

Prošek or Prosecco: IP or ICH?



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The 12th IP Conference

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Today

- The issue? Geographical indication
- What is cultural heritage (CH)?
- What is intangible cultural heritage (ICH)?
- Wine as ICH?
- Are Prosecco and Prošek ICH?
- EU and ICH?
- IP v. ICH?
- The outcome?
- The future?



Prosecco's Issue

Geographical indication

Italy:

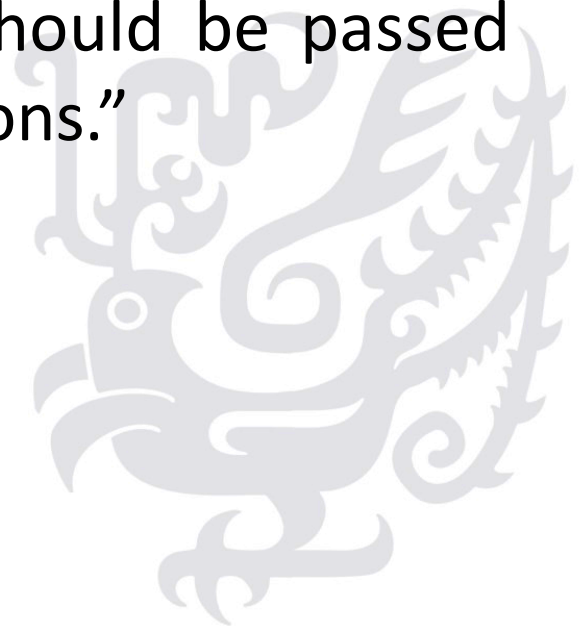
1. **DOCG**- Denominazione di Origine Controllata e Garantita
 2. **DOC**- Denominazione di Origine Controllata
 3. **IGT**- Indicazione Geografica Tipica
- Prosecco: DOC status in 1969 and DOCG status 2009
 - Prošek?
 - Italy and Croatia are members of both the WTO Agreement and the Paris Convention- TRIPs
 - EU: member of WTO: 2008, Second Chamber of the ECJ confirmed Advocate General's (2004), involving the Hungarian wine Tokaj (sometimes called "Tocay") and Italian wine Tocai

What is Cultural Heritage?

- Cultural Heritage is a term of international law
- Six conventions – with specific definitions
- Popular meaning of CH

“Cultural heritage is evidence of the activities and achievements of humankind that should be passed on for the benefit of future generations.”

- Includes?





DAN RYAN'S

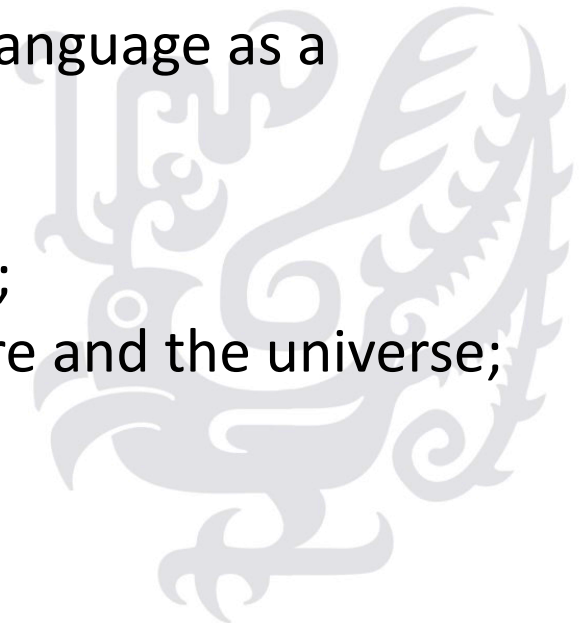


What is Intangible Cultural Heritage?

Latest convention- 2003 Convention for the Safeguarding of the Intangible Cultural Heritage

“the practices, representations, expressions, knowledge, skills...that communities, groups and, in some cases, individuals recognize as part of their cultural heritage...manifested inter alia in the following domains:

- (a) oral traditions and expressions, including language as a vehicle of the ICH;
- (b) performing arts;
- (c) **social practices, rituals and festive events**;
- (d) knowledge and practices concerning nature and the universe;
- (e) **traditional craftsmanship**.





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Wine as ICH?

Qvevri
wine-
making
method-
Georgia



Prosecco- Intangible Cultural Heritage?

- Prosecco hills associated with wine production for 1,000 years
- 1st first written reference 1754 Aureliano Acanti “I would like to wet my mouth with that Prosecco with its apple bouquet”.
- But modern Prosecco developed late 20th century from sweet sparkling into dry sparkling wine
- Mass produced: 300 million bottles a year
- generally drunk with little ceremony, easy flavour and relative affordability- cheap alternative to champagne at weddings and other significant celebrations
- But no social custom or ritual directly associated with its consumption- and the Italians claim no such significance

Prošek- Intangible Cultural Heritage?

- Technique and custom of making Prošek is 2,000 years old and may date to the arrival of the Greeks on the Dalmatian islands in the 4th century B.C.
- 1st written mention 1556, Croatian poet Petar Hektorović
- Locally, domestically produced, often by single families according to family recipes.
- Drinking? when a child is born, birth vintages are saved for coming-of-age, college graduation and weddings, and family produced bottles are given as gifts at traditional festivals
- Janica Tomic, winemaking family on Hvar- “[i]t’s about identity, tradition and customs”.

Safeguarding?

- National Lists
- World: UNESCO Representative list of the Intangible Cultural Heritage of Humanity
- But **R.5** The element is included in an inventory of the intangible cultural heritage present in the territory(ies) of the submitting State(s) Party(ies)
- Obligations on State Parties- identifying intangible cultural heritage, respecting it and raising awareness of it by recording and educating
- Prosecco and Prošek?



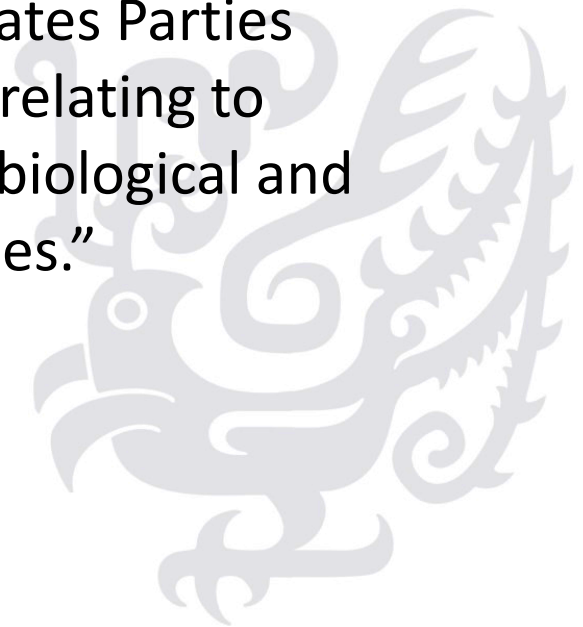
EU and Cultural Heritage

- Article 3(3), Treaty on European Union (The Lisbon Treaty) – EU shall “ensure that Europe’s cultural heritage is safeguarded and enhanced”.
- Article 167, Treaty on the Functioning of the European Union (TFEU)- the improvement of the “knowledge and dissemination of the culture and history of the European peoples” and the “conservation and safeguarding of cultural heritage of European significance”.
- However, domestically, “cultural policy and care for cultural heritage are the sole responsibility of the Member States”.



IP v. ICH?

- IP law is intended to protect property rights for individuals.
- ICH law is intended to safeguard intangible cultural heritage as identified by “communities, groups and ... individuals” for the benefit of the “communities, groups and ... individuals”, and for us all- not property rights!
- “Nothing in this Convention may be interpreted as:
(b) affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties.”
- **Why?**
- **So ICH Law? “Mostly harmless!”**



Outcome? Prosecco, July 2018



Outcome Croatia?





Caroline	0,03 l		25,00
Jack Daniels	0,03 l		30,00
Chivas Regal	0,03 l		30,00
Johnny Walker Red	0,03 l		25,00
Jagermeister	0,03 l		25,00
Pelinkovac	0,03 l		20,00
Travarica	0,03 l		20,00
Tequila	0,03 l		25,00
Vodka	0,03 l		20,00
Stock 84	0,03 l		20,00
VINA / WINE			
Martini bianco/rosso	0,10 l	čaša/glass	25,00
Prošek	0,10 l	čaša/glass	25,00
Vino bijelo kval. (White Wine)	0,20 l	boca/bottle	30,00
Vino crno kval. (Red Wine)	0,20 l	boca/bottle	30,00
Vino bijelo kval. (White Wine)	0,75 l	boca/bottle	150,00
Vino Rose kval.	0,75 l	boca/bottle	180,00
Vino crno vrhunsko (Red Wine)	0,75 l	boca/bottle	200,00
Prosecco (Sparkling wine)	0,20 l	boca/bottle	85,00
Prosecco (Sparkling wine)	0,75 l	boca/bottle	250,00
Moet & Chandon	0,75 l	boca/bottle	1.000,00
Reuven Clicquot	0,75 l	boca/bottle	1.000,00



PZ Svirče - Hadrian Prošek, the famous dessert wine from Dalmatia

Home / Dessert Wine / Hadrian Prošek, the famous dessert wine from Dalmatia

Hadrian Prošek is a unique dessert wine made from the indigenous Bogdanuša grape. It is made using dried wine grapes in the passito method.



€18,95

€17,95 Incl. tax

Brand: [PZ Svirče](#)

- Buy 2 for €16,16 each and save 10%



The Future: IP v ICH?

- Problem for IP?
- ICH is popular
- Linked to indigenous rights
- Cultural appropriation and cultural theft?
- Thank you!

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Upcoming in "Wine Law and Policy: From National Terroirs to a Global Market", Eds. Julien Chaisse, Fernando Dias Simões, Danny Friedmann

