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STOLEN THREADS OR SHARED HERITAGE? RETHINKING INTELLECTUAL PROPERTY AND CULTURAL APPROPRIATION IN THE GLOBAL FASHION INDUSTRY

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ABSTRACT

The global fashion industry frequently appropriates Indigenous Traditional Cultural Expressions (TCEs) without attribution, consent, or benefit-sharing, creating legal uncertainty. Existing intellectual property (IP) systems rooted in Euro-American concepts of individual authorship and limited protection periods are unable to safeguard collective, intergenerational cultural heritage. A critical analysis of India, Kenya, Australia, and Peru reveals that while national models offer partial protection, none effectively address cross-border enforcement or Indigenous cultural rights. International frameworks, such as the UNDRIP, the Convention on Biological Diversity, the Nagoya Protocol, and WIPO negotiations, offer guidance but lack binding authority. The study advocates for a culturally sensitive legal framework incorporating Free, Prior, and Informed Consent (FPIC), mandatory benefit-sharing, and recognition of collective custodianship. Stronger international obligations and harmonized trade and IP laws are necessary to prevent cultural exploitation and support equitable collaboration in fashion.

Keywords: Cultural Appropriation, Traditional Cultural Expressions (TCEs), Indigenous Intellectual Property Rights, Fashion Industry, Sui Generis Legal Framework

INTRODUCTION

In today's world, where fashion trends change in the blink of an eye, one thing remains constant: fashion artists drawing inspiration from history, but is it just borrowing or blatant theft? As the fashion industry thrives with a growth rate of 9.02% year-on-year, the appetite for standout and trendsetting aesthetics is greater than ever. It is undeniable that the fashion industry, driven by trends and the pursuit of novelty, frequently draws inspiration from diverse cultures, but the line between appreciation

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and appropriation blurs when cultural elements are extracted, commodified, and commercialized without proper attribution, respect, or reciprocity.[2] This blurred line led to the emergence of a new concept called cultural appropriation.

Cultural appropriation, a multifaceted and often contentious phenomenon, involves the adoption or use of elements of a minority culture by members of a dominant culture. This concept becomes particularly complex and ethically charged within the fashion industry, where trends frequently draw inspiration from diverse cultural sources.[3] High-end fashion houses such as Dior's "Cruise Collection 2024" altered and misrepresented the pok'u'ul, a Tsotsil male garment from Zinacantán, Chiapas, renaming it an "overcoat." Despite claims of collaboration, this raises concerns of cultural appropriation, misrepresentation, and erasure of the Indigenous heritage of Mexican culture[4].

This thesis adopts a doctrinal and comparative legal research method, relying on primary sources of law such as domestic legislation, judicial decisions, and binding agreements, supported by secondary scholarly literature. The critical analysis of four countries: India, Kenya, Australia, and Peru, helps to assess the advantages and drawbacks of different legal solutions for TCEs in the fashion industry. Moreover, the paper applies critical legal theory to pinpoint the deficiency of the current IP systems structurally and to propose a set of principled suggestions for changes in the law, both locally and globally. To cover these missing parts, this article is aiming to accomplish the research goals listed below: assessing the insufficiencies of current intellectual property systems in safeguarding Indigenous Traditional Cultural Expressions (TCEs) in the worldwide fashion sector, conducting a in detail study of the different legal strategies implemented in India, Kenya, Australia, and Peru, and drafting a set of practical law and policy changes, reflecting not only the local but also the global level, that would facilitate the creation of a viable and culturally appropriate protection framework.

FROM INSPIRATION TO MISAPPROPRIATION: A CRITICAL LENS ON FASHION'S CULTURAL BORROWING

To understand what cultural appropriation in the fashion industry means, we first need to understand what culture is. Culture generally refers to the set of shared attitudes, values, goals, and practices that characterize an organization or institution. This definition aligns with the broader usage of the term, encompassing the distinct "way of life" or "social norms" within a specific group or entity.[5] "As per culture: a critical review of concept and definition, which has compiled 164 definitions of culture, has explained that culture consists of patterns, explicit and implicit, of and for behaviour acquired and transmitted by symbols, consisting of distinctive achievements of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional ideas and especially their attached value; cultural system may, on the one hand, be considered as product of action, and the other as conditional elements of further actions"[6]. Whereas appropriation in the fashion world is not limited to

2. Gebru, The Piracy Paradox and Indigenous Fashion, SSRN Electronic Journal (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3908765 [https://perma.cc/XXXX-XXXX] (last visited Mar. 25, 2025).
3. P. Haynes, The Ethics and Aesthetics of Intertextual Writing: Cultural Appropriation and Minor Literature, 61 B.J. Aesthetics 291 (2021), https://doi.org/10.1093/aesthj/ayab001 (last visited Mar. 25, 2025).
4. Organized Civil Society of Zinacantán Culture, Residents and Artisans from Zinacantán Respond to the DIOR Brand Appropriation of the Traditional Dress of the Municipality (June 8, 2023), Schools for Chiapas, https://schoolsforchiapas.org/residents-and-artisans-from-zinacantan-respond-to-the-dior-brand-appropriation-of-the-traditional-dress-of-the-municipality/ (last visited Mar. 25, 2025).
5. Black's Law Dictionary (Bryan A. Garner ed., 11th ed. 2019) (last visited June 1, 2025).
6. Yuniya Kawamura & Jong-Whan Marc de Jong, Cultural Appropriation in Fashion and Entertainment (Bloomsbury Publishing 2022), https://www.bloomsbury.com/ (last visited June 1, 2025).

a particular act, but is a composite spectrum that goes from inspiration to imitation, borrowing, and ultimately, theft. Appropriation is "an umbrella term that encapsulates different degrees of borrowing, ranging from inspiration to theft," highlighting the ambiguity and contradictions involved in such acts of cultural engagement.[7] When it comes to appropriation in the fashion industry, the concept of borrowing becomes particularly corrupt as it mostly implies neither a return nor even acknowledgment, thereby raising ethical concerns about authorship and originality in design practices. When cultural expressions are appropriated or reproduced by outsiders, mainly for profit or aesthetic appeal, without acknowledgment or consent, this strips them of their original context, leading to what is now called cultural appropriation. Appropriation, such as cultural appropriation in fashion, refers to the adoption of elements from a minority or marginalized culture by individuals or entities belonging to a dominant culture, often without understanding, acknowledgment, or respect for their original meaning and context[8]. This phenomenon can be understood as "a complex political and ethical discussion with many nuances and layers that require careful and critical unpacking."[9] These cases underscore the pressing need for better protection of traditional cultural expressions (TCEs) under intellectual property (IP) regimes.[10] For example, in 2015, the French fashion house Isabel Marant was accused of plagiarizing the traditional Tlahuitoltepec blouse, a garment indigenous to the Mixe community in Oaxaca, Mexico, by using its patterns in a commercial collection without attribution or permission. The case gained international attention and highlighted the limitations of IP laws, which typically fail to recognize collective and customary ownership over such cultural heritage.[11] These cases reveal not only ethical failures but a deep legal vacuum when it comes to protecting collective, intergenerational, and culturally significant fashion expressions.

GUARDIANS OF IDENTITY: THE ROLE AND MISUSE OF TRADITIONAL CULTURAL EXPRESSIONS IN FASHION

TCEs generally refer to the various creative expressions of an Indigenous community in tangible, intangible, