COPYRIGHT LAW AND CULTURAL EXPRESSION: THE PROBLEM OF PRESERVING FOLK AND INDIGENOUS MUSIC IN THE DIGITAL AGE

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INTRODUCTION

The conflict between copyright systems and indigenous cultural expression, especially indigenous and folk music, has amplified in the digital era. Conventional copyright law, based on single authorship, originality, and transitory ownership, is contrasted with indigenous music culture's intergenerational, collective, and orally transmitted nature. With the digital media allowing instant sharing and commodification of cultural content, the danger of misappropriation and cultural erasure of identities is heightened. Additionally, the use of artificial intelligence (AI) in music creation has added a new layer to the commodification of indigenous sounds, usually without acknowledgement or mere remuneration. This paper describes the boundaries of current intellectual property regimes in the face of these challenges and envisions reformative measures in harmony with cultural justice.

AIMS

This study aims to critically analyse why traditional copyright law does not recognise common ownership between indigenous and folk music styles. It aims to critically analyse international legal practice and norms towards the protection of traditional knowledge systems and how digital platforms and AI are influencing the commodification and preservation of such forms of culture. The research study aims to create a framework to ensure cultural equity through the provision of protection measures to traditional communities.

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METHODOLOGY

The research is comparative law in nature, comparing international systems such as the World Intellectual Property Organisation's[1] (WIPO) Traditional Knowledge (TK) and Traditional Cultural Expressions (TCE) systems, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage[2], and national law from countries with significant indigenous populations. Case studies such as the negotiation of joik music ownership[3] among the Sami people and the campaign for cultural rights among the Mapuche people have been employed to create legal mobilisations.

FINDINGS

Traditional Cultural Expressions (TCEs): WIPO's Expanded Legal Framework: The World Intellectual Property Organisation (WIPO) has taken up the challenge of imagining the protection of Traditional Cultural Expressions (TCEs)[4] in language that bursts beyond the old confines of traditional intellectual property regimes. At issue in this challenge is the recognition that TCEs[5] are living, not fossilised, aspects of collective identity, history, and spirituality, not inert cultural artefacts. These aspects—music and oral narrative, dance, painting, ceremonies, oral tradition—are outside the proprietary and individualising rationality that forms the base of most contemporary IP regimes[6]. They are unlike works produced by identifiable individuals at a point in time because they are fostered over multiple generations by shared memory, oral tradition, and spiritual meaning. For indigenous music, these are often inextricably linked to the ceremonial and performative contexts in which they are produced, closely intertwined with the cosmology and moral ordering of the culture that gives rise to it. Traditional IP law, based on originality, fixation, exclusivity, and temporality at its core, institutionally cannot identify or safeguard cultural creativity varieties that fail to meet these expectations. The condition of fixation, in this instance, makes oral traditions invisible to copyright law. Likewise, the individualistic design of IP cannot accommodate collective authorship common in indigenous musical culture. WIPO, aware of this, has

[1] World Intellectual Property Organization. (n.d.), *Traditional knowledge and traditional cultural expressions frameworks*
[2] United Nations Educational, Scientific and Cultural Organization, (2003, October 17), *Convention for the safeguarding of the intangible cultural heritage*, 2368 U.N.T.S.3.
[3] Stuevold Lassen, B. (1999), On copyright in Saami joiks. *Scandinavian Studies in Law, 38*, 115–126.
[4] World Intellectual Property Organization, (n.d.). *Traditional knowledge and traditional cultural expressions frameworks*
[5] World Intellectual Property Organization, (n.d.), *Intellectual property and genetic resources, traditional knowledge and traditional cultural expressions*
[6] World Intellectual Property Organization. (2003), *Consolidated analysis of the legal protection of traditional cultural expressions/expressions of folklore* (WIPO/GRTKF/STUDY/1)

proposed the idea of the creation of sui generis regimes sensitive to the specificity of traditional knowledge and cultural expression. These regimes would not seek to apply existing IP logic but to rethink ownership, creativity, and authorship on the ground—their inspiration drawn from customary law, collective rights, and community-determined moral norms.

One of the keystones of WIPO's approach is the empowerment of customary law as a valid source of legal sanction. That is, indigenous peoples would be given the authority to determine what amounts to an infringement, misappropriation, or disregard in terms relevant to their own cultural codes and ethical regimes. This decolonial legal move squarely resists the normative hierarchy of Western legal norms[7] and asserts the legitimacy of indigenous epistemologies. WIPO's approach also envisions the extension of moral rights—customarily narrow in conventional copyright law—to encompass collective protections against distortion, trivialisation, or abuse of cultural symbols and musical traditions. Such rights would not only guarantee cultural dignity but also bar the flattening or commodification of rich expressions by third parties. As opposed to perpetual copyright terms that have an expiry period after a specified number of years, TCE makes provisions for non-exclusive and eternal protections, looking at cultural heritage as not being more than a commodity to use and dispose of, but a living thing that must be cared for, respected, and nourished. Worth noting, WIPO insists there must be prior informed consent (PIC), no third party to use traditional cultural material[8], e.g., indigenous music, without proper consultation and agreement of the source communities. This is also accompanied by access and benefit-sharing (ABS) that allows communities to only gain benefit and maintain control over the use of their cultural expression, commercial, scholarly, or creative. Regardless of the promise of revolution, WIPO's Model[9] is confronted by daunting obstacles to implementation in practice. What it generates is virtually all soft law—advice in the shape of recommendations, not binding legal decrees. That is to say that while the model is able to motivate national law and international discussion, it is not able to mandate state action or corporate responsibility. Even more, where states proceed to domesticate WIPO's recommendations, there is a threat that the resulting legislation will be hijacked by state interests or watered down by bureaucratic

