



Appraisal of Misappropriation of Traditional Cultural Expressions: A SMART Model Approach

Shubham Anand¹ and Nidhi Mehrotra^{2†}

¹Shailesh J Mehta School of Management, Indian Institute of Technology, Powai – 400 076, India

²Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology, Kharagpur – 721 302, India

Received: 24th January 2025; revised: 23rd July 2025

The development of humankind has its roots in the tacit knowledge that has shaped their life and well-being. This knowledge, especially in a traditional community, encompasses medicinal knowledge, agricultural and forestry, stories, arts and crafts, music, and dance forms. However, with the advent of globalisation, consumerism and technological advancement, these age-old contents have faced a grave concern of misappropriation, warranting an urgent intervention through holistic and comprehensive means. A lack of uniformity in legal measures and weaker forms of protection, such as existing Intellectual Property Rights, has resulted in cross-border misappropriation. The present study analyses a series of misappropriations to understand the different measures adopted. The study strongly suggests that the convergence of mechanisms across jurisdictions should be aligned with the principles established by international institutions such as UNESCO and WIPO. Moreover, the study proposes a SMART model while advocating a minimum order of uniformity in protecting Traditional Cultural Expressions (TCEs), especially in cases of misuse and misappropriation. The proposed model may be utilized to advance an effective TCEs protection system.

Keywords: Cultural Misappropriation, Indigenous Communities, Intellectual Property, SMART Model, Traditional Cultural Expressions, Traditional Knowledge

Traditions and culture are deeply ingrained in the lives of communities, who profess, preserve, and transmit them from one generation to another, making them valuable assets. Traditional Cultural Expressions (TCEs) are perceived to have shared and sacred emotional links and are an essential component of Traditional Knowledge (TK).¹ World Intellectual Property Organization (WIPO) Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions (IGC) has long deliberated over the draft articles for protecting TCEs. However, only in the forty-seventh session, the term TCEs is defined under Article 1 as

“Traditional Cultural Expressions are any forms in which traditional culture practices and knowledge are expressed, [appear or are manifested] [the result of intellectual activity, experiences, or insights] by indigenous [peoples], local communities and/or [other beneficiaries] in or from a traditional context, and [may be]/[is] dynamic and evolving and comprise verbal forms [Such as stories, epics, legends, popular stories, poetry, riddles and other narratives; words,

signs, names and symbols] , musical forms [Such as songs, rhythms, and instrumental music, the songs which are the expression of rituals], expressions by movement [Such as dance, works of mas, plays, ceremonies, rituals, rituals in sacred places and peregrinations, games and traditional sports/sports and traditional games, puppet performances, and other performances, whether fixed or unfixed] , tangible [Such as material expressions of art, handicrafts, ceremonial masks or dress, handmade carpets, architecture, and tangible spiritual forms, and sacred places] or intangible forms of expression, or combinations thereof.”²

The content in the square brackets signifies the point of contention among member states. Interestingly, even after more than two decades of deliberations, a consensus on the very definitional aspect of TCEs has yet to be reached. The definitional discourse serves as the most crucial element of the protection regime.³ Adoption of a broader meaning will help capture intangible and dynamic heritage and promote respect for customary norms.

The contemporary inclusive nature of the working description delivered by WIPO results from intense

[†]Corresponding author: Email: nidhimehrotra11@gmail.com

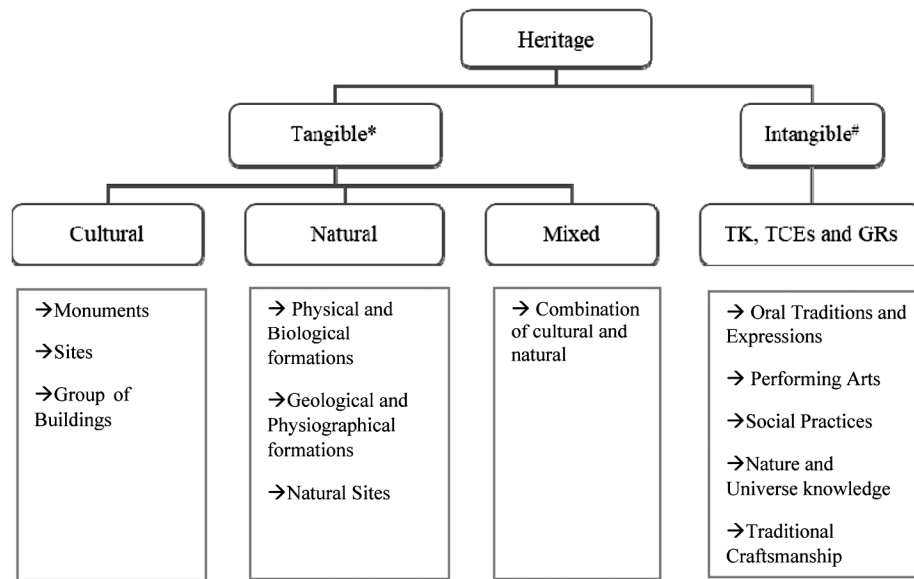
historical development that addressed the issues relating to TK and TCEs. WIPO and UNESCO jointly convened an expert group that developed a *sui generis* model for Intellectual Property (IP) protection for TCEs.⁴ Nevertheless, these initiatives failed to develop an efficient legal order to protect TCEs.

WIPO conducted Fact-Finding Missions (FFMs), a significant step in identifying TK holders' IP-linked needs and expectations, from 1998 to 1999.⁵ These FFMs were supplemented with several regional consultations spreading across the globe. These consultations and their findings proved to be the bedrock of the deliberations taking place at contemporary times under the aegis of WIPO IGC. The outcomes resulted in the adoption of the proposal to increase and mobilise the ongoing work intended for TK and TCEs protection by WIPO and UNESCO. These recommendations categorically emphasised the necessity of developing a comprehensive model at the international level, similar to TRIPS (the Agreement on Trade-Related Aspects to Intellectual Property Rights), for protecting expressions of folklore. Against this backdrop, the WIPO IGC was constituted to build consensus for the protection framework over TK, Genetic Resources, and TCEs.⁶ In more than two decades of temporal events, there has been a wide range of deliberations with significant outcomes such as the 'Draft Article for Protection of TK and TCEs,' glossary of key terms in providing conceptual clarity

and uniformity to terms associated with these subject matters and other components linked to the functionality of the international protection model to the TCEs.⁷ The glossary underlines the scope of misappropriation as

“use of the noncopyrightable information or ideas that an organisation collects and disseminates for a profit to compete unfairly against that organisation, or copying a work whose creator has not yet claimed or been granted exclusive rights in the work.”⁷

Etic to emic studies of these knowledge systems highlight that apart from economic aspects, these systems also cover social and emotional connotations of the communities. The domain of TCEs is intertwined with the idea of cultural heritage, forming a rich tapestry that celebrates human creativity and identity (Fig. 1). However, the approach towards the recognition of this tacit knowledge differs. While the proponents of Intangible Cultural Heritage (ICH) emphasise knowledge as 'heritage', highlighting its role in custodianship and inter-generational nature,⁸ the IP regime treats this as a form of 'property'. From the ICH perspective, TCEs form the bedrock of a community's identity, providing continuity and a sense of belonging across generations. Thus, TCEs represent the living practices, knowledge, and skills integral to a community's daily life.⁹ UNESCO has also been involved in protecting cultural aspects of this knowledge system that are covered under the



* Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972.

Convention for Safeguarding Intangible Cultural Heritage, 2003.

Fig. 1 — Classification of heritage

‘expression of folklore.’ UNESCO WIPO Model Provisions under section 2 considers “expression of folklore” as

*“productions consisting of characteristic elements of the traditional artistic by individuals reflecting the traditional artistic heritage developed and maintained by a community of [name of the country] or by individuals reflecting traditional artistic expectations of such a community, in particular: (i) verbal expressions, such as folk tales, folk poetry and riddles; (ii) musical expressions, such as folk songs and instrumental music; (iii) expressions by action, such as folk dances, plays and artistic forms or rituals; whether or not reduced to a material form; and (iv) tangible expressions, such as: (a) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes; (b) musical instruments; (c) architectural forms.”*⁴

Interestingly, the model provisions only protect the artistic heritage of expressions, thus limiting its scope of application. Despite these attempts, the intersection of IP with safeguarding cultural heritage accentuates the complexities of protection measures. From a legal perspective, conventional IP is very restrictive regarding its applicability (Table 1). At the same time, global movements towards open access to the knowledge economy, particularly through Information and Communication Technology (ICT) tools and cultural institutions, enhance the risk of misappropriation of TCEs.¹⁰ Specifically, the impact of misappropriation is intensely realised by culturally rich countries due to the misuse of the cultural content without the consent of the custodian communities.¹¹ However, the efforts of WIPO while dealing with TK and TCEs are encouraging¹², but at the same time, cautious in the interests of the indigenous communities.¹³ In the backdrop of such context, the present study aims to analyse a representative set of misappropriation cases to understand the challenges faced by the custodian communities. Moreover, without any explicit legal protection and statutory remedies available, it is interesting to trace the remedial measures adopted by such communities while raising their voices and concerns against misappropriation.

Method

The present study adopts an exploratory research approach, exploring several instances of

misappropriation of TCEs across various geographical regions and Indigenous communities globally. This exploratory research is based on utilising secondary data sources to navigate through misappropriation, either alleged or proven. The present study aims to critically analyse the complexities and nuances involved in the unauthorised use of TCEs, highlighting the challenges and opportunities in protecting these cultural assets. The comprehensive examination of these misappropriation cases includes identifying the motivations behind the misappropriation, the impact on the indigenous communities, and the broader cultural and economic implications. The study relies on limited and representative instances to carve out a compelling and diverse discussion over the misappropriation of TCEs in the absence of a protection mechanism informing the broader debate over protection measures for TCEs.

Results

The prima facie analysis of the cases underscores the cross-border transactional nature of the misappropriation cases. This factor affects the course of remedial measures, varying depending on the jurisdiction. The most significant extent of the exploitation of these traditional subject matters can be witnessed in creative industries.¹⁴ As discussed below, the misappropriation instances have been broadly categorised and represented under four categories based on the remedial measures claimed by the Indigenous communities.

Utilisation of Legal Mechanisms to Redress the Issue of Misappropriation

The Case of Indigenous Community of Māori and TCEs

The Māori people are an indigenous population of New Zealand whose rich and varied culture includes traditional and contemporary arts such as sculpture, weaving, kapa haka (group dancing), whaikorero (oratory), moko (tattoo), cinema, poetry and theatre. The majority of the misappropriation cases involved granting trademarks on the terms having Māori origin, along with misuse of contents such as symbols and tattoos. The scope of misappropriation was not limited to New Zealand; instead, it occurred across the globe (Table 2).

Many of these misappropriations were witnessed by introducing slight modifications to the existing use of terms. For instance, Kapiti Cheeses Limited developed a new cheese known as ‘*Hipi Iti*,’ meaning “little sheep” in Māori.¹⁵ Most new words were created with some alteration or a new combination

Table 1 — Interaction of IP Laws and the protection of TK and TCEs		
Forms of IP	Relevant measures for TK and TCEs	Challenges
Copyright	<ul style="list-style-type: none"> • Interpretation of broad definitions given under copyright, such as artistic work, dramatic work, engravings, literary work, musical work, performance, and performers <i>may be</i> utilised to consider these subjects within the ambit of TK. • Provision relating to compulsory license for the copyright of unpublished or published work and unknown authors. • Recognition of performer's rights, and • Moral rights of an author extending the right to claim authorship, restrain or claim damages in case of distortion, mutation, modification or any act prejudicial to author's honour or reputation. This right <i>may be</i> utilized as a tool against TK and TCEs misappropriation towards distortion of cultural and traditional values attached. 	<ul style="list-style-type: none"> • Originality and fixation requirement for copyright protection. • Traceability of author. • Community owned works.
Patent	<ul style="list-style-type: none"> • National legislations putting a bar on patent protection to traditional knowledge, such as section 3 (p) of the Indian Patent Act 1970. 	<ul style="list-style-type: none"> • Novelty, non-obviousness and utility requirement for patent protection. • TK, as a subject matter, fails to qualify for the tests of 'novelty' and 'non-obviousness.' • The challenge of public domain and prior art.
Geographical Indication	<ul style="list-style-type: none"> • GI grants community rights, unlike other IP, which grant individual rights. • Being a community right, the indigenous communities often rely on this system to claim recognition to a product as a result of their traditional knowledge and association with their geographical location. • TCEs such as craft products, paintings, and textiles signify a close integration of TK and TCEs of the communities who practice and produce these. • The registered GI mark helps create a brand image for traditional goods, which embodies the age-old culture and originates from a specific geographical location. 	<ul style="list-style-type: none"> • Purpose of both (GI and Trademark) is to link customer and manufacturer of goods/services. • Traditional content not meant for trade purposes, always. • Problems associated with shared knowledge.
Trade Mark	<ul style="list-style-type: none"> • Trademark is a mark that is capable of distinguishing the goods and services from one individual to another. • Several jurisdictions provide provision for registered trademarks of traditional goods and services against any act causing infringement and for non-registered goods and services. Moreover, the common law provision of passing off is available as a remedy against infringement. • Collective marks provision may be used to create a brand image for traditional goods and services, such as paintings, handlooms, weaves, etc., in the market. • Certification marks are also available, which can be used to protect traditional goods that have cultural significance. These measures can only justify counterfeits and leave behind the misappropriation and misuse of traditional content. 	
Protection of Undisclosed Information/ Trade Secret	<ul style="list-style-type: none"> • May be suitable option to consider protection as the knowledge remains within the Traditional and Indigenous communities. 	<ul style="list-style-type: none"> • Proper measures need to be taken to keep the information secret. • The communities lack resources in terms of infrastructure, finance and, above all, awareness.

Source: Adapted from Anand *et al.* (2024)

with old terms. The issue of misappropriations became more intricate because “Hipi” is a translation of the word “sheep”, which is not a traditional Māori word. The main contention of the trademark applicant was that the term in question does not represent a pure

Māori language term, which can be very well used as a trademark. Māori community contended that “a mere combination of Māori words with some other word cannot be accepted as these combinations are solely intended to escape the legal mandate set up by

Table 2 — Representative List of TCEs of the Māori Community (New Zealand) with misappropriation

TCEs	Product range with application of TCEs	Companies involved
Māori names and imagery	Toy products	LEGO (Denmark)
Rangatira	Rugby boots	Canterbury (New Zealand)
‘Māori Mix’	Cigarettes	Phillips Morris International Inc. (USA)
‘Kia Ora’	In-flight magazine	Air New Zealand (New Zealand)
‘Mark of Kri’	PS2 game	Sony PlayStation (USA)
Atua	Ski	Fischer (Austria)
Moko	Hot-Rod trucks	Ford Motor Company (USA)
Moko	Face food	Danish restaurant (Denmark)

the trademark law.” Since the legal issue here pertains to trademark, the recourse was sought under the same.

In response, the New Zealand government amended the trademark law and identified the purpose of the act to “*address Māori concerns relating to the registration of trademarks that contain a Māori sign, including imagery and text.*”¹⁶ Section 17(1)(c) of the Trade Marks Act 2002 provides that the New Zealand Intellectual Property Institute (IPONZ) could not grant a trademark if it considers that its use or registration may offend the Māori people. Further, under Section 175A, IPONZ also assesses the potential offence of all trademark applications, including abbreviations of foreign words, images, and designs. The appropriateness of the decision is ensured by consultation with the Māori Consultative Committee constituted under Section 177. If the Committee contemplates that the trademark is not offensive, it shall pass the substantive examination stage. However, in cases where the trademark is considered offensive, the Committee informs IPONZ. The Committee is vested with only advisory powers as the recommendations are not binding on the IPONZ.¹⁷

Despite these amendments, the provisions lack the imperative to provide an enabling ecosystem for TCEs and the Māori community to facilitate redressal mechanisms. Introducing an independent Māori committee for reviewing all IP-related applications to prevent misappropriation is a welcome step. Further, making the assessment report by the Committee binding on the IP office¹⁸ and broadening the scope of the legislation may make the present effort more comprehensive and inclusive in terms of TCEs protection.

Mike Perr Embroidery Case

Mixe is the Indigenous group of inhabitants of Mexico on the eastern highlands and is culturally conservative. A French designer, Isabel Marant, famous for her bohemian aesthetics, faced criticism for copying

traditional embroidery design from the Mixe community’s indigenous design. Marant’s new design collection comprises a blouse with graphic elements, which was claimed to be identical to the Mixe of Santa Maria Tlhuitoltepec blouse.¹⁹ Marant was accused of claiming the design as her novel creation.²⁰ The social media platform was extensively utilised to elaborate dialogue on cultural appropriation and the fashion industry. In the wake of these incidents, Marant expressed her views as she was inspired by Oaxaca’s culture and no claim of any exclusive rights to the design in question was made. The pertinent question remains to the access and benefit sharing model. Despite the absence of a claim of exclusive rights, the economic benefits arising from the design collection were limited to the designer and were not shared with the community. However, the Mixe community did not take legal action in this event. Surprisingly, French ready-to-wear brand Antik Batik took legal action against Marant. Antik Batik filed a legal complaint against Marant before the French court, claiming to be the actual copyright owner of the Mixe embroidery design.²¹ The court invalidated the claim and held that neither Batik nor Marant could claim rights to the design because of its origin from Mixe communities in Oaxaca as a piece of traditional knowledge. In recognition of this court judgement, the Mixe community’s traditional designs and language were declared as ICH as per UNESCO guidelines by the Oaxaca’s Congress.²² This blouse, the cultural property of the Mixe community, is regarded as a cultural expression.

The decision of the Oaxaca Congress to include the traditional designs in the ICH under the Convention for the Safeguarding of the Intangible Cultural Heritage 2003 is a laudable initiative. This effort highlights Mexico’s effort to identify and recognise the cultural value of indigenous communities and its determination to play its part in the adequate protection of these cultural expressions and the guardian communities from any cultural

appropriation.²³ The action taken by the Oaxaca helped the indigenous Mixe community to safeguard their cultural expression from misappropriation. These instances of misappropriation took recourse to the existing legal mechanism. However, the presence of a *sui generis* protection would have enabled upright protection of the cultural expressions. While evolving legal rights and ownership, the protection system would also help develop a management system. The management of TCEs may be ensured by implementing a positive protection system along with policy measures.

Amicable Solution through Means of Contractual Terms

The Case of Navajo Nations and Urban Outfitters

Navajo Nation is an American Indian territory occupying portions of northeastern Arizona, southeastern Utah, and northwestern New Mexico in the USA.²⁴ The Navajo Nation has a culturally rich and unique quality and diversity of cultural expressions. These expressions include arts and crafts, costume jewellery, paintings and embroidery products. The richness of cultural expressions attracts various multinational companies to realise economic benefits by utilising the name “Navajo” within their product range. To tackle such a situation, the Navajo Nation has 171 registered trademarks in its name in the United States Patent and Trademark Office (USPTO) and has been the user of the term “Navajo” since 1894. US fashion retailer Urban Outfitters has been selling products with the term “Navajo” for about a year and a half in 2012.

A letter addressed to Urban Outfitters was sent by a member of the Navajo Nation, informing them how their product offended the people of the Navajo Nation. The letter got public attention, and the community members stated that they were embarrassed due to the misappropriation carried out by Urban Outfitters.²⁵ The Urban Outfitters’ production of some objectionable products using the term ‘Navajo’ was perceived as representing cultural insensitivity. The products included ‘Navajo Hipster Panties’ and ‘Navajo Liquor Flask.’ The letter sought the removal of these products from the market, as this act reflected insensitivity towards the cultural beliefs of the Navajo Nation people. Urban Outfitters admitted that they were using the term ‘Navajo,’ but the use of the term did not attract any wrong.²⁵ The name usage was claimed as a right by Urban Outfitters, and they were not acting insensitively

towards the Navajo Nation’s beliefs. Such an inappropriate approach of Urban Outfitters compelled the Navajo Nation to file a complaint. Pursuing the contention raised by Urban Outfitters, the Navajo Nation approached legal remedy and went to court of law against them.

In the complaint filed by the Navajo Nation, Urban Outfitters was accused of infringing the rules of both federal and state trademarks since it used the trademark registered by the Navajo Nation, “Navajo”, for a range of fashion products which falsely claimed they were either manufactured or possess a close relation to American Indians. Claims of using imagery over the products manufactured by Urban Outfitters, adopting geometric prints and designs resembling Navajo Indian tribal patterns and designs, were also made by the Navajo Nation. Copying prints and designs was prohibited under the ‘Indian Arts and Crafts Enforcement Act, 2000’, to which the provisions were not complied with by Urban Outfitters. Urban Outfitters, rejecting all the claims raised by Navajo Nation, took the defence of fair use of the print and designs and non-infringement of any trademark. They contended that the term “Navajo” describes a particular type of design, print or pattern. With its wide use, this term has become a generic term that is free to be utilised, barring any ownership over it.

The matter was pursued for a long time, forcing both parties to settle the dispute amicably in 2016.²⁶ The amicable solution to this issue was reached by signing a supply and license agreement, whereby Navajo Nation and Urban Outfitters agreed to work together on a collection of Native American jewellery. Both entities were required by the license agreement to cooperate and market genuine “Navajo” products without compromising the cultural sensitiveness of the indigenous communities of Navajo Nation.²⁷ The contractual agreement is an outcome due to the absence of positive protection for TCEs. This instance underscores the need for legal and policy intervention in TCEs protection.

