy as they protect creativity and control the commercial exploitation of the products of scientific, technological and cultural creation. The ability to develop and use such products is a key driver of economic growth and for international competition, especially for the production and trade of technology-intensive goods and services.

Given the vital role of heritage locations in the tourism sector and their unique contributions to the cultural identity of the Mekong countries, multilateral and regional coordination is essential to address the challenges faced by the cultural and creative industries sector, ensuring their resilience, growth, and sustainability.

The project’s objective is aligned with the short-term and long-term outcomes, for further contributing to the anticipated impact on strengthening creative industries for cultural heritage conservation and tourism development in the World Heritage Sites for socio-economic development, as shown below:

Project’s Objectives, Outputs and Outcomes	
Project’s Objectives	To enhance the economic potential of the creative industries in the five Mekong countries by strengthening creative industries for cultural heritage conservation and tourism development in the World Heritage Sites for socio-economic development.
Short-term outcomes (Outputs)	<ul style="list-style-type: none"> ▪ Strengthened and Established Cooperatives among Cultural Groups/Creative Industry. ▪ Strengthened Protection of Copyrights and Creativity through Intellectual Property Rights (IPRs) in the Heritage Sector, Arts, Media and Functional Creations. ▪ Promoted Creative MSMEs through Digital Platforms. ▪ Introduced Sustainable Solutions for Cultural Tourism and Creative

	<p>Industries.</p> <ul style="list-style-type: none"> ▪ Promoted Innovative Practices in Cultural and Creative Industries. ▪ Baseline Data Established.
Long-term outcomes	<ul style="list-style-type: none"> ▪ Developed and promoted viable creative/cultural industries for sustainable tourism development. ▪ Preserved, protected and promoted creative industries and intangible heritage for cultural enrichment and national identity. ▪ Creative MSMEs promoted through digital application platforms for market development. ▪ Sustainable solutions for cultural tourism and the creative industries promoted. ▪ Innovative policies to harness the symbiotic potential of cultural tourism and the creative industries formulated. ▪ Monitoring and Evaluation for the project established and launched.

3. Anticipated Study

The assessment aims to assess the regulatory, institutional, and legal frameworks governing creative industry sectors within selected heritage sites covered by the project¹. It focuses on aspects such as geographical concentration, products, services, raw material requirements, challenges, and prospects that have been identified in the baseline study.

More specifically, the consultant will conduct a desk study to identify existing efforts, institutional structures, provisions, compliance requirements, and gaps in the horizontal landscape of creative sectors at the national and. Using globally adopted definitions, standards, treaties and national classifications on creative industries, the study will enable the identification of issues, gaps, potentials, and provide policy recommendations and application processes to the five Mekong countries. Furthermore, it will propose suitable measures to safeguard creative industry works, products, and services of project focused products.

Specific objectives include:

- Assessing the existing legal regulatory, institutional, and legal frameworks of creative industries in selected five project sites of five Mekong countries.
- Identifying gaps, issues, and prospects in the project's identified creative industries / sectors on products/services outline in the baseline study.
- Defining the scope and breadth of the protection needed as outlined by the World Trade Organization (WTO), World Intellectual Property Organization (WIPO) and other relevant international treaties.
- Providing targeted policy recommendations and application processes to strengthen IP protection and promotion of the project's identified creative industries sector products/services.

4. Key target stakeholders in the creative industries

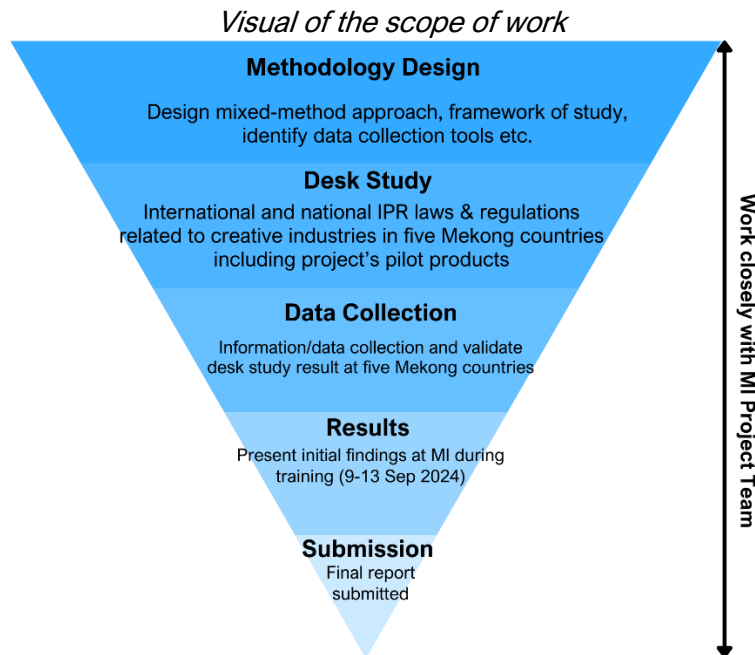
The assessment location should cover five Mekong countries namely Thailand, Cambodia, Viet Nam, Laos, and Myanmar. The target stakeholders are:

¹ Please find the list of the products in the annex.

- National Government agencies: Officials of National Ministry of Commerce and Industry, Standards and Certification and Officials of Department of Tourism and Culture.
- MSMEs/Micro, Small and Medium Creative Enterprises (MSMCE) /Artisans representing - Performing arts, food, festivals, craft villages, arts, media, functional creators, cultural sites, audiovisuals, and creative services etc.
- Provincial Government agencies: Heritage administration office, provincial tourism and cultural department etc.
- Business and industry associations: Chamber of Commerce, Business Association etc.

5. Scope of Work and Deliverables

5.1. Scope of Work



The consultant will work closely with the MI Project Team and will be responsible for:

- i. Designing methodology(ies) with a mixed-method approach for the Study. The approach will be adopted with three modes of information collection (i.e., desk review including success case studies, survey and online and offline consultations), while the methodology should include a strategy for conducting the study, designing of survey tools, identification of stakeholders, determination of primary information sources, and survey plan.
- ii. Conducting desk research to understand the landscape on the existing legal provisions, institutional structures, compliance requirements, and gaps in the horizontal landscape of creative sectors in selected heritage locations in five Mekong countries, namely Ayutthaya (Thailand), Siem Reap (Cambodia), Hue (Viet Nam), Luang Prabang (Laos), and Bagan (Myanmar). The desk study, where relevant, should also look at:
 - Roles of IPRs in creative industries in the Mekong countries, especially in the increasing digitalization transformation process

- Substantive rules for protection of IP rights in the creative industries (legislation, copyright subject matter and formalities; protection of economic rights; ownership and transfer of rights; IP management tools, etc.)
 - Enforcement of IP rights in the digital environment (current challenges in digital copyright enforcement, copyright and related rights enforcement mechanisms, technological protection measures and rights management information)
 - Recommendations to IPRs in the Mekong countries, including hardware and software solutions.
- iii. Develop tool(s) and methods to conduct survey and gather information/data in five Mekong countries with a combination of qualitative and quantitative methods and techniques.
 - iv. Use the identified creative industries products outlined in the annex document to provide appropriate policy recommendations and determine the scope and breadth of the protection needed, as well as the suggested application process for the associations/groups involved. The initial findings will be shared at one of the sessions related to IPR at the MI training for creative industries associations, which is scheduled to take place during September 9-13, in Khon Kaen, Thailand.
 - v. Work on finalizing the study assessment report and present to project stakeholders, Project Advisory Committees and MI project team, and final submission.

5.2. Key Deliverables

- i. **Assessment study report.**
- ii. **Presentation and moderate the IPR session** at “Training cum Workshop on Creative Industries Association in Project Location in the Mekong Region,” which will be held at the Mekong Institute Residential Training Center in Khon Kaen, Thailand, from September 9 to 13, 2024.
- iii. **Presentation of the final study findings** to Project Advisory Committee, Project Stakeholders and MI project team.
- iv. **Revise the final report** as per suggestions and recommendations of the workshop participants.

5.3. Responsibilities of the MI Project Team

- i. Work with the consultant and help in finalizing the methodology of the study;
- ii. Provide support for data collection;
- iii. Coordinate and facilitate meetings for data collection and verification with targeted respondents in the five Mekong countries
- iv. Provide comments on the first draft of the study report within the one week of submission by the consultant.
- v. Organize a validation workshop to present and validate the findings of the study report with relevant stakeholders identified by the MI Project Team with the help of the consultant.

4. Timeline and Payment

The project is funded by the Mekong-Republic of Korea Cooperation Fund (MKCF) and managed by the Department of Trade and Investment Facilitation, Mekong Institute. The consultant should be responsible for organizing and conducting the scheduled activities in collaboration with the host countries and MI Implementing team.