[7] Byron, I. P, (2021), The protection of traditional knowledge under the *sui generis* regime in Nigeria, *International Review of Law, Computers & Technology*
[8] World Intellectual Property Organization, (2022), *Draft articles on the protection of traditional cultural, expressions* (Rev. 2) (WIPO/GRTKF/IC/43/4).
[9] Osei-Tutu, J. J. (2011), A sui generis regime for traditional knowledge: The cultural divide in intellectual property law, *Marquette Intellectual Property Law Review, 15*(2), 147–172

channels. Without indigenous peoples being offered leadership positions in these processes, there is a threat that the new law will replicate the very systems of exclusion it is aimed at moving beyond.

In addition, WIPO's urgency is also compelled by the increasing spectre of digital media technologies and artificial intelligence. In the algorithmic music production, online streaming, and data excavation age, older music patterns can be sampled, remixed, and commodified at record speed—often without authorisation, acknowledgement, or reward. Commercialisation of indigenous sound patterns by AI-produced artists is not merely an affront to cultural dignity but also the continuation of the historical trajectories of colonial extraction under digital guise. WIPO's architecture, then, is not merely a legal tool but a shield against the next phase of cultural imperialism, where traditions get flattened into aesthetic commodities within the global attention economy. But the potential of WIPO's project is that it has the capacity to create a new sense of law—a law that is sensitive to the sovereignty of the community, the dignity of culture, and the right to decide how one's heritage is introduced to the world. With grassroots legal mobilisation, cross-border solidarity, and genuine investment in indigenous capacity-building, WIPO's TCE model has the potential to construct the conditions for a post-colonial order of justice, equity, and respect in culture. For music, this is not about simply excluding misappropriation but about empowering indigenous peoples to thrive creatively, economically, and spiritually, on their terms.

CASE LAW DISCUSSION: INTERFACE OF THE COURTS WITH INDIGENOUS CULTURE AND MUSIC

The changing legal environment of Aboriginal culture and music affirms that there is a deep incongruity between dominant intellectual property (IP) regimes and the cultural conditions to which they are being required to conform. The character of the tension is that aboriginal creativity cannot be mapped onto Western conceptualisations of authorship, law, ownership, and exploitation. It is inextricably bound up with communal living, spiritual symbolism, oral cultures, and ecologic interrelatedness—qualities that cannot be comprehended by fixation, individuation, and commodification. The handful of legal controversies and popular controversies resolved in courts or accorded media attention emphasise this incongruity starkly and necessitate a radical reconsideration of legal categorisations, enforcement machinery, and ethical norms.

Milpurrurru v. Indofurn Pty Ltd:[1011] In this Case, the Australian Federal Court's identification of economic and cultural harm in response to unauthorised copying of Aboriginal[12] artwork was groundbreaking. It implicitly recognised that cultural property is not merely economic property, but an extension of community identity and spiritual systems of belief. The Court's ruling to grant damages for desecration of sacred images was a departure from commercially rational thinking and opened up a more integrated conception of harm—one that could, and arguably should, be applied to traditional music. In many indigenous cultures, music is not sung for entertainment or profit but is incorporated into rituals, cycles of the seasons, and oral histories. Unauthorised sampling, remixing, or reinterpretation of such music, especially in commercial or digital contexts, can be a cultural wound of profound depth—an insult to a community's right to tell and protect its own story.

Bulun Bulun V. R & T Textiles Case:[13] While this is positive in result, it further codified the disconnect between indigenous cultural practice and statutorily grounded IP regimes. The court recognised the dominance of community values and customary law, but ultimately held legal enforcement could only be by recognisable individual authorship under national law. The ruling had a basic flaw in contemporary IP regimes: the need for recognisable individual authorship precluded broad ranges of communal and intergenerational transferred works. Indigenous communities are therefore trapped in an inconsistency—recognised as creators but without the legal authority to secure or enforce their rights in a collective form. In music, this means a failure to be able to control the dissemination, stylisation, or recontextualisation of songs that can have sacred or ceremonial meaning. These challenges come to new heights in the algorithmic era. The thought experiment of AI-composed songs by Tupac Shakur, and more generally, folk and indigenous music, is a harbinger of the future legal and ethical void on algorithmic appropriation. AI algorithms trained on archival music databases, sometimes without permission or credits, can produce derivative works appropriating indigenous forms in the absence of cultural context. Not only does this violate the principle of Free, Prior, and Informed Consent (FPIC) under international human rights law, but this is a new form of extractivism, where the digital economy is the new frontier of cultural expropriation. These

[10] Milpurrurru v. Indofurn Pty Ltd (1994) 54 FCR 240 (Austl.)
[11] Martin, M. (1995), What's in a painting? The cultural harm of unauthorized reproduction: *Milpurrurru & Ors v. Indofurn Pty Ltd & Ors*. *Sydney Law Review, 17*, 591–611.
[12] Blakeney, M (1995), Milpurrurru & Ors v Indofurn & Ors: Protecting expressions of Aboriginal folklore under copyright law. *Murdoch University Electronic Journal of Law, [1995]*, 4
[13] Bulun Bulun v. R & T Textiles Pty Ltd (1998) 41 IPR 513 (Austl.)

challenges reflect the need to create regimes of rights for digital and posthumous moral rights, so cultural memory and artistic heritage are not pushed into anonymised data systems.

