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ROLE OF IPR IN PROTECTING FOLK ART AND CULTURE

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Abstract

Folk art and traditional cultural expressions—let’s just call them TCEs for simplicity—are basically the soul of a community. I mean, this stuff isn’t just pretty pottery or catchy songs; it’s the DNA of a people. We’re talking everything from wild dances and grandma’s bedtime stories to weaving, pottery, and some mind-bending ritual symbols. All of it says, “Hey, this is who we are!” It’s not just about making art. It’s about sticking together, knowing how to live with nature, and being proud of your roots. But, man, the threats are real. Globalization is steamrolling everything, tech is changing how we live, and suddenly, you’ve got companies (and sometimes clueless tourists) swiping designs and tunes, slapping them on T-shirts, and selling them without even a nod to the folks who made them. That’s a double whammy—no money, no credit, and slowly, the culture just fades away because the next generation is too busy scrolling TikTok to learn how to weave or tell those old stories. Now, here’s the kicker: regular intellectual property laws? Pretty much useless here. They’re built for inventors and big business, not villages and oral traditions. Copyright, patents, trademarks—all that jazz—only works if you’ve got something “original,” written down, and with an expiration date. Most folk art doesn’t check those boxes. It’s a group thing, passed down, tweaked over time, and half the time, it’s not even written anywhere. So yeah, if someone steals it, good luck fighting back in court. People aren’t just sitting around, though. There’s been some creative lawyering—“sui generis” systems, for example, which just means “one of a kind.” These let communities actually own their stuff together, get protection forever, and make sure outsiders have to ask before using anything. You’ve also got Geographical Indications (think Champagne from France or Kanchipuram silk from India) and collective trademarks that make sure the real deal comes from the real place, with the real people getting paid. Big shots like WIPO and UNESCO are trying to help too, sharing advice and pushing for international rules that don’t totally suck for traditional artists. They’re like the nerdy but helpful older sibling. Look around the world—India, Africa, bits of Europe, Latin America—and you’ll see some wins. When communities take charge, document their art, teach the next generation, and set up fair ways to share the profits, things start to look up. But honestly, legal protection is just one piece. What really matters is respect—letting communities call the shots, making sure they benefit, and giving them space to keep traditions alive while letting them change, too. Bottom line: If we actually care about folk art and TCEs, we’ve got to move past cookie-cutter laws. We need flexible, respectful systems that let culture breathe, grow, and still stay connected to its roots. That way, we don’t just preserve the past—we give it a future.

Keywords: Geographical Indications, Trademarks, Copyright, Patents, Intellectual Property

Introduction

Folk art and culture—they’re way more than just pretty crafts or catchy songs. Honestly, they’re like the heartbeat of who we are. Every group out there has its own stash of songs, stories,

weird little dances, or crafts that say, “Hey, this is us.” It’s not just about nostalgia either. These traditions get passed down, sometimes in the most low-key ways, from grandma to grandkid

or neighbour to neighbour¹⁶, keeping that sense of “belonging” alive, even when everything else is changing. Think about the wild drumming at a festival, the bonkers-detailed embroidery from some tiny village, or those long-winded stories elders tell—folk art just lives and breathes with the people. But, let’s not kid ourselves about these traditions. They’re under attack. Fast-paced tech, mass production, and this overwhelming tidal wave called globalization are making it stupid easy for anyone to rip off designs or performances. Some random halfway across the world can slap a sacred pattern on a T-shirt and sell it online, and the original creators get zip. Local artists lose out—money, recognition, the whole deal—while people who don’t even get the meaning cash in. Meanwhile, the younger generation is binging on Tikor and forgetting how to weave baskets, so a lot of these art forms are just... fading out. So, where does that leave us? Cue Intellectual Property Rights (IPR)¹⁷. IPR’s supposed to be the legal superhero, marking out what belongs to who—art, inventions, whatever—so creators get credit and maybe even make a living. If we actually use IPR right, it could help protect folk art from being ripped off, keep traditions alive, and maybe, just maybe, turn that creativity into something communities can actually profit from. Here’s the catch though: IPR was built for lone inventors or big companies, not for stories or designs that have been tweaked by hundreds of people over centuries. It’s kind of like trying to use a selfie stick as a shovel—not the right tool for the job. That’s why people are looking for new angles, like special legal systems made just for traditional knowledge or using things like “geographical indications” (you know, like Champagne can only come from Champagne). The real challenge is figuring out how to mash up old-school wisdom with modern law, so communities don’t just get “protected” but actually get to control their stuff

and benefit from it¹⁸. At the end of the day, if we get this right, IPR isn’t just about keeping things safe from copycats—it’s about letting communities own their stories and keep humanity’s wild, beautiful heritage alive.

Understanding Folk Art and Traditional Cultural Expressions

Folk art and all those traditional cultural vibes? Way more than just fancy stuff people make for fun. It’s like, the heartbeat of a community—you can see their history, their struggles, their inside jokes, all wrapped up in these creations. No one’s sitting in a studio thinking, “I’m going to make a masterpiece.” Nah, it’s more like stuff bubbling up from grandma’s kitchen, from festivals, from whatever folks are living through right now. You ever seen Madhubani paintings from Bihar? Or those wild Warli stick-figure murals from Maharashtra? Rajasthan’s blue pottery is another vibe. But it’s not just about paintings or pots—think folk songs, weird little dances everyone somehow knows, stories told around a fire, weaving patterns that mean way more than they look like. A flower stitched on a shawl could mean “hey, good luck with your crops,” or maybe it’s a warning to keep bad spirits out. Songs? Sometimes they’re basically history books that rhyme. And most of the time, this stuff isn’t taught in a classroom. It’s more like, your auntie teaches you while you’re shelling peas or whatever. Then there’s this label people throw around at UNESCO¹⁹ meetings—Traditional Cultural Expressions, or TCEs if you want to sound official. Basically, anything artsy or ritualistic that a group made up, and that screams “this is us.” Music, dances, symbols, even weird rituals or tattoo patterns—if it means something deep to that community, it’s a TCE. Closely tied to all that is Traditional Knowledge—stuff people have figured out over centuries and just keep passing down. Together, they’re kind of the glue that holds local cultures together. But here’s the annoying part: because this stuff isn’t

¹⁶ World Intellectual Property Organization. (n.d.). *Intellectual Property and Traditional Cultural Expressions*. WIPO.

¹⁷ Torres, C. (2015). *Legal Protection of the Intangible Cultural Heritage*. ResearchGate.

¹⁸ World Intellectual Property Organization. (2003). *Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions*.

¹⁹ World Intellectual Property Organization. (2022). *Developing a National Strategy on Intellectual Property, Traditional Knowledge, and Traditional Cultural Expressions*.

signed by one person or locked in a museum, it's super easy for big companies or "inspired" designers to just swipe it. Modern copyright laws? They're all about "who made this and when." Folk art laughs in their face—try putting a patent on a song nobody remembers writing. So you get outsiders copying designs, selling them off, not giving a single rupee or ounce of credit to the folks who actually made it mean something. It's not just about money—it chips away at community pride, too. This is why, before anyone starts yapping about intellectual property rights and legal stuff, you got to actually get what folk art and TCEs are about. They're not just pretty things to hang on a wall—they hold families and whole villages together, they keep old stories alive, and honestly, they make the world away more interesting place. Protecting these traditions? It's not just some legal checkbox—it's about keeping cultural diversity and history alive for real.

Intellectual Property Rights: Concepts and Relevance

So, intellectual property rights (IPR)—that's just a fancy way of saying, "Hey, if you come up with something cool or original, you should get the credit and control over it." Whether it's writing a book, inventing a gadget, sketching a logo, or even coming up with a killer brand name, IPR is your backstage pass to owning your stuff. It's like owning a house, but instead, it's your ideas, your art, and your inventions. There's a bunch of types, too. Copyright? That's for your books, music, movies—the creative stuff. Patents? That's when you invent something (think: new phone tech, not a better sandwich, sadly). Trademarks—those protect your brand's vibe: logos, names, slogans, whatever makes you stand out in a crowd. Then there are industrial designs (basically, "Hey, this product LOOKS cool, and that's my design") and geographical indications, which is a mouthful but just means stuff like "Only cheese from Parmesan can be called Parmesan" or "Darjeeling tea is actually from Darjeeling." Makes sense, right? At the end of the day, all these rules are trying to do one thing: let creators cash in (or at least get some

respect) for a while, but not hog it forever²⁰. You get your time in the sun, but eventually, your creation becomes fair game for everyone. It's like having a secret recipe—you keep it to yourself for a bit, but one day, it's going to end up on the internet. Now, here's where stuff gets wild. The internet and globalization made copying stupidly easy. One minute you're showing off your design on Instagram, next minute some random halfway across the world is selling it on t-shirts. IPR is supposed to help fight that—keep things original, stop people from ripping you off, and make sure it's still worth creating new stuff. But—and it's a big but—the whole system was built with solo creators and companies in mind. Not grandma's folk song or your village's traditional weaving patterns. Folk art²¹. Traditional culture? That stuff doesn't have a single "owner." It's community-built, passed down, changed up, and straight-up ancient sometimes. Try putting a patent or copyright on something that's been evolving for 200 years²². Good luck. So yeah, protecting this kind of collective heritage is messy. Without some kind of protection, big companies—or just opportunists—can swoop in, slap it on a mug, and cash out. Sometimes they even mess it up or change it until it barely resembles the real deal. Bottom line: before we even start talking about how to keep folk art and traditional culture safe, we got to really get what IPR is and isn't. If you look at it from a community angle, IPR could be more than just a money machine—it could actually help us show respect and give credit where it's due. Maybe even make sure traditional knowledge holders aren't left out in the cold while everyone else profits off their culture.

The Interplay between IPR and Folk Art

Talking about Intellectual Property Rights and folk art? Man, that's a wild ride. There's this push and pull—like, on one hand, IPR's supposed to protect and give some credit where it's due, you

²⁰ Al-Khader, M. (2023). *Legal Protection of Intangible Cultural Heritage as a Tool of Sustainable Development in Jordan: Initiatives, Challenges and Opportunities*.

²¹ Protection of Traditional Cultural Expressions as Intellectual Property.

²² Sui Generis Systems for the Protection of Traditional Knowledge.

know? But then you look at how folk art actually works and, honestly, the legal system just doesn't get it half the time. I mean, it's built for individual "authors," not a bunch of grandmas and uncles and neighbourhood kids who've been passing down stories and designs for centuries. Folk art is basically the soul of a community, right? It's not about one person cranking out a masterpiece in their garage. It's more like a living, breathing mixtape that keeps getting remixed by every generation. Try telling a copyright lawyer that a weaving pattern has been evolving for 300 years, and watch their eyes glaze over. The law wants a name and a date—folk art laughs in the face of that. And then there's stuff like copyright and patents—don't even get me started. They're designed for people with business cards, not for a village that's just vining with their traditions. Like, who's the "author" of that old folk song your grandma sings? Nobody knows. It just exists. Trying to slap individual ownership on something so collective feels weird, almost disrespectful. Still, there are a few legal tricks that sort of work. Geographical Indications and Collective Trademarks, for example—those are more flexible. If you register "Madhubani Painting" or "Pashmina Shawl" as a GI, suddenly you're saying, "Hey, only the real deal from this region gets to use this name." Outsiders can't just swoop in, slap the label on some knockoff, and walk away with the profits. That's a win. Plus, if you play your cards right, IPR can give traditional artists a shot at the global stage. More money, more recognition, maybe even younger folks sticking around to learn the craft instead of bailing for a city job. But man, you got to be careful—start chasing the cash too hard and the whole thing risks turning into a soulless tourist trap. Nobody wants to see sacred art turned into cheap souvenirs. So yeah, it's messy. There's no perfect fix. You're juggling law, ethics, and culture, trying not to drop any balls. At the end of the day, the real goal isn't just to protect folk art like some fossil in a museum. It's about keeping it alive—letting it evolve, keeping the community's identity strong, making sure the past keeps talking to the

present. The law should help with that, not get in the way. But honestly? Sometimes it's just playing catch-up.

Challenges in Applying Conventional IPR to Folk Art and Culture

1. No Single Author in Sight Here's the thing: copyright law is obsessed with the "who." Like, who actually made this? But folk art? Good luck pointing to just one person. It's basically a big community project, with everyone tossing in their own flavour over centuries. Laws want to slap a name and a date on everything, but with folk stuff, you're just never going to get a neat answer. So, traditional works? They pretty much get left out of the copyright party.

2. Always Changing, Never Pinned down Legal folks want stuff nailed down — like, written, recorded, painted. But so much folk art is alive. Its stories told out loud, dances handed down, stuff you learn from your grandma and then twist a little for your own kids. Every time it gets performed, it changes a bit. That's the magic! But also, that's why it barely fits into strict legal boxes.²³

3. Copyright Clocks Don't Work Here IPR gives you a set window — lifetime of the creator, plus a few decades. But, like, how do you even start that clock with folk art? This stuff's been around forever. There's no "start date," no "expiration date," it just... is. So yeah, a system set up for short-term protection doesn't really vibe with something that's meant to last for generations.

4. Who Actually Owns This? Folk art isn't about one person cashing in. It's the whole community's jam. But the law? It wants a name, a face, someone to sue or pay. So when it comes to, say, a traditional song or a weaving pattern, who do you even talk to? The whole village? A council of elders? Some government guy? With no clear owner, it's kind of a legal mess.

5. Easy Pickings for Outsiders Here's where things get sketchy. Since a lot of folk art isn't

²³ Bhattacharya, S. (2012). *Geographical Indications and Protection of Traditional Art in India*. Journal of Intellectual Property Rights.

protected, big brands can just scoop up designs, slap them on a t-shirt, and make bank – while the original folks get nothing. Its classic cultural appropriation: outsiders cash in, insiders get side-lined. Happens all the time, especially in fashion and decor.

6. Lost in Translation (and Documentation) a lot of these traditions aren't even written down. They're passed around by word of mouth, and sometimes people don't want them documented at all – maybe it's sacred, maybe it's just private. So, proving who made what, or even what the "original" is, gets super complicated. And if the community's not into writing it down, the law basically throws up its hands.

Evolving Approaches: Toward Tailored IPR Systems

Standard Intellectual Property Rights (IPR) just aren't built for folk art. They're like trying to fit a square peg in a round hole. These rules were made for patents and trademarks, not centuries-old traditions handed down at village gatherings or firesides. So, as folks start to realize this mismatch²⁴, there's been a real push—by governments, international orgs, and a bunch of academics—to find some workarounds that actually make sense for communities rather than corporations. First off, traditional IPR is all about individual inventors and big companies. It doesn't get stuff like collective authorship or the way these art forms constantly change and grow over generations. Protecting folk art isn't really about giving someone a legal monopoly. It's about respect, recognition, and making sure communities actually get something out of it—not just some lawyer in a suit. Now, let's talk sui generis (fancy Latin for "one of a kind"). These are special legal systems whipped up just for things like traditional knowledge and cultural expression. They don't have expiration dates and, crucially, they let entire communities own their stuff together. Plus, they can slap down anyone

trying to twist or exploit these traditions for a quick buck. India's got some pretty early examples of this—like the Protection of Plant Varieties and Farmers' Rights Act²⁵, or the Geographical Indications Act. Other places, like Panama and Peru, have jumped on board too, handing legal rights directly to Indigenous folks so they call the shots on their own heritage. Then there's Geographical Indications—think of it like Champagne from France or Darjeeling Tea from India. You can't just slap the name on any old thing; it's got to come from the real place, made by the real people. Madhubani Paintings and Kanchipuram Silk only count if they come from the source. It's a way to stop knockoffs and keep the cash flowing back into the home community, not some random sweatshop halfway across the world. On a similar note, collective and certification trademarks let groups of artisan's band together and market their goods under a single brand or label. So, a tribal weaving co-op could own a logo that guarantees you're getting the real deal, not a copycat from a big-box retailer. Certification marks also tell buyers, "Hey, this was made the traditional way." It's about control, authenticity, and pride. Internationally, you've got groups like WIPO and UNESCO trying to get everyone on the same page. WIPO's Intergovernmental Committee is hashing out a global framework (which is moving at a glacial pace, but hey, its progress). UNESCO's²⁶ been waving the flag for Intangible Cultural Heritage since 2003, mostly focusing on keeping traditions alive and raising awareness instead of hard-and-fast legal rights. But here's the thing: you can have all the fancy laws in the world, but if you don't let the actual community call the shots, it's just window dressing. Top-down rules miss the mark when they ignore local traditions and decision-making. Real protection means real participation, proper consent, and making sure benefits flow back to the people doing the work. And don't forget—

²⁴ Blakeney, M. (2007). *Intellectual Property and Traditional Knowledge*. WIPO: World Intellectual Property Organization.

²⁵ Dutfield, G. (2000). *Intellectual Property Rights, Trade and Biodiversity: Seeds and Plant Varieties*. Earthscan Publications.

²⁶ UNESCO. (2003). *Convention for the Safeguarding of the Intangible Cultural Heritage*.

many communities already have their own rules about how cultural stuff gets shared or passed down. Instead of bulldozing over these customs with outside laws, it makes way more sense to blend them in. That way, the protections actually fit the culture, not just some legal textbook.

Conclusion

Folk art and good old traditional culture—man, that stuff is priceless. It's not just pretty patterns on a vase or grandma's embroidery, it's the soul of a community, all that messy, beautiful history and wisdom wrapped up in colours and rhythms. These things are alive, not just museum pieces. They breathe through people, stories, music, rituals. But you know what? In today's hyper-connected world, they're getting stomped on—ripped off, sold out, or just flat-out disappearing. The usual Intellectual Property Rights (IPR) systems? Honestly, they're built for inventors and big business, not for a village that's been weaving the same patterns for generations. Still, IPR isn't useless—if you actually adapt it for real people. There's some cool stuff out there: special laws just for this kind of thing (Sui generis is the fancy term), Geographical Indications (think Champagne can only come from Champagne), group trademarks, certification marks, whatever. These can actually help keep traditions alive and, hey, maybe even put a little money in the pockets of the folks who keep this stuff going. On top of that, international heavyweights like WIPO and UNESCO are starting to wake up and offer some real backup for protecting intangible heritage. But honestly? The only way any of this really works is if the actual keepers of these traditions get a say. You can't just slap a law on something and call it protected. It's got to be about community, fair business, and some serious skill-building.

References

• Bergelson, V., & Leibman, A. (2017). IPr-recurrence in nilsystems. *Annals of Mathematics*, 186(1), 1–25.

- Busselez, R., Bessada, C., & Descamps, M. (2009). Bioprotectant glass-forming solutions: Structure and properties in nanocapillaries. *Biophysical Journal*, 97(8), 2225–2233.
- UNESCO. (2003). *Convention for the Safeguarding of the Intangible Cultural Heritage*. United Nations Educational, Scientific and Cultural Organization.
- World Intellectual Property Organization (WIPO). (2018). *Intellectual Property and Traditional Cultural Expressions: An Overview*. Geneva: WIPO Publications.