The Consultant is required to prepare a detailed work plan that sets out an approach for conducting and fully completing all activities within the set timeframe per table below:

Activities	August			September				October	
	W2	W3	W4	W1	W2	W3	W4	W1	W2
Phase 1: <ul style="list-style-type: none"> Design methodology and strategy for conducting the study Design the study framework Conduct desk research through review of related documents and secondary data. Preliminary design structure of final report 									
Phase 2: <ul style="list-style-type: none"> Develop tools/questionnaire for collecting information Gathering information/data Conduct field work 									
Phase 3: <ul style="list-style-type: none"> Prepare the presentation of the study findings and present at the training during the second week of September (half day) Finalize the report Present the report at the dissemination workshop (online) 									
Phase 4: Submission of final study report									

The total lump-sum amount of this consultancy service is **US\$ 5,000**. The payment schedule is as follows:

- 20% of the total amount will be paid upon signing contractual agreement / TOR;
- 30% of the total amount will be paid upon completion of Phase 1.
- 30% of the total amount will be paid upon completion of Phase 2 and 3.
- 20% of the total amount will be paid upon completion of Phase 4.

In addition:

- MI shall facilitate the consultant to carry out fieldwork activities and meetings with local partners and stakeholders in the Mekong countries.
- During the fieldwork in the five Mekong countries, MI will cover economy airfare, transport by land route in the project sites and accommodation costs. Other costs such as allowance, insurance etc. will be bear under consultant responsibility.
- MI shall not be responsible for any further expenses incurred by the Consultant during the consultancy works and for any losses and/or damages caused to consultant.
- All payments will be made by bank transfers in the name of the Consultant as specified in the TOR / contract.

Note:

- Any delay of the work by the consultant without notice (at least 5 days in advance) and agreement from MI will be penalized by deducting the payment at USD 35 (0.5% of the total consultancy fee) / per day based on the days of latency.
- The consultant's failure to deliver all the required outputs for over one-month delay will be considered as a default, which requires the consultant to pay back the first payment added with the compensation for the loss of the MI (50% of the total consultancy fee).

5. Qualifications of the Consultant

- Advanced university degree in law, preferably with a specialization in IP law.
- At least 5-10 years working experience in conducting studies/research/consultancy work especially in the areas of culture, creative industries and related fields.
- Sound knowledge and experience in the base study tools and experience in conducting similar surveys especially in Mekong countries.
- Experience in conducting large scale surveys.
- Fluency in English, clear communication including presentation, and good interpersonal skills.

6. Assignment Prohibited and Termination

The consultant is prohibited to assign or sub-grant any part of the activities under the agreed assignment without prior written consent of MI. Where such prior written consent is given, it shall not relieve the Consultant of any of its responsibilities under this contractual agreement.

The consultant shall ensure that the writings, textual matter, drawings, photographs, picture, maps, and diagrams, and all materials submitted to MI are either (i) original with the Consultant in all respects and do not infringe the copyright or intellectual property right of any third party; or (ii) should there be any part of the writings, textual matter, drawings, photographs, picture, maps, diagrams and material which are not of the consultant's original work, the consultant shall have obtained / cleared all copyright permissions.

MI shall have the rights to terminate this contract in the case that the Consultant is unable to fulfil his / her obligations under the terms and conditions of this TOR; or the contractual agreement may be terminated by either MI or the consultant, whichever comes first.

7. Conflict Resolution

In the case where conflict arises between MI and the consultant, the MI Management shall discuss and resolve the conflict in an amicable manner.

8. Submission of Application

For any party (individual consultant, consulting firm, or research institute) is interested in the consultancy, please prepare following documents and send it to the MI team:

- Expression of Interests, which should include a cover letter, draft study methodology, work plan, concept note, draft report outlines and chapter plan, and team composition and roles
- CV of Consultant (s)
- Samples of relevant work and studies.

Deadline for application: **August 8, 2024** (Bangkok time).

Submit to: icreate@mekonginstitute.org

For any inquiries, please contact:

Mr. Madhurjya Kumar Dutta




Director
Trade and Investment Facilitation
Department
Mekong Institute
Khon Kaen 40002, Thailand
Email: dutta@mekonginstitute.org

Ms. Thongvone Sosamphan


Project Coordinator
Trade and Investment Facilitation Department
Mekong Institute
Khon Kaen 40002, Thailand
Tel: +66 (0) 43 202 411 ext. 2113
Email: thongvone@mekonginstitute.org

Annex: Pilot creative/cultural products of Creative4Mekong Project

Ayutthaya, Thailand

NAME	DESCRIPTION OF PRODUCT	STATUS
Palm Leaf Hat 	<p>A handicraft that has been inherited since ancient times. Weaving a palm leaf hat requires no less craftsmanship than any other kinds of basketwork. The weavers have to be skilled and patient as the crafts will have to undergo a number of weaving steps. The palm leaf hat is now an OTOP product of Tambon Bang Nang Ra, Amphoe Bang Pahan, Phra Nakhon Si Ayutthaya. It has gained popularity among Thais and foreigners and is available in various provinces around the country.</p>	<p>5 stars OTOP award Declared as CPOT Product</p>
Palm Leaf Fish Mobile 	<p>Pla Tapien Bilan is a woven palm leaves craft introduced by the Muslim merchant during the Ayutthaya period. Settled down in Tha Wasukiri, Baan Hua Laem for over a hundred years. The fish itself is symbolize togetherness, wealth, and the abundance of natural resources. Referring to the traditional phrase “there is the rice in the farm, and fish in the water”.</p> <p>However, Pla Tapien Bilan became less significant in childhood development or house decoration, but more as a souvenir and economic benefits.</p>	<p>3 stars OTOP award Declared as CPOT Product</p>
Khon Mask 	<p>Khon used to consider as royal play, thought exclusively for child of lord and the royal blood. However, this play was standardized and open for public interest, notably during the King Rama XI. Represented as one of UNESCO intangible cultural heritage list.</p> <p>Khon Mask, therefore, represent the characters by distingue the face of human, gods, Ogres, and the animals described in the literature through unique figures, patterns, and colors.</p>	<p>OTOP and CPOT products</p>

Bagan, Myanmar

NAME	DESCRIPTION OF PRODUCT	STATUS
Lacquerware 	<p>Myanmar lacquerware is made of bamboo and lacquer. The body is made with thin strips of bamboo, which are painted with lacquer and let to dry. Each piece is intricately designed by carving a fine pattern with a small knife and filling the patterns with colored lacquer. After the fall of the Bagan dynasty, around the 14th century to the 18th century, lacquerware techniques were introduced to Myanmar from the northeast hilly areas. A combination of bamboo from Ayeyarwadi valley and lacquer from Shan hills. It can be said that traditional crafts were unique to Bagan, the center of Myanmar’s culture.</p>	<p>In preparation for ICH adoption</p>

Sand Painting



One artform that you will find mainly in the Bagan area is sand painting. Not having traditional canvas available, artists spread an acrylic glue on cloth and sprinkle fine sand on it. Once it is dry it is ready to be painted. Once the newly created 'sand-canvas' has dried in the sun, the artist then paints an image onto the 'sand-paper'.

Unknown



Puppet show



The puppet show in Bagan offers a vibrant glimpse into Myanmar's rich cultural heritage. These traditional performances, known for their intricate marionettes and lively storytelling, depict ancient myths, folklore, and historical tales. Skilled puppeteers bring colorful characters to life through precise movements and expressive gestures, captivating audiences with their artistry and charm. The puppet shows in Bagan not only entertain but also preserve and celebrate Myanmar's artistic traditions, making them a must-see for visitors exploring the region's cultural landscape.

In preparation for ICH adoption

Luang Prabang, Laos

NAME	DESCRIPTION OF PRODUCT	STATUS
Saa paper 	"Sa" papers, it may occur in the era of LaneXang kingdom in XV century because in this period LaneXang kingdom was prosperous and Buddhism has widely disseminated as well as the palm leaf manuscript and "Sa" paper was used for recording Dhamma teachings and history of Buddhism. Besides the information of religion, palm leaf manuscript and "Sa" paper also recorded information of history, customs, verses, novels, festivals, traditions, ancient herbal medicines, maps, worship, legendary ancestors, black magic and etc. However, "Sa" paper, in the past, was invented for recording only. Nowadays "Sa" paper is not useful only for recording but the "Sa" paper also is used for other purposes such as wrapping papers, notebooks, paper sheets, lanterns, paper bags, book covers, photo albums; papers that feature elephants, birds, Buddha statues deeply embossed and etc.	ODOP and ICH
Embroidery 	Embroidery "Pak-Ding" is a traditional handicraft which is valuable and unique for people of Luang Prabang city, Luang Prabang province. In the past, utilization of embroidery objects was special only for king's families and nobility or people having significant role in society while ordinary people could not use because materials that used for embroidery were from silver, gold, silk and other which were very expensive. Presently, the usage of embroidered	ODOP and ICH