India's Traditional Knowledge Digital Library (TKDL)[14][15] is a strong counterexample, an operational model of documentation and legal protection from biopiracy. The success of the TKDL in having spurious patents on traditional drugs such as turmeric and neem revoked is a testament to the efficacy of available, multilingual, state-funded databases in the creation of intellectual sovereignty. The application of the model to music and intangible forms of culture is, however, fraught with difficulties. Traditional music is different from medicinal preparations that are textually coded and potentially subject to comparative patent examination. Traditional music is in fluid, performative, and context-dependent forms. Any attempt to systematize it into a digital library has to go out of its way not to suck the dynamic, relational life out of it. Also, unless a database is coupled with legally actionable recognition of community moral and cultural rights, it can become a repository for exploitation rather than protection.

Navajo Nation v. Urban Outfitters:[16] As trademark law offers a new paradigm for the protection of culture. In claiming unauthorised use of the name "Navajo" as a violation not only of a registered trademark but of cultural dignity, the Navajo Nation re-mapped identity as intellectual property. Although the terms of the settlement are not revealed, the symbolic importance of the case is that it sets out that communities can and should utilise available IP tools in new ways, even if the tools were not created with their realities in mind. Applied to indigenous music, we have a model where communities can trademark some musical styles, names, or symbols as trademarks or collective marks, some degree of control over how their cultural products are framed and consumed in public space. Indian copyright law, and many others, cannot account for collective moral rights[17][18] or non-economic[19] harm due to misrepresentation. To artists whose art pieces are inevitably integral to spiritual practice and oral tradition, recognition and respectful presentation may mean more to them than financial

[14] Thikkavarapu, P. R., & Chandrashekaran, S. (2017, July 15), Why the traditional knowledge digital library's existence deserves a thorough relook. *The Wire Science*
[15] World Intellectual Property Organization. (2011, February 22), WIPO and India partner to protect traditional knowledge from misappropriation, *World Intellectual Property Organization*
[16] Navajo Nation v. Urban Outfitters, Inc., No. 1:12-cv-00195 (D.N.M. filed Feb. 28, 2012)
[17] Jones, P (1997), Copyright Law and Moral Rights, *Waikato L. Rev.*, *5*, 83
[18] Unimarks Legal, (2024, December 11), *How Indian Copyright Act protects the moral rights of creators*, Unimarks Legal
[19] Dietz, A. (1994), The moral right of the author: moral rights and the civil law countries, *Colum - VLA JL & Arts*, *19*, 199

reward. The lack of legal instruments to protect these priorities is a sign of a more general systemic failure to map law onto lived cultural realities.

Cumulatively, these examples provoke paradigmatic change in the manner in which the law thinks and responds to cultural creativity. The contemporary IP regime is based on Enlightenment presuppositions of originality,[20] fixity, and single authorship—presuppositions systematically excluding non-Western, non-commercial, and non-individualistic creativity.[21] Moving beyond this exclusion will demand more than technical revision; it will demand a reconceptualisation of legal ontology itself. This involves the recognition of customary law as a valid source of legal normativity, recognition of collective authorship[22], and the development of legal protection mechanisms offering protection in perpetuity to cultural forms of expression bound up with identity and heritage. The tendency towards sui generis legislation—customary regimes specifically designed to address the particular needs of traditional society—is growing and must be taken forward on good participatory governance, cultural insensitivity, and enforceability.

A rights-oriented, progressive legal response will also have to contend with the growing role of algorithmic and digital platforms. AI developers, streaming providers, and content providers become increasingly middlemen of cultural use, yet continue to be insufficiently regulated in how they leverage established knowledge. To implement FPIC, set up benefit-sharing frameworks, and mandate algorithmic transparency is the next necessity here. At the same time, international frameworks and national law must shift from symbolic affirmation to institutions that effectively redistribute power, giving people back the ability to define, defend, and develop their cultural expression on their terms. Lastly, indigenous and traditional music is not only a heritage genre but a living tradition of cultural survival and identity. Any legal order that cannot be perceived as much is actively complicit in its annihilation. As legal scholars, practitioners, and communities work towards a more equitable and diverse intellectual property order, the cases here described should not only be cautionary examples but blueprints for envisioning what cultural justice might be in the 21st century.

[20] López Martínez,,A, (2005), Sui generis systems for the protection of traditional knowledge, *Revista de Derecho Internacional, 6*, 301–339
[21] Rigamonti, C. P. (2006), Deconstructing moral rights, *Harv, Int'l LJ*, *47*, 35.
[22] Kilian Bizer et al., *Sui Generis Rights for the Protection of Traditional Cultural Expressions: Policy Implications* (2011), https://doi.org/10.4000/books.gup.465

UNESCO CONVENTION ON THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE (2003): LEGAL AND CULTURAL STUDY

The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage[23] (ICHC) has been the most groundbreaking innovation in international cultural[24] and legal practice of the 21st century. As a recognition that, in addition to being found in monuments, artefacts, and material forms, culture[25] can also be found in living processes such as oral traditions, arts of performance, rituals, customs, and traditional craftsmanship, the Convention is a break with the centuries-long, monument-based Eurocentricity of heritage practice. Its adoption is an indicator of growing perception that heritage is a process—it is dynamic, fluid, and in the immediacy of lived experience among members of a community. It is something more than an act of legislation; something more than an event of formal prescription. It has been a move towards philosophical, ethical questioning of what exactly it is to "own," "conserve," or "transmit" culture.[26] Most of all, this emphasis is particularly relevant in the case of music. Music has been more than artistry, but also collective memory, historical trauma, religious signification, ecological knowledge, and linguistic variation. For indigenous and local people, music is connected to land, identity, and spirituality and cannot be isolated from these contexts without loss of meaning. The ICHC honours this interdependence by situating cultural bearers—more than extraneous institutions—at the centre of any conserving endeavour. It acknowledges that communities are not passive objects to be conserved, but the legitimate authors, interpreters, and transmitters of their cultural practices.

This focus on community participation is one of the Convention's core values. By obliging states to facilitate the active, free, and informed participation of communities in the identification and protection of their heritage, the ICHC aligns itself[27] with more universal human rights standards. The convergence of the Convention with the Free, Prior, and Informed Consent (FPIC) norm is especially important. FPIC, as codified in the UN Declaration on the Rights of Indigenous Peoples[28] (UNDRIP), entails not just consultation,

[23] United Nations Educational, Scientific and Cultural Organization, (2003, October 17). Convention for the safeguarding of the intangible cultural heritage, 2368 U.N.T.S. 3. 3
[24] Blake, J. (2004), Developing a new standard-setting instrument for the safeguarding of intangible cultural heritage : Elements for consideration, *Museum International, 56*(1), 21–31
[25] Lixinski, L. (2013), *Intangible cultural heritage in international law*, OUP Oxford
[26] Blake, J., & Lixinski, L. (Eds.), (2020), *The 2003 UNESCO intangible heritage convention: A commentary*, Oxford University Press
[27] Graber, C. B. (2006), The new UNESCO convention on cultural diversity: A counterbalance to the WTO ? *Journal of international economic law*, *9*(3), 553-574
[28] Assembly, U. G. (2007), United Nations declaration on the rights of indigenous peoples, *UN Wash*, *12*, 1-18

but also the giving of consent—free from coercion and voluntarily given—by communities before their knowledge, resources, or traditions are developed by others. In practice, this means that states, companies, or scholars cannot legally or ethically document, archive, take, or distribute traditional music[29] styles without community participation and consent. This is a radical departure from previous anthropological and archival practice, which seemed to treat cultural expressions as freely pluckable knowledge.

Moreover, the Convention's principle is, in fact, contrary to intellectual property management economic rationality. While copyright regimes are based on exclusivity, single proprietorship[30], and economic reward, the ICHC is based on collective guardianship, non-commodification, and cultural transmission. This is required in the era of intensification of marketisation of culture[31] under global capitalism because music, especially music of indigenous or marginalised countries, is at risk of being harvested and recontextualised by digital media, streaming services, and artificial intelligence technologies. These technologies can reproduce or remix traditional melodies without reference, leave, or payment. For this reason, the ICHC presents an alternative story. It says that music is not a sonic commodity to sell and consume but a living repository of social and historical value that needs to be safeguarded as a cultural entitlement, not commercial property.

But this protection is mediated through a variety of mechanisms, like national inventories and international lists of recognition. National inventories, as Article 11(b) imagines, require states to identify and record the intangible cultural heritage on their territory. These inventories are bottom-up and participatory, with the communities themselves being part of the process of recording and categorisation. In theory, these inventories can save delicate traditions from disappearance and can be policy-making, financing, and education tools. But their usefulness is patchy. Without legally binding measures or mechanisms, recording musical tradition in an inventory will not get very far in preventing unauthorised use[32], especially in the digital environment. Indeed, such recording might have the perverse effect of putting traditions at risk by exposing them to harm by making them more visible and accessible with no protection attached.

[29] Lenzerini, F. (2011), Intangible cultural heritage: The living culture of peoples, *European Journal of International Law*, *22*(1), 101-120
[30] Lázaro Ortiz, S, & Jiménez de Madariaga, C. (2022), The UNESCO convention for the safeguarding of the intangible cultural heritage: a critical analysis. *International journal of cultural policy*, *28*(3), 327-341
[31] Navarro, B. (2016), Creative industries and Britpop: the marketisation of culture, politics and national identity. *Consumption Markets & Culture*, *19*(2), 228-243
[32] Awopetu, R. (2019), In defense of culture: Protecting traditional cultural expressions in intellectual property. *Emory LJ*, *69*, 745

Internationally, the ICHC creates two principal listing mechanisms: the Representative List of the Intangible Cultural Heritage of Humanity[33] and the List of Intangible Cultural Heritage in Need of Urgent Safeguarding[34]. The Representative List aims to place in the limelight practices that show the diversity of intangible heritage and emphasise its significance. The Urgent Safeguarding List, on the other hand, addresses practices facing extinction, with specific intervention and assistance. India, for example, has been able to list various musical forms like Baul music[3536], Vedic chanting[37], and Koodiyattam[38] under these lists, thus providing global recognition to local culture. These listings can be useful to access money, tourism, and cultural pride. But simultaneously, they pose questions regarding who gets to tell the story of authenticity. International recognition involves the burden of performative "purity," which can smother the organic evolution of traditions that thrive on hybridity, improvisation, and contextual change.

This recognition/control tension has been objected to by a lot of scholars. Christoph Brumann[39], Richard Kurin[4041], among others, argue that institutionalisation of intangible heritage has the effect of generating what they refer to as "museumification"—a mechanism whereby cultural practice becomes fixed in place and time, scripted for external use, and evaluated in terms of state or UNESCO-approved criteria. This can be particularly injurious to musical practices, which thrive on spontaneity, oral tradition, and local reinterpretation. For example, a listed folk song might be pressured into standardisation to one specific version for nationalist or tourist agendas at the expense of its multiplicity and fluidity. The irony here is that through trying to salvage a tradition, one can reify and standardise it so that it ceases to become more significant to its people and becomes less responsive.

[33] UNESCO, *Representative List of the Intangible Cultural Heritage of Humanity: Criteria Intangible Heritage* (2008)
[34] Lázaro Ortiz, S., & Jiménez de Madariaga, C. (2022), The UNESCO convention for the safeguarding of the intangible cultural heritage: a critical analysis. *International journal of cultural policy*, *28*(3), 327-341.
[35] Karim, A. (1987), [Review of *The Music of the Bauls of Bengal*, by C. Capwell]. *Asian Folklore Studies*, *46*(1), 140–142, https://doi.org/10.2307/1177905
[36] Capwell, C. H. (1981), *The music of the Bauls of Bengal* (Doctoral dissertation, Harvard University).
[37] Arnold, A. (Ed.). (2017), *The Garland Encyclopedia of World Music: South Asia: the Indian Subcontinent*. Routledge
[38] Chandra, S. Koodiyattam–The Heritage Drama of Kerala.
[39] Brumann, C. (2014), Heritage agnosticism: a third path for the study of cultural heritage. *Social Anthropology/Anthropologie Sociale*, *22*(2), 173-188
[40] Kurin, R. (2004), Safeguarding Intangible Cultural Heritage in the 2003 UNESCO Convention: a critical appraisal, *Museum international*, *56*(1-2), 66-77
[41] Kurin, R. (2014), US Consideration of the Intangible Cultural Heritage Convention *Ethnologies*, *36*(1), 325-358

One of the most significant weaknesses of the ICHC is that it is not harmonised with other international legal orders, particularly intellectual property and digital technology orders. The Convention does not mention anything about a model for harmonising its goals with WIPO work on traditional cultural expressions or with data protection, copyright enforcement, and algorithmic governance orders. Therefore, there are no laws and institutions through which communities can perceive their traditions being celebrated under the ICHC and commodified under copyright orders. This disjuncture is symptomatic of a broader failure to secure legal coherence in a context of technological convergence and globalisation. It is also symptomatic of the persistent marginalisation of indigenous epistemologies in international law drafting and implementation[42].

Nevertheless, in spite of such practical and structural shortcomings, the Convention is of strategic and normative value beyond measure. Combined with more robust legal instruments—such as the Convention on Biological Diversity[43] (CBD), the Nagoya Protocol[44], and WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore—the Convention can be added to as part of a multi-scalar legal approach to empowering and safeguarding communities. National regimes, too, can discover legitimacy in the norms of the ICHC. India's National Mission on Intangible Cultural Heritage, for example, borrows a page from the Convention while seeking to place preservation work in local contexts. Such interlinkages are bound to draw closer together the ideals of hard law enforcement and soft law principles.

The Convention's diplomatic value cannot be overstated. It provides communities a platform on which to exercise cultural sovereignty, to articulate for policy change, and to claim a voice in international forums. It allows them to frame their cultural practices as not reactionary holdouts from the past but as vibrant landscapes of knowledge, resistance, and creativity. It is particularly urgent in a world where AI, data harvesting, and digital spying aim to encode culture down—with its social anchors removed and commodified en masse. The ICHC, with all its failures, provides a vocabulary through which communities can push against these urges and reclaim their entitlement to cultural self-determination. In short, the ICHC is no magic bullet, but it is a good beginning. It redefines culture as a living, collective, and non-

[42] Nijar, G. S. (2013), Traditional knowledge systems, international law and national challenges: marginalization or emancipation?, *European Journal of International Law*, *24*(4), 1205-1221
[43] Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79
[44] Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, May 20, 2014, 2014 O.J. (L 150) 234

commodifiable force. It gives priority to the voices of tradition creators and preservers. It resists the hegemonic discourses of ownership and economic value, and instead offers a vision of cultural rights based on dignity, continuity, and participation. As digital platforms, global markets, and AI systems increasingly reconstitute the flow of music and tradition, the principles enshrined in the ICHC will remain an invaluable point of reference for anyone who wishes to promote a more just, equitable, and culturally sensitive global order.

MACHINE LEARNING AND THE DISAPPEARANCE OF THE FOLK OR AI AND THE NEW ERA OF MUSICAL APPROPRIATION

The advent of generative AI is a tectonic shift in the cultural politics of music, and it hurts most in the handling of folk and indigenous traditions[4546]. While AI music is marketed as a revolutionary technology for composers[47] or as democratizing creativity, this rhetoric hides a darker, more sinister truth: the quiet assimilation of cultural heritage into corporate data regimes. These traditions—songs of resistance, spirituality, communal labour, ecological memory—are slowly being diminished to "inputs" and not inheritances, "style" and not substance. What is so dangerous about this moment is the speed and scale of erasure. Unlike the past, when cultural appropriation was tied to bodily performance, publication, or recording, generative AI operates at a distance of abstraction that renders the act of appropriation all but invisible. A single AI model,[48] having learned from hundreds of hours of field recordings made under ethnographic or colonial conditions, can now produce infinite variations of "folk-like" music that sound identical to the original but are entirely cut off from its cultural context. This is not theft—it is dismemberment. The cultural body is dismembered into sonic fragments, algorithmically reassembled, and rebranded as innovation.

Additionally, the internal workings of machine learning algorithms are such that, once they have learned from a corpus, they are a "black box"—a contained motor whose contents are no longer accessible to examine or to trace. If Odia folk songs, Saami yoik, or Andean pan flute melodies are part of a training corpus, there is no direct way for communities to discover, or even to resist. Transparency of AI systems, coupled with the enormous power disparity

[45] Dugeri, M. (2024). The Cannibalization of Culture: Generative AI and the Appropriation of Indigenous African Musical Works. *J. Intell. Prop. & Info. Tech. L.*, *4*, 17
[46] Worrell, T., & Johns, D. (2024), Indigenous considerations of the potential harms of generative, AI. *Agora*, *59*(2), 33-36
[47]Candusso, S. (2024), *Exploring the impact of generative AI on the music composition market: a study on public perception, behavior, and industry implications* (Doctoral dissertation, Politecnico di Torino)
[48] Kanhov, E., Kaila, A. K., & Sturm, B. L. (2024), Innovation, data colonialism and ethics: critical reflections on the impacts of AI on Irish traditional music. *Journal of New Music Research*, 1-17

between tech corporations and indigenous peoples, ensures that the most vulnerable are also the most excluded from the debate. This has deep implications not just for intellectual property law but for cultural justice in and of itself. Erasure of the folk by machine learning is more a crisis of civilisation than a legal abomination. When music is severed from the land, people, and philosophy that gave it life, it is no longer heritage—it is entertainment without memory, beauty without responsibility. The philosophical foundations of much indigenous musical thought—where song is less expression than a way of knowing, healing, and being about the land—are untranslatable to the commodified abstraction of AI.

The question is not how to control AI, but how to decolonise it. What would it mean to create AI systems that are accountable to the communities whose practices they appropriate? How might we envision "consent architectures" for cultural knowledge, where the indigenous communities have real-time agency over how their songs are being used, by whom, and for what ends? Can we envision a system of licensing not on individual copyright but on customary law, kinship protocol, and collective stewardship? These are not technical questions—they are ethical responsibilities. Something greater than monetary reparations is at stake. Communities are not simply asking for royalties or credits, though those might be included in the redress. What is asked for is acknowledgement of cultural self-determination, of historical responsibility, of the ability to become something greater than the extractive imagination of Silicon Valley. To deny this is to let a new colonialism be forged—one where the map is not redrawn on paper but in code, where extraction is not by ship or by gun, but by algorithms that incant in plundered voices.

Here, the phrase "the disappearance of the folk" acquires a grim literalness. When AI replicates a tradition without community, context, or permission, it not only substitutes that tradition—it replaces it. The market compensates for the copy, not the original. The search engine is giving preference to the AI version, not the ancestral version. And in this cycle of synthetic echo, the original slowly becomes silent, not because it was lost, but because it was swamped. If we are to dismantle this course, it will require more than reformist tinkering with copyright law. It will require a reimagination of the relationship between technology, culture, and justice. It will require placing at the forefront the knowledge systems that have long been excluded, not as commodities to be extracted, but as living epistemologies with their own rules, rhythms, and rights. Only then can we be certain that in the age of artificial intelligence, the real intelligence—the ancestral, the communal, the embodied—does not fade into silence.

COMPARATIVE LEGAL ANALYSIS: NATIONAL SYSTEMS PROTECTING FOLK AND INDIGENOUS MUSIC IN THE AI AGE

The international intellectual property protection regime continues to be highly fragmented, particularly in the protection of folk and indigenous music. Although the majority of legal systems assume a Euro-American concept of originality and authorship, none of them have effectively addressed the collective, intergenerational, and spiritual origins of traditional cultural forms (TCEs). The advent of AI music composition has only highlighted the problem, with folk cultures being systematically raided for data with very little convergent legal protection. Comparative examination of laws in India, the United Kingdom, Australia, and the United States provides convergences and divergences in the recognition and protection of such cultural forms.

INDIA: SEGMENTED PROTECTION AND CULTURAL DISCONNECTION

India has one of the world's richest folk and tribal music cultures, but its law is not yet adequately adjusted to safeguard these from digital exploitation. The revised Indian Copyright Act 1957,[49] still fails to specify collective authorship in addition to joint authorship by identifiable individuals. Section 2(d)[50] of the Act defines an "author" in terms not including communities and oral tradition, and moral rights under Section 57[51] are once again conferred upon identifiable individuals, not collectives.