Institutionalisation: An Innovative Approach to Tackle the Misappropriation

The Case of the Maasai Tribe in the Eastern African Region

An indigenous group comprising semi-nomadic people settled in African nations such as Kenya and northern Tanzania, the Maasai tribes have been habitant for ages. The tribe represents one of the

remarkable histories of Africa. They are known for their distinct dresses, customs and traditions, rituals, and dances. A rich corpus of cultural heritage made these communities vulnerable to threats of misappropriation.

An NGO claimed the use of Maasai iconography for the sale of products by various fashion labels such as Louis Vuitton, Calvin Klein and Diane Von Furstenberg and the use of their name with some minor modifications for trademark rights. NGOs claim such misappropriation helps secure IP rights in developing countries.²⁸ The NGO has also formed an African IP Trust to support African stakeholders in developing IP value capture strategies.²⁹ Exploitation of the iconic cultural heritage of the Maasai Tribe has taken place across the globe. The majority of the community's population is in poverty. Ironically, their cultural expressions are appropriated worth billions in global trade, and hardly any economic benefit from this trade reaches this custodian community.³⁰ The cultural expressions of the Maasai tribe under the "Maasai brand" are estimated to be valued at more than ten million dollars a year.³¹

After instances of misappropriation of their culture, images, way of life, and even dress, the community finally chose to redress the issue. In this light, the Maasai Intellectual Property Initiative (MIPI) was institutionalised to create an assembly of Maasai elders trained in IP. The assembly would function as a legal body to negotiate with companies interested in the Maasai line of cultural expressions through a licensing agreement to enable the community to advance their economic rights. "*You should not use it to your benefit, leaving the community or the culture owner without anything. If you take what belongs to somebody and go and display it and have your fortune, then it is very wrong,*" quoted the head of the MIPI.³²

The fundamental issue involved in this case was the commercial appropriation of the indigenous cultural property without access and benefit-sharing mechanism with the community. As per the MIPI, the cultural expressions of the Maasai community could be valued for billions of dollars, given the characteristics of the tribe community. For instance, companies, including Land Rover, have a range of accessories under the name speciality trainers Maasai Barefoot Technology, and Louis Vuitton has a whole range of Maasai products, including beach towels, hats, and scarves.³³

These instances conform to the assessment of the MIPI in realising the appropriate market value of the cultural expressions of the Maasai Tribe.

The community resorted not to have a legal battle due to the non-availability of legal protection measures available to the community. Instead, they chose an innovative pathway that effectively helped them in the long term through economic gains for themselves. Although the creation of MIPI proved innovative, it has limitations. Another way forward could be setting up voluntary codes or regulations to govern the use of the cultural expressions of the community and the associated IP by the Maasai tribe. This method may become helpful in securing IP protection, as many companies would try to lower negative publicity. In the contemporary age of consumerism, consumers have access to information, and greater reliance is accorded to ethical considerations and corporate social contribution. Being voluntary initiatives, it altogether depends on the strategy of the firm to showcase and market its products. Nevertheless, companies' consciousness of their brand value may guide them not to indulge in practices that appeal to the consumers' negative sentiments. The present case concerns the need for a positive form of protection through the *sui generis* system, effective management of TCEs, awareness among the indigenous communities and regional cooperation. These broad approaches cumulatively help develop and strengthen protection mechanisms for TCEs.

Application of ICT

The Case of Vibe Tribe

MAC Cosmetics, a cosmetic company, launched its summer collections product range with the label "VIBE TRIBE" in 2016. Regarding the knowledge of indigenous communities of Southwest America, this event was opposed, and disappointments arose. The reason is the similarities of the cosmetics product with that of indigenous prints of Native Americans from Southwest America. It became evident that MAC cosmetics not only misappropriated the attire of the tribes but also adopted feather hair accessories. The names of cosmetics products were also named in line with the indigenous names used by the communities, such as "Arrowhead" for lipstick, "Adobe Brick" for blush, and "Wild Horses" for eye shadow. The misappropriation was criticised when MAC announced the cosmetics line through social media.³⁴

Though there existed similarities in the attire and product names with those of Indigenous people, the company made a public announcement stating that the summer collection “has absolutely no resemblance with, nor was it inspired by the Native American cultures.”³⁵ There has been an outright rejection of claims forwarded by the indigenous groups, making the issue of misappropriation non-serious.

The present issue did not see any legal engagement among the Native American tribes and MAC for alleged misappropriation. Though the social media platforms helped in a way to criticise the move adopted by MAC, it rarely affected the decision.³⁶ Engagement in acts of cultural misappropriation was brought up by consumers and other activists over social media platforms. Apart from mere criticism and backlash over the issue of misappropriation, which was direct and grave, no other remedial measures were available to pursue the issue further.

This case involved using TCEs without prior consent and the absence of acknowledgement, where no legal relief could be availed by the Indigenous community, which has owned and preserved these cultural contents for ages. The absence of a legal protection system in this regard left the communities’ grievances unheard and unresolved. The company neither expressed any apology nor stopped its line of cosmetics production.

Kimono Case

The kimono is a traditional garment affiliated with Japanese culture. The dress holds great significance in the culture of Japan. Kimono can be expressed as a part of Japanese culture. An issue started when Ms Kardashian West developed a range of Kimoji and KKW Beauty products. She said these were meant to be “a nod to the beauty and detail that goes into a garment.” This event of the use of Japanese cultural expressions in the production of other fashion labels quickly became the subject of online charges of ignorant and offensive misuse.³⁷ People started criticising the use of the term Kimono, which reflects the greater cultural values of Japan. There was an absence of any due acknowledgement of the Japanese culture of Kimono, from where the conceptualisation was done. Kardashian West said she has no plans “to design or release any garments that would, in any way, resemble or dishonour the traditional garment.” She also has no plans to respond to the reaction by changing the name.³⁷

The story did not stop with only the production of Kimono’s range of products. The issue became more

intense when it was found that Kardashian West had applied for trademarks for her Kimono lines. These trademark applications raised more criticism of Kardashian's actions. These applications were filed to acquire exclusive rights over apparel with the term ‘Kimono’ on it.

After such development, the social media platform was again used to criticise Kardashian’s act. A hashtag on X (formerly Twitter), “#KimOhNo”, and an online petition movement was started by Sono Fukunishi, who also wrote about wearing a kimono every day. “I do not wish to share the word with an underwear brand,” the petition says.³⁸ The Japanese term ‘Kimono’ means ‘clothing’ in English. The petition puts forward this event as “horrible cultural disrespect.” With the help of social media and the internet, a movement was started to criticise the act of cultural insensitiveness and attempt to get an exclusive trademark right over the same.

The backlash started over the issue and forced Kardashian to make a public statement. Kardashian West said, “I understand and deeply respect the significance of the kimono in Japanese culture.” Facing this backlash, the trademark applications were withdrawn, and the name was replaced with “Kimono” to “SKIMS”. Through social media platforms, a strong medium to protest against cultural misappropriation was created, demanding a public apology. In the ICT age, social media platforms have proven to be a vital catalyst for the broader public interest.

