

# Geographical Indications as Global Knowledge Commons. Intellectual Property Rights and Discursive Strategies at the global level.

Armelle Mazé<sup>111</sup>

---

<sup>1</sup> A. Mazé is from INRAE, UMR SADAPT, University of Paris-Saclay, AgroParisTech, Paris France (Armelle.maze@inrae.fr)

**Abstract** – In this communication, we extend the pioneering work by Hess & Ostrom (2003, 2007) by considering Geographical Indications as global Knowledge Commons (KC). Our analysis focuses on the institutional and political dynamics which have surrounded the intellectual property regimes (IPR) supporting GIs and its extension at the international level. Its adoption by a growing number of countries worldwide seems to indicate a paradigm shift opening new spaces for GIs recognition at the international level.

**Keywords** –Geographical indications, knowledge commons, collective action.

### INTRODUCTION

The reference to the geographical names and locations has always been since immemorial ancient time part of human heritage and a support for the development of impersonal trade. More recently, in the second part of the XXth century, the protection of Geographical Indications as formal Intellectual Property Rights have been subject to a number of sharp economic and political debates and negotiations at the international level, especially between the US and the EU (Chen, 1997, Lorvellec, 1997, Josling, 2006, Barham and Sylvander, 2011). In this communication, we extend current researches, using the pioneering work of Hess & Ostrom (2003, 2007), to understand the institutional and political dynamics at stake at the international level that are currently involved for their entitlement as Knowledge Commons (Madison et al. 2010, Frischmann et al. 2014). First applied to scholarly knowledge in the context of digital technology, Hess (2012) proposed to extend the analysis to all forms of knowledge, to all forms of “shared understanding gained by experience or study”, as well as “useful knowledge, whatever their forms in which they are expressed or obtained” (p.14), including indigenous, traditional, vernacular, scientific, cultural and creative works.

We argue that Geographical Indications are relevant candidates for being considered as “knowledge commons”, e.g. all the shared collective knowledge resources, a complex knowledge ecosystem that is created and shared by a group of place-based local communities, and subject to social dilemmas” (Hess and Ostrom 2007). The recognition of GIs is supported by specific combination of cultural and natural resources defining their “terroir” being considered here as a “knowledge commons” shared among local communities in relation to their environment.

After giving an overview of the different lines of theoretical arguments and discursive strategies developed for the definition of IPR regimes on geographical indications, we investigate more precisely an alternative approach where geographical indications are defined as “knowledge commons” (Hess and Ostrom, 2007). Our analysis includes a discussion about the relationships and tensions between human traditional knowledge and the non-human biophysical environment (Downes, 2000).

### THEORETICAL FRAMEWORK

Following the classical taxonomy developed by Ostrom (1990) and illustrated by the Figure 1 below, that is discussed by Hess and Ostrom (2003), knowledge, in its intangible form, fell into the category of a “public good” since it is difficult to exclude people from knowledge once someone had made a discovery. However, the “public good” dimension is also not synonymous with open and free access.

In a similar way, geographical names are usually considered as part of the public domain as they provide key services in facilitating travels and mobility, by defining postal addresses and all related services. Since ancient time, geographical names, or place-names, have also become valuable trademarks when attached with specialty or quality products with a strong reputation (Galli 2017). Depending of the IPR regime, the various use of geographical names can be represented in the Ostrom’s taxonomy as in Figure 1.

When geographical names become valuable assets by acquiring a large notoriety and reputation among consumers, private appropriation, including through usurpation, undue use or trademark registration is more likely (Stanziani 2004, Mazé 2015).

		Subtractability/rivalry	
		Low	High
Excludability	Difficult (costly)	<b>A Public Good</b> Language, common knowledge Geographical names, place names	<b>B Common Pool Resources</b> EU Protected Geographical Indications (with product specifications and links with their terroir and specific Social Ecological System)
	Easy (Low costs, Excludable, )	<b>C Toll or club Good</b> Under congestion conditions Collective Trademark Certification Mark Under membership conditions	<b>D Private Good</b> Individual Trademark

Figure 1. An extended Ostrom’s taxonomy to the legal protection of geographical names (adapted from Mazé 2015).

### DATA AND METHODS

In order to better understand the drivers and shifts in the regimes of justifications and argumentations developed to support the creation of dedicated sui generis IPR regimes, such as the one for GIs, our analysis is based on an extensive survey of past and current academic literature on GIs, and a detailed analysis of current negotiations surrounding GI’s in the international Trade agreement. These debates involved leading international organizations, such as the WTO, WIPO, FAO acting as a form of international polycentric governance, rather than a unified one, and as key institutional drivers of the diffusion of geographical indications worldwide (Mazé 2017).

### RESULTS

Over the last century, a number of international conventions (Paris’s convention in 1883, Madrid’s convention in 1891, Lisbon agreement in 1958 involving the WIPO – World Intellectual Property organization, have started providing added legal protections to famous place names against undue appropriation. In addition, the establishment in 1992 of EU legislation on GIs (EC 2081/92) has become

another key milestone for GIs recognition and extension worldwide.

In the mainstream academic literature, the protection of GIs has often been restricted to their reputation capital, without considering the role of local community in creating, maintaining, innovating and developing their collective knowhow about specific products as well as stewardship over their environment.

As first developed in France and later extended through the EU legislation, the legal protection of GIs acknowledges the importance of coevolving natural and cultural heritage, and the role of collective knowledge developed by groups of human actors (see OIV definition). Thus, GIs are not only based on “traditional knowledge”, but rather should be viewed as co-evolving and innovative knowledge ecosystems, in line with the definition of “knowledge commons” proposed by Hess and Ostrom, (2007). Maintaining and supporting local communities involved in sustainable GIs production is one of the expected positive outcomes of their worldwide extension

### **CONCLUSION**

During the last decades, the rapid adoption of dedicated institutions and legislations on Geographical Indications by a growing number of Southern countries open new perspectives for their legal recognition at the international level (Vandecandelaere et al. 2009). More recently such protection as been extended to handy craft products. The acknowledgement of GIs as shared “knowledge commons” offer a different perspective for the protection of “traditional knowledge” and specific know how of local communities on agricultural products and their agroecosystems, but also to favour stronger self-governance and stewardship of local communities for the sustainability of their specific agroecosystems as social-ecological systems.

Self-organization and collective action within GIs remain nevertheless subject to social dilemma. As stressed by Ostrom (2009) there is no one-fit-all institution solution. Acknowledging the role of GIs as “knowledge commons” is a mean and a strategy to better taking into account and prevent potential adverse effects observed when local GIs acquires a large notoriety and increasing consumer demand, sometimes to the expense of original GI’s production and the sustainability of agroecosystems.

### **REFERENCES**

Barham, E. and Sylvander, B. (eds) (2011) *Labels of origin for food: local development, global recognition*. Cambridge, MA: CABI.

Chen, J. (1996) ‘A Sober Second Look at Appellations of Origin: How the United States Will Crash France’s Wine and Cheese Party’, *Minnesota Journal of International Law*.

Downes, D. (2000) *Intellectual Property as a Tool to Protect Traditional Knowledge*. *Columbia Journal of Environmental Law*, 25, 253-281.

Frischmann, B.M., Madison, M.J. and Strandburg, K.J. (eds) (2014) *Governing knowledge commons*. Oxford University Press.

Hess, C. (2012) ‘The unfolding of Knowledge commons’, *St Antony’s International Review*, 8(1), pp. 13–24.

Hess, C. and Ostrom, E. (eds) (2007) *Understanding knowledge as a commons: from theory to practice*. Cambridge, Mass: MIT Press.

Galli, M. (2017) *Beyond frontiers: Ancient Rome and the Eurasian trade networks*. *Journal of Eurasian Studies*, 8, 3–9

Josling, T. (2006) ‘The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict’, *Journal of Agricultural Economics*, 57(3), pp. 337–363.

Lorvellec, L. (1996) ‘You’ve Got to Fight for Your Right to Party: A Response to Professor Jim Chen’, *Minnesota Journal of International Law*, p. 155.

Madison, M.J., Frischmann, B.M. and Strandburg, K.J. (2010) ‘Constructing Commons in the Cultural Environment’, *Cornell Law Review*, p. 657.

Mazé, A. (2015) *Geographical Indications as Global Knowledge Commons*. Ostrom’s law on common intellectual property and collective action, Draft Working Paper, INRAE, UMR SADAPT.

Mazé, A. (2017) ‘Standard-setting activities and new institutional economics’, *Journal of Institutional Economics*, 13(3), pp. 599–621.

O’Connor, B. (2004). *The Law of Geographical Indications*. Cameron May.

Ostrom, E. (1990) *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press.

Ostrom, E. (2009) ‘A General Framework for Analyzing Sustainability of Social-Ecological Systems’, *Science*, 325(5939), pp. 419–422.

Vandecandelaere, E., Arfini, F., Belletti, G. & Marescotti (2009). *Linking People, Places and Products. A guide for Promoting Quality linked to Geographical Origin and Sustainable Geographical Indications*. Roma: FAO and SINER-GI.