Though there are state-funded documentation programs like the National List on Intangible Cultural Heritage (NMICH) and the Sangeet Natak Akademi, they are not legally designed for misappropriation avoidance. There is minimal legislative action even in the case of AI and digital sampling in the cultural context.

UNITED KINGDOM: CULTURAL BLIND SPOTS IN A RESTRICTIVE IP SYSTEM

The UK Copyright, Designs and Patents Act 198,8[52] is based on a classical IP model which respects originality, fixation, and individual authorship—prerequisites with which oral folk culture is not acquainted. The indigenous cultures of the UK are hardly given any consideration, and customary or communal origins of music are unheard of by law. The UK has taken the lead in WIPO discussions on TCEs, but not in legislating for it to be

[49] Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India)
[50] Copyright Act, 1957, § 2(d), No. 14, Acts of Parliament, 1957 (India)
[51] Copyright Act, 1957, § 57, No. 14, Acts of Parliament, 1957 (India)
[52] Copyright, Designs and Patents Act 1988, c. 48 (UK)

implemented in UK law. There is no obligation under the law for developers of AI to highlight sources of data to train generative models. It is therefore a case[53] of Scottish folk music or other folk repertoires being scraped into datasets and marketed with no obligation under the law.

AUSTRALIA: ENCOURAGING AWARENESS OF INDIGENOUS CULTURAL RIGHTS

Australia is the only jurisdiction where judicial involvement in Indigenous rights to culture has been observed, albeit in isolated and exceptional instances. The Milpurrurru v Indofurn Pty Ltd (1994)[54] and Bulun Bulun v R & T Textiles (1998)[55] cases created the insufficiency of traditional copyright law to effectively protect Aboriginal music and artwork on the grounds of customary law and collective authorship. As long as Australia's Copyright Act 1968[56] continues to be limited to private interests, attempts at non-statutory culturally sensitive protocol development by organisations such as the Australia Council for the Arts[57] and AIATSIS[58] have been underway. These have been ethics guidelines on use, attribution, and consultation with the community. These are non-statutory guidelines and not legally binding; AI developers are not bound by law to adhere to them. Proposed changes, such as the inclusion of a sui generis regime for Indigenous Cultural and Intellectual Property (ICIP), continue to be on the table, but not legislation.

UNITED STATES: PATCHWORK PROTECTIONS AND COMMERCIAL BIAS

In the United States, the Copyright Act of 1976[59] is similarly slanted towards individual, fixed, and original work. There is no explicit federal protection of indigenous or communal music, and Native American communities have to resort to trademark law (e.g., Navajo Nation v. Urban Outfitters) or custom tribal IP codes, which have very limited extraterritorial impact. The 1990 Indian Arts and Crafts Act[60] merely protects against misrepresentation, but

[53] Kanhov, E., Kaila, A. K. & Sturm, B. L. (2024). Innovation, data colonialism and ethics: critical reflections on the impacts of AI on Irish traditional music. *Journal of New Music Research*, 1-17
[54] Milpurrurru v. Indofurn Pty Ltd (1994) 54 FCR 240 (Austl.)
[55] Bulun Bulun v. R & T Textiles Pty Ltd (1998) 41 IPR 513 (Austl.)
[56] Copyright Act 1968 (Cth) (Austl.)
[57] Council, A., 2013, Australia council for the arts, Australia Council for the Arts
[58] Ward, G. K. (2011), The role of AIATSIS in research and protection of Australian rock art, *Rock Art Research: The Journal of the Australian Rock Art Research Association (AURA)*, *28*(1), 7-16
[59] Copyright Act of 1976, 17 U.S.C. §§ 101–810 (2012)
[60] Indian Arts and Crafts Act of 1990, 25 U.S.C. §§ 305–305f (2018)

not musical content. Moreover, in the 2018 Music Modernisation Act[61], AI music could be copyrighted even though it originates from traditional cultural content. This raises the misappropriation stakes, especially since models such as OpenAI's Jukebox are based on data of questionable origin. While the Smithsonian Institution and the Library of Congress maintain huge folk archives[62], there are no binding legal prohibitions excluding the usage of this content for training generative AI models, or provisions under which communities can object to usage.

AFRICA: BETWEEN RICH ORAL TRADITIONS AND STRUCTURAL DISEMPOWERMENT

The African continent boasts a wide variety of indigenous music traditions, the majority of which have been firmly entrenched in communal memory, ritual, narrative, and socio-spiritual functions. From the West African griot traditions to the Central African tradition of polyphonic voice[63] to southern ngoma drum culture[64], music is not entertainment but a living history of resistance, identity, and history. However, most African countries operate under colonial copyright regimes inherited from European colonial powers. These regimes do not usually leave space for the collective, oral nature of traditional music. The African Regional Intellectual Property Organisation (ARIPO) and the Organisation Africaine de la Propriété Intellectuelle (OAPI) have developed regional policy guidelines on Traditional Knowledge and Traditional Cultural Expressions (TCEs), but these are soft law instruments with minimal enforcement.