These cases of cultural misappropriation reflect the diverse nature of misappropriated cultural expressions, Indigenous communities, geographical locations, strategies involved, arguments advanced, and the resolution mechanism. There have been many more instances of misappropriation of cultural expressions (Table 3). The comprehensively considered misappropriation issues shed light on one fundamental underlying problem: the non-availability of legal and policy measures to the component of cultural heritage. The role of technology in addressing the cause of misappropriation is critical. Technological integration may be employed in creating registries of cultural expressions and creating awareness among stakeholders. However, the integration must occur through a roadmap and policy intervention to counter the techno-legal challenges and resource constraints. Further, the role of technology in enhancing misappropriation cannot be undermined. Thus, the measured approach should be adopted while integrating technology to protect TCEs.

Table 3 — List of cases with TCEs misappropriation

Case Name (year)	Country of Origin of Dispute	Type of IP Protection Granted	Current Status of Dispute	Dispute Resolution Method	Settlement Terms/ Awards, if the settlement has been done
Bulun Bulun vs. Nejlam (1989)	Australia	Copyright	Resolved	Settlement	Withdrew all infringing products and compensation awarded.
Zia Symbol Case (1990s)	USA	Trademark	Contested	N/A	The flag of New Mexico still contains Zia symbol. Compensation paid.
Milpurruru vs. Indofurn [The Carpets Case] (1994)	Australia	Copyright	Resolved	Judicial decision	Permanent Injunction granted.
Bulun Bulun vs. R & T Textiles (1998)	Australia	Copyright	Resolved	Judicial decision	The issue was removed. No compensation award.
Dhanpat Seth vs. Nilkamal Plastics Ltd. [Kilta Case] (2007)	India	Patent	Resolved	Judicial decision	No settlement.
Hakuna Matata case (2018)	USA	TM	Ongoing violation	N/A	Fabindia agreed to remove the words 'Khadi' and 'Charkha' symbol.
Khadi vs. Fabindia case (2018)	India	TM	Resolved	Settlement	Infringement of copyright holders. Permanent injunction granted.
WAM Clothing Case (2018)	Australia	Copyright	Resolved	Judicial decision	Acknowledgement to the original song composer. Royalty granted.
Genda Phool Song case (2020)	India	Copyright	Resolved	Settlement	

Discussion

The very phenomenon of cultural misappropriation is not a recent development; instead, it grew with the introduction of the idea of globalisation.³⁹ Global trade has resulted in incremental demand for ethnic art, classic designs, and traditional approaches to modern art among consumers. Against this backdrop, the creative industries realised the need to instil the element of 'traditional' in their product range to gain a competitive advantage. These strategies accounted for direct and indirect events of misappropriation of cultural expressions around the globe. The unethical act involving the misappropriation of cultural expressions became possible due to the absence of statutory support for the subject matter of TCEs and exclusive rights to the Indigenous communities over these contents. The non-existence of rights paved the way for seamless misappropriation and demanding situations for the communities to seek their grievances.

These cases signify the intensity of the acts of cultural misappropriation. These acts have intra- and inter-state jurisdiction, making the nature of the dispute more cross-border. These issues have made the cultural content vulnerable with little to no protection. There would have been a low level of cases if proper legal mechanisms had been in place to protect and safeguard TCEs. The lack of a legal mandate favouring TCEs protection left the

indigenous communities, holders of such expressions, with no remedies.⁴⁰ The communities employ generic methodologies to address their concerns and expect help from society. Moreover, the communities take recourse to social media platforms, which are widely accessible to a larger population. They attempt to establish crowd trust, like crowdfunding, to highlight their issues and advance their claims to a larger section of society. The absence of legal protection and exclusive rights must be a primary cause of adopting such a step. Additionally, there are other critical challenges attached to misappropriation emerging from the analysis, including,

Community's Resourcefulness to Misappropriation

Misappropriation cases are not always reported or taken to court of law. There are various factors attached to this. The low level of literacy, poor economic conditions, higher cost of litigations, low rate of technological penetration among these communities, and the non-existence of exclusive rights over TCEs are some of the key challenges that make them and their expressions vulnerable to exploitation.

Non-availability of legal protection

This is the central issue identified in the cases of misappropriation where the custodian Indigenous communities cannot establish their legal attachment

due to the non-existence of exclusive rights. This issue has contributed to a significant failure of the support for the indigenous communities in the fight against misappropriation.

Low Awareness about the Legal System and rights such as IP rights

The indigenous communities possessing a rich corpus of cultural expressions often lack legal knowledge. Also, there is low penetration of intellectual property rights among these communities. After misappropriation incidents, the community has minimal or no knowledge of IP, legal proceedings, and other procedures. These factors present a challenge to the community in terms of facing difficulty to make themselves aware and then proceed for grievance redressal.

Minimal State Intervention

The indigenous communities are mostly marginalised sections of the society with their art and cultural practices. Moreover, the misappropriation impacts them negatively, where the role of the state becomes evident. In the above-discussed cases, there is minimal support from the state, and hardly any support systems have been developed to tackle issues relating to the misappropriation of TCEs. There should be an effective governance model in support of these communities. The cultural heritage they possess is recognized nationally and internationally. The state acts as a custodian of cultural heritage and must provide proper systems for grievance redressal and upliftment.

The protection of TCEs is majorly hindered by low community participation, inadequate intellectual property policies regarding TK and TCEs, and

insufficient stakeholder commitment. To address these issues, the government must implement mechanisms focused on workforce training and community enlightenment.⁴¹ These issues present an opportunity to tackle the menace of misappropriation affecting cultural heritage across the globe. Although it is suggested to have a comprehensive ecosystem for the protection of TCEs as the diversity of this subject domain is so vast that no singular legal mechanism, whether an existing IP law or a *sui generis* law, can adequately address all kinds of cultural expressions comprehensively.⁴² Nevertheless, the learnings from these instances may be utilized in carving out a system for protecting TCEs, as the way forward in the larger interest of TCEs (Fig. 2).

The indigenous communities must be strengthened through awareness about their rights. The awareness must be centred on their cultural property. These may include IP rights and fundamental legal understanding to empower them about their TCEs.⁴³ This awareness will help them in grievance redressal if they face any legal challenges related to misusing their cultural expressions. Moreover, increased participation of all the stakeholders, such as communities, the public and the state, is necessary. The indigenous communities being marginalised section of society warrant state intervention to a great extent. The state should focus on their all-around development and improvement in socio-economic conditions. Special emphasis must be placed on improving the promotion and preservation of their cultural expressions.