objects and clothes had evolved from the royal palace to public use in ceremonies and festival such as Lao New Year (Miss Lao New Year “Nang-Sang-Khan” must wear clothes with elegant decorated patterns made by embroidery); In wedding party or other ceremony, people also adore to wear embroidered clothes which originated from the royal palace, and it was the origin of Pak-Ding (embroidery) which was inherited up till now.




Lacquerware



Lacquerware had been produced and utilized for many centuries since the reign of King Sackarin (period 1890-1904) and it was widely used in the reign of King Sisavangvong and King Sisavangvatthana. It is artistic works that require sensitivity. Lacquer which was Both uses in works relate to arts, sculpture, and decoration of important Buddhism places such as temple, sacred objects, stupas and buildings, and household accessories.

ODOP and ICH

Siem Reap, Cambodia.

NAME	DESCRIPTION OF PRODUCT	STATUS
<p>Silk</p> 	<p>Artisans Angkor stands in a league of its own. Founded in 1992 through a partnership between a European NGO and the Ministry of Education, Artisans operates vocational centres across the country to train rural Cambodians in Khmer craftsmanship. In Siem Reap – the traditional home of silk weaving—it’s all about the textiles.</p> <p>Thread by thread, patterns inspired by ancient imagery and Royal designs emerge from the steady hands of our weavers. The lengthy process from mulberry tree to clothes rack is a multi-stage journey for artisans and silkworms alike, working together to create timeless, unique products</p>	<p>-</p>
<p>Stone Caving</p> 	<p>Stone carving in Siem Reap is a testament to Cambodia's rich cultural heritage and the enduring legacy of the Khmer Empire. As a living tradition, it continues to captivate and inspire, serving as a bridge between the past and the present. Through ongoing efforts to preserve and promote this craft, stone carving remains an integral part of Siem Reap's cultural landscape, ensuring that the skills and artistry of the ancient Khmer are passed down to future generations.</p>	<p>-</p>
<p>Khmer shadow theatre</p> 	<p>The Sbek Thom is a Khmer shadow theatre featuring twometre high, non-articulated puppets made of leather openwork. Dating from before the Angkorian period, the Sbek Thom, along with the Royal Ballet and mask theatre, is considered sacred. Dedicated to the divinities, performances could only take place on specific occasions three or four times a year, such as the Khmer New Year, the King’s birthday or the veneration of famous people.</p>	<p>Inscribed ICH in 2008</p>

Hue, Viet Nam.

NAME	DESCRIPTION OF PRODUCT	STATUS
Conical hat 	<p>The hat has a conical shape, made out of straw and is kept on the head by a silk cloth chin strap that keeps the hat from slipping out of the wearer's head. This traditional conical hat is particularly suitable for farmers in such a tropical country as Vietnam where fierce sunshine and hard rains take place as often as girls' sulking. It can be used as a basin or a bowl to contain water when they are thirsty, as a fan when they are hot, as a basket of a bunch of vegetables. Romantically, young couples can veil their kisses behind this traditional conical hat during their dates.</p>	-
Ao Dai – Traditional Vietnamese Dress 	<p>The provincial People's Committee assigned the cultural sector to coordinate with relevant agencies to enhance studies, orient solutions, and organise cultural and arts events and community-based programmes to build the brand of "Hue – The capital of Ao Dai".</p> <p>The project has set out many specific goals such as the encouragement of gradually developing Hue's Ao Dai into a traditional dress for cultural exchanges, ritual activities, and traditional festivals; and the organisation of Hue Ao Dai Festival as a biennial series of community cultural events.</p>	-
Cơm Hến (Mussel rice) 	<p>Cơm hến, or mussel rice, is a traditional dish from Huế in central Vietnam. It features steamed rice topped with tiny, savory mussels and an array of ingredients like crispy pork rinds, roasted peanuts, fresh herbs, bean sprouts, and banana blossoms. A tangy dressing of fish sauce, chili, and lime juice ties everything together, creating a refreshing and flavorful meal. This beloved street food is a staple of Huế cuisine, offering a taste of the region's history and culture in every bite.</p>	-