Kenya, South Africa, and Ghana have all expressed interest in sui generis protection of folklore. Ghana's Copyright Act of 2005[65] contains a provision on folklore protection that gives the state the role of a trustee on behalf of the people. But this is to facilitate the objective of vesting power in national governments rather than the communities. For Africa, in the AI case, there is the double exposure: not only will its musical heritage be appropriated by global tech firms without consent or recompense, but most communities do not have legal

[61] Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018)
[62] Bartis, P. T. (1982), *A History of the Archive of Folk Song at the Library of Congress: the first fifty years*. University of Pennsylvania
[63] Huron, D. (1989), Voice denumerability in polyphonic music of homogeneous timbres, *Music Perception*, *6*(4), 361-382
[64] Rutsate, J. (2024), Ngoma Materiality and Instrumentality: Reconfiguring Malawian Indigenous Music Digitization for Global Music Appreciation. In *De-neocolonizing Africa: Harnessing the Digital Frontier* (pp. 449-461). Cham: Springer Nature Switzerland
[65] Copyright Act, 2005, Act 690 (Ghana)

or digital infrastructure to even be aware when such misappropriation has taken place. The invisibility of AI training datasets is one of the causes of this asymmetry, and there is no regional digital rights law dealing with the intersection of AI and TCEs.

NEW ZEALAND: BICULTURAL FOUNDATIONS OF LAW AND THE EMERGENCE OF MĀORI IP ADVOCACY

New Zealand presents a different case one in which the recognition of Indigenous cultural rights has been more formally established within the country's political and legal environment. At its core is the Treaty of Waitangi[66] (1840), a founding treaty between the British Crown and Māori iwi (tribes) that increasingly has been interpreted as promising cultural and intellectual property rights. The Waitangi Tribunal has made a series of groundbreaking reports confirming the safeguarding of mātauranga Māori[67] (Māori knowledge systems), including music, haka, and oratory. One of them, WAI 262, recommended the establishment of a legal framework acknowledging Māori ownership of traditional knowledge and enabling culturally appropriate decision-making on its utilisation. Subsequent governments have not yet fully followed up on the report, and statutory protection of Māori music is still precarious under existing copyright law. In spite of all this, New Zealand has established ethical frameworks through organisations such as Toi Māori Aotearoa and Creative New Zealand that promote community-based practices of consent and attribution of the arts. Such frameworks promote respect for whakapapa [68](genealogy) and tikanga[69] (customary law), and sharing custodianship. Online, Māori activists desire protocols preventing Indigenous music incorporation into AI training datasets without consent and sharing benefits. Furthermore, New Zealand's adoption of cultural sovereignty is also influencing debate on algorithmic ethics. Increasingly, there is debate around the idea of "data sovereignty" among the Māori, contending that AI systems with Indigenous cultural content must be governed by Māori law and co-designed with iwi authorities.

COMPARATIVE REFLECTIONS

In each of the four legal systems, the same pattern applies: traditional music is valued as heritage but insufficiently protected by law. India and Australia have more affluent people's

[66] Treaty of Waitangi, Feb. 6, 1840, Māori–U.K., reprinted in *1* N.Z. Treaty Series (1959)
[67] Hikuroa, D. (2017), Mātauranga Māori—the ūkaipō of knowledge in New Zealand, *Journal of the Royal Society of New Zealand*, *47*(1), 5-10
[68] Te Rito, J. S. (2007), Whakapapa: A framework for understanding identity, *MAI Review LW*, *1*(3), 10.
[69] Mead, H. M. (2016), *Tikanga Maori (revised edition): Living by Maori values*, Huia publishers

traditions and some recognition of community rights, but no legally enforceable mechanism. The UK and the US, with more formal IP regimes, have even less access. In each of the four legal systems, there are no ethical or legal requirements on AI firms to disclose sources of training data, to obtain permission, or to negotiate benefit-sharing. This comparative legal deficit facilitates the commodification of tradition in the guise of innovation. It permits AI systems to re-code musical heritage as algorithmic simulations that are commercially viable but culturally disconnected. The future legal response needs to go beyond patchwork reform to a plural and postcolonial IP regime that recognises that creativity may not always start with the self, and neither must its reward.

CONCLUSION

Folk and indigenous music upset the very assumptions on which modern copyright law relies: individual authorship, originality, and fixity. These styles are not fixed objects of property, but fluid, morphing modes of collective memory, identity, and resistance. But in the era of algorithms and platforms, establishing cultural visibility and value, these styles are being increasingly commodified, erased, and misappropriated. As this essay has contended, the application of standard copyright regimes to such traditions not only fails to protect them but warps their meaning and transmission. The exclusion of community creation, the rapacious use of folk motifs by mass industries, and the wanton digitisation of culture all represent a legal and moral crisis. At risk is not the preservation of sounds, but the survival of worldviews, rituals, and knowledge systems to which these sounds belong. Looking ahead, conservation needs to be reimagned not as extraction or enclosure but as participatory stewardship anchored in local agency, free consent, and indigenous sovereignty. International models like the UNESCO Intangible Cultural Heritage[70] model and sui generis approaches to new protection provide windows into a more just legal imagination. But deeper change requires more decolonisation of copyright law itself, not simply hearing the words written down, but the silences, the practices, and the relationships that make cultural creation possible. In remaking law for living traditions, we don't just preserve heritage, we reassert the right of communities to sing, remember, and resist as they will.

[70] United Nations Educational, Scientific and Cultural Organization, (2003, October 17), Convention for the safeguarding of the intangible cultural heritage, 2368 U.N.T.S. 3.3