The most crucial aspect linked with TCEs is proper legal protection, ensuring the exclusive right of appropriation to the Indigenous communities and other rights attached to it. Legal backing for TCEs is a domain that contains a humongous scholarship. The contention

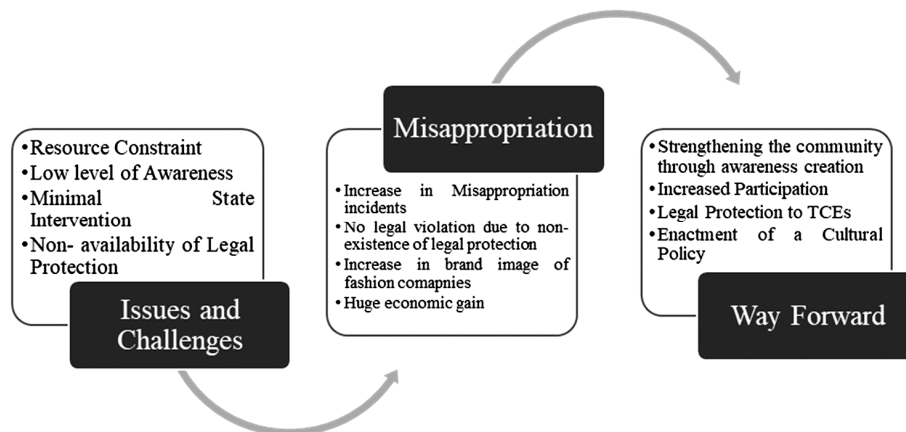


Fig. 2 — Linkage of issues and challenges with the suggested way forward

being forwarded is to have a legal order in place to tackle the cases of misappropriation. The force of legal protection would benefit the community by establishing exclusive rights through positive protection.⁴⁴ Apart from the legal intervention, there is a need for a cultural policy outlining the vision, mission, and objectives to be achieved in advancing the cultural heritage of the nations. The policy document would cater to an environment that is enabling for the stakeholders involved with the culture and different aspects of culture. Culture holds an important place in the development of the nation, and its treatment should be aligned with the contemporary needs of the concerned stakeholders. The policy would act as a catalyst for realising the true potential of cultural heritage in nation-building. The technological integration through the use of ICT is crucial. Digitalisation efforts, the development of repositories, and audio-visual mechanisms for protecting and preserving TCEs are important, and their integration may produce positive outcomes.⁴⁵ Technological advancements such as artificial intelligence, machine learning, and blockchain may serve the long-standing needs of the preservation and protection of TCEs. However, their integration becomes challenging given the low government intervention, community resource constraint, and other associated risks.

The findings of the present study are utilised in the conceptualisation of the SMART model proposed for effective protection and management of TCEs in light of the emerging issues and challenges in this subject

domain. The model, in the assessment of the misappropriation instances discussed above, is an outcome to respond to the emergent challenges and seek to address them effectively. The model integrates five components: *sui generis* system, management, awareness, regional cooperation, and technological integration. These components and their attributes are provided in Table 4. The attributes serve as grounds for substantiation towards a practical and comprehensive protection system for TCEs.

The SMART Model

S- Sui Generis system of protection: The legal protection for TCEs in the form of a *sui generis* system is a much-warranted need. Such a protection system grants positive and exclusive rights to indigenous communities possessing knowledge such as TK and TCEs. This system enumerates enabling provisions for TCE protection and the upliftment of communities that practise traditional knowledge.

M- Management of TCEs: Effective management of TCEs must be ensured by integrating the legal system and available policy measures. The management would incorporate specific strategies directed towards the prevention of acts of misappropriation and misuse. Policy intervention for TCEs protection and management is crucial to establishing outcome-based measures in the interest of the cultural expressions and the communities.

A- Awareness: Awareness about the rights available to the indigenous communities is key in fighting the menace of the misappropriation of TCEs.

Table 4 — Key Attributes of the SMART Model

Components of the SMART Model		Key attributes
S	<i>Sui Generis</i> System of Protection	<ul style="list-style-type: none"> - Definitional Clause - Positive Protection - Nature of Rights and corresponding duties - Working Mechanism for Access and Benefit Sharing - Shared Ownership Rights within communities - Bottom-up approach for the type of remedies in cases of misappropriation.
M	Management of TCEs	<ul style="list-style-type: none"> - Stakeholders' engagements in shaping the policy for management of TCEs - Institutions for creating awareness and establishing ways for effective management - Promoting Supportive Supervision
A	Awareness	<ul style="list-style-type: none"> - Building awareness, trust, and accountability at all levels of protection through implementation - Cultural sensitization among consumers through media
R	Regional Cooperation	<ul style="list-style-type: none"> - Strong Regional Collaboration in cases of shared cultures - Cross-border enforcement mechanism - Policy Advocacy and Regional diplomacy
T	Technological Integration	<ul style="list-style-type: none"> - Use of Technology-driven collaboration - Digital documentation and preservation - Establishment of authenticity of goods that are part of TCEs

Cultural awareness among consumers and the fashion industry is equally desirable. Cultural awareness, in a way, would certainly help in the creation of a transparent society by refuting any attempt at cultural misappropriation for economic gains.

R- Regional Cooperation: The cross-border challenges arising within the domain of TCEs protection and misappropriation can be addressed through the mechanism of regional cooperation. Such cooperation with shared cultural heritage may ensure a unified approach to protect TCEs.

T- Technological Integration: In the wake of accelerating technological advancement, digital tools and their integration have become indispensable for safeguarding TCEs. Advanced documentation techniques such as high-resolution 3D scanning digital archives enable systematic capture and long-term curation of cultural heritage. Technology-driven collaborations may foster participatory preservation, allowing the stakeholders to engage in strengthening the protection system. These strategies would help mitigate erosion risks and develop sustainable pathways for revitalising living traditions.

The SMART model aligns with the existing legal instrument; however, each component addresses distinct legal lacunae in the existing protection mechanism of TCEs. The *sui generis* component responds to the inadequacy of existing IP systems, such as copyright and trademark, which require authorship, originality, and limited duration protection (Table 1). These grounds fail to accommodate the communal, intergenerational and perpetual nature of TCEs. The context of management highlights the absence of legal recognition of the customary governance mechanism, thereby proposing community-driven cultural protocols and access

frameworks. This would ensure an effective management mechanism advancing the interests of the traditional communities. The awareness element brings in the lack of mandatory obligations on states or institutions to educate creators, consumers and intermediaries on the significance and rights associated with TCEs. Awareness among the stakeholders is a critical point in the development of the comprehensive protection mechanism for TCEs. Regional cooperation reveals the fragmentation in cross-border legal enforcement and calls for integrated legal infrastructure such as regional registries of TCEs, joint dispute resolution mechanisms, and harmonized frameworks for transboundary cultural heritage protection. Lastly, technological integration fills the critical gap in existing legal mechanisms that are poorly equipped to address the digital dissemination, misuse, and tracing of TCEs. Technological intervention, through the incorporation of digital identifiers and information and communication technologies, may be implemented in national and international cultural property regimes. In sum, the SMART model not only complements the legal efforts but also offers a coherent mechanism for addressing key implementational gaps in the protection of TCEs.

The adopted approach in the present study allows for the identification of gaps that the SMART model is designed to fill. This diagnosis reiterates that while the measures adopted in the misappropriation events address fragments of the protection need, they lack the integrative, community-led, and technology-driven governance mechanism envisioned by the SMART framework (Table 5).

The instances of misappropriation dealt with in the present study are representative. However, cultural

Table 5 — Integration of the SMART Model in the Cases of Misappropriation

Adopted Approaches in Misappropriation Cases	Challenges	Relevant Attributes of the SMART Model
Utilisation of Existing Legal Mechanism	<ul style="list-style-type: none"> - limited scope - no exclusive rights on TK and TCEs to communities - restricted remedial measures 	<i>Sui generis</i> system (S), Management (M)
Contractual Agreements	<ul style="list-style-type: none"> - specific to parties - knowledge asymmetry - no positive rights to communities 	<i>Sui generis</i> system (S), Management (M)
Institutionalisation	<ul style="list-style-type: none"> - absence of legal mandate - administrative and implementational challenges 	<i>Sui generis</i> system (S), Management (M), Awareness (A), Regional cooperation (R)
Application of ICT	<ul style="list-style-type: none"> - resource and knowledge constraint - absence of techno-legal safeguard - lack of roadmap and policy intervention - may be utilized as tool for misappropriation 	<i>Sui generis</i> system (S), Management (M), Technological Integration (T)

misappropriation and the significance of the SMART model may also be established through instances such as Disney's trademark of the Swahili phrase, 'Hakuna Matata'⁴⁶ and the 'Aloha Poke' trademark case.⁴⁷ These instances illustrate the real-world damage caused to cultural components and community perspectives, supporting the need for a SMART model. Moreover, New Zealand's Toi Iho initiative⁴⁸ underscores 'management' and 'awareness' in a culturally grounded manner. Countries such as Kenya and Panama rely heavily on positive protection for TK through the *sui generis* mechanism, one of the primary elements of the SMART Model. Broadly, these examples substantiate the theoretical model by reflecting on the operational frameworks where similar mechanisms have been employed successfully. Though these cases are representative, the framework holds a broader implication in its application while informing the deliberations on TCEs. While the components of the SMART model have been reflected in various international guidelines and national efforts, they often appear fragmented and inconsistent. This study contends that a more comprehensive and integrated approach is crucial for the coherent protection and governance of TK. The proposed model highlights the minimum threshold components necessary for effective protection, preservation, and management of TK. However, individual nations may implement additional measures tailored to their specific cultural, legal and policy needs.

Conclusion

With the development of the technological age resulting in information access and increased use of ICT tools, enhanced access to cultural expressions is possible. This growth has negatively impacted the cultural expressions all across the globe. Several factors have contributed to the misappropriation events. Lack of awareness, minimal state intervention, and non-existence of legal protection are major contributors to misappropriation cases. The above-discussed cases are representative. However, the actual incidents of misappropriation might be a long catalogue creating huge concerns and issues. The methodology exercised to resolve these present disputes is evident that the role of courts is non-proactive, and very few instances can make it to the courts. The reason is simple: there is no legal protection for TCEs to redress instances of misappropriation. Moreover, these matters require

quick redressal to prevent the larger effect of the misappropriation, where the judicial system falls short.

The absence of a policy framework poses difficulties for the communities in raising their voices to safeguard cultural expressions. The nature and scope of these instances are varied, but theoretically, all the concerns raise the same fundamental issue of no strict and comprehensive protection framework and non-recognition of exclusive rights of the Indigenous communities. These learnings are necessary to realise how traditional communities are facing a challenging task with acts of misappropriation and taking steps to minimise the same. Though the story is not negative everywhere, the majority of communities across the world are facing these challenges. It is high time that the stakeholders reflect proactiveness towards the cause of traditional communities in protecting their legacy, which they have been holding and safeguarding for ages. A protection system should be advocated for the traditional communities to have the right to exercise their exclusive right and provide access to cultural expressions. The system must consider benefit-sharing mechanisms in cases of access to cultural expressions to substantiate the economic rights of the communities. The SMART model is nevertheless an exploratory design to cater to the needs of the communities and other stakeholders. The Model engraves a comprehensive consideration of key elements in laying out the adequate protection and management schema for TCEs.

References

- 1 WIPO, Booklet No. 1, Intellectual Property and Traditional Cultural Expression/ Folklore, (2003), <https://doi.org/10.34667/tind.28589>, WIPO- Traditional Cultural Expressions, <https://www.wipo.int/tk/en/folklore/> (accessed on 18 December 2024).
- 2 WIPO, IGC, Forty-Seventh Session, The protection of traditional cultural expressions: Draft articles, (2023), https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_47/wipo_grtkf_ic_47_15.pdf (accessed on 15 December 2024).
- 3 Martinet L, Traditional cultural expressions and international intellectual property law, *International Journal of Legal Information*, 47 (1) (2019) 6, <https://doi.org/10.1017/jli.2019.8>.
- 4 WIPO- UNESCO. Model provisions for national laws on the protection of expressions of folklore against illicit exploitation and other prejudicial actions, (1982). <https://www.wipo.int/export/sites/www/tk/en/docs/1982-folklore-model-provisions.pdf> (accessed on 20 December 2024).
- 5 WIPO FFM, WIPO Report on fact-finding missions on intellectual property and traditional knowledge, (1998-1999).

- 6 WIPO, Intergovernmental committee on intellectual property and genetic resources, traditional knowledge and folklore, (2000), <https://www.wipo.int/tk/en/igc/> (accessed on 18 December 2024).
- 7 WIPO IGC Draft Provisions, https://www.wipo.int/web/igc/draft_provisions, WIPO IGC Glossary of Key Terms Related to IP and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, Fortieth Session, (2019), Geneva, https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_35/wipo_grtkf_ic_35_inf_7.pdf (accessed on 21 December 2024).
- 8 Nwabueze J, The role of intellectual property in safeguarding intangible cultural heritage in museums, *International Journal of Intangible Heritage*, 8 (2013) 181, <https://www.ijih.org/volumes/article/436>.
- 9 Buckingham L & Lixinski L, Propertization, Safeguarding, and the Cultural Commons: The Turf Wards of Intangible Cultural Heritage and Traditional Cultural Expressions in Valentina Vadi and Bruno de Witte (eds.), *Culture and International Economic Law*, Routledge, (2015) 160, <http://dx.doi.org/10.2139/ssrn.4253299>.
- 10 Prażmowska K, Misappropriation of indigenous cultural heritage- Intellectual property rights in the digital era, *Santander Art & Culture Law Review*, 2 (6) (2020) 119, <https://doi.org/10.4467/2450050xsnr.20.013.13016>.
- 11 Awopetu R, *In defense of culture: Protecting traditional cultural expressions in intellectual property*, Emory LJ, 69 (2019) 745.
- 12 Vargas Alberto, WIPO's proposed treatment of sacred traditional cultural expressions as a distinct form of intellectual property, *Chicago Journal of International Law*, 23 (1) (2022) 235.
- 13 Pager Sean A, Traditional knowledge rights and wrongs, *The Virginia Journal of Law & Technology*, 20 (1) (2016) 82.
- 14 Lee S, Cultural appropriation in contemporary fashion, *Archives of Design Research/Di'jainhag Yeon'gu*, 32 (2) (2019) 137. <https://doi.org/10.15187/adr.2019.05.32.2.137>.
- 15 TCEs Principle, Practical examples of misuse or misappropriation of Maori TK in New Zealand and Abroad, The protection of traditional cultural expressions/ expressions of folklore: Table of written comments on revised objectives and principles (2007), Geneva, https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_11/wipo_grtkf_ic_11_4_b.pdf (accessed on 15 December 2024).
- 16 Trade Marks Act 2002, Public Act 2002 No. 49.
- 17 Para 2.2.2 of the Practice Guidelines of the Māori Advisory Committee and Māori Trade Marks. <https://www.iponz.govt.nz/get-ip/trade-marks/practice-guidelines/current/maori-advisory-committee-and-maori-trade-marks/> (accessed on 20 December 2024).
- 18 Māori Advisory Committee, Term of Reference, 11.2.4 Term of Reference for the Māori Trademarks Advisory Committee. <https://www.iponz.govt.nz/assets/pdf/maori-ip/terms-of-reference-maori-advisory-committee.pdf> (accessed on 15 December 2024).
- 19 Piñeda N L, Inspiration or plagiarism? Mexicans seek reparations for French designer's look-alike blouse, *The Guardian*, <https://www.theguardian.com/global-development-professionals-network/2015/jun/17/mexican-mixe-blouse-isabel-marant> (accessed on 25 December 2024).
- 20 CIPRI, The (unofficial) verdict: cultural intellectual theft in Marant vs. the Mixe community of Oaxaca Cultural IP Rights. <https://www.culturalintellectualproperty.com/post/the-unofficial-verdict-cultural-intellectual-theft-in-marant-vs-santa-maria-tlahuitoltepec> (accessed on 6 December 2024).
- 21 Szmydke P & Castano I, Court decision due in case involving Isabel Marant blouse design, WWD, <https://wwd.com/feature/isabel-marant-antik-batik-blouse-mexico-lawsuit-10288052/> (accessed on 11 December 2024).
- 22 Varagur K, Mexico prevents Indigenous designs from being culturally appropriated- again, HuffPost, https://www.huffpost.com/entry/mexico-prevents-indigenous-designs-from-being-culturally-appropriated-again_n_56e87879e4b0b25c9183afc4 (accessed on 17 December 2024).
- 23 Reed N, Cultural and intellectual property appropriation disputes over culturally inspired fashions, Foley Hoag LLP, <https://foleyhoag.com/news-and-insights/blogs/making-your-mark-blog/2019/february/cultural-and-intellectual-property-appropriation-disputes-over-culturally-inspired-fashions/> (accessed on 8 December 2024).
- 24 History, Navajo Nation, <https://www.navajo-nsn.gov/History> (accessed on 11 December 2024).
- 25 Martin M, Navajo nation sues urban outfitters over trademark, NPR, <https://www.npr.org/2012/04/05/150062611/navajo-nation-sues-urban-outfitters-over-trademark> (accessed on 25 December 2024).
- 26 Woolf N, Urban outfitters settles with Navajo Nation after illegally using tribe's name, The Guardian, <https://www.theguardian.com/us-news/2016/nov/18/urban-outfitters-navajo-nation-settlement> (accessed on 22 December 2024).
- 27 Navajo Nation and urban outfitters reach settlement over trademark rights, *The Columbia Journal of Law & the Arts*, (2019), <https://journals.library.columbia.edu/index.php/lawandarts/announcement/view/42>.
- 28 Young S, Maasai people of East Africa fighting against cultural appropriation by luxury fashion labels, *The Independent*, <https://www.independent.co.uk/life-style/fashion/maasai-people-cultural-appropriation-luxury-fashion-retailers-louis-vuitton-east-africa-intellectual-a7553701.html> (accessed on 17 December 2024).
- 29 AIPT, <https://africanipt.wordpress.com/> (accessed on 22 November 2024).
- 30 Leleto N L, Maasai resistance to cultural appropriation in tourism, *The Indigenous Peoples' Journal of Law, Culture, & Resistance*, 5 (2019) 21, <https://www.jstor.org/stable/48671862>.
- 31 Vézina B, Curbing cultural appropriation in the fashion industry, CIGI Papers, (2019) 1-16, <https://www.cigionline.org/sites/default/files/documents/paper%20no.213.pdf> (accessed on 28 November 2024).
- 32 Phipps-Rufus T, Companies accused of exploiting cultural identity of Kenya's Maasai, The Guardian, <https://www.theguardian.com/sustainable-business/ethical-exploit-cultural-brands-masai> (accessed on 29 November 2024).
- 33 Castelli C, Maasai in Kenya and Tanzania should fight against cultural appropriation of their traditional knowledge by luxury fashion labels, <https://www.linkedin.com/pulse/maasai-kenya-tanzania-should-fight-against-cultural-luxury-castelli/> (accessed on 14 December 2024).
- 34 Bryant T, The problem with MAC's new vibe tribe collection, Refinery29. <https://www.refinery29.com/en-us/2016/04/108902/mac-vibe-tribe-cultural-appropriation-controversy> (accessed on 21 December 2024).

- 35 Oliver M, MAC vibe tribe cultural appropriation controversy, Strikeapose. <https://www.strikeapose.co.uk/mac-vibe-tribe-cultural-appropriation-controversy/> (accessed on 26 November 2024).
- 36 New MAC cosmetics collection called out on Twitter for cultural appropriation. CBC. <https://www.cbc.ca/news/indigenous/cosmetics-line-called-out-for-cultural-appropriation-1.3597988> (accessed on 27 November 2024).
- 37 Friedman, V. Kim Kardashian West and the Kimono Controversy. The New York Times. <https://www.nytimes.com/2019/06/27/fashion/kim-kardashian-west-kimono-cultural-appropriation.html> (accessed on 25 November 2024).
- 38 Fukunishi S, Say No to Kim Kardashian's "KIMONO" #KimOhNo. Change.org. <https://www.change.org/p/kim-kardashian-west-say-no-to-kim-kardashian-s-kimono-kimohno> (accessed on 26 November 2024).
- 39 Arewa O, Piracy, biopiracy and borrowing: Culture, cultural heritage and the globalization of intellectual property, *Case Legal Studies Research Paper No. 04-19*, (2006). <http://dx.doi.org/10.2139/ssrn.596921>.
- 40 Turner S B, The case of the Zia: looking beyond trademark law to protect sacred symbols, *Chicago-Kent Journal of Intellectual Property*, 11 (116) (2012), <https://scholarship.kentlaw.iit.edu/ckjip/vol11/iss2/2>
- 41 Adewumi A A, Protecting intangible cultural heritage in the era of rapid technological advancement, *International Review of Law, Computers & Technology*, 36 (1) (2022) 3, <https://doi.org/10.1080/13600869.2021.1997084>
- 42 Torsen M, Anonymous, untitled, mixed media: Mixing intellectual property law with other legal philosophies to protect traditional cultural expressions, *The American Journal of Comparative Law*, 54 (1) (2006) 173, <https://doi.org/10.1093/ajcl/54.1.173>
- 43 Anand S, Sonar R M & Jain K, Strategic mapping of measures for ensuring effective protection of traditional knowledge: Learning from the mistakes of the past, *European Intellectual Property Review*, 46 (10) (2024) 661, <https://search.informit.org/doi/10.3316/informit.T2024121800019091176175853>.
- 44 Anand S, Sonar R M & Jain K, Traditional knowledge research in India: A bibliometric-based review and thematic analysis, *Indian Journal of Traditional Knowledge*, 24 (3) (2025) 275, <https://doi.org/10.56042/ijtk.v24i3.9491>.
- 45 Hunter J, The role of information technologies in indigenous knowledge management, *Aust Acad Res Libr*, 36 (2) (2005) 109-124. <https://doi.org/10.1080/00048623.2005.10721252>.
- 46 BBC, Lion King: Petition calls on Disney to drop 'hakuna matata' trademark. <https://www.bbc.com/news/world-46605515> (accessed on 25 December 2024)
- 47 Lee S, The Aloha Poke Case: When trademarks facilitate misappropriation, *Columbia Undergraduate Law Review*. <https://www.culawreview.org/journal/the-aloha-poke-case-when-trademarks-facilitate-misappropriation> (accessed 26 December 2024)
- 48 Toi Iho, <https://www.toiho.org.nz/> (accessed on 25 December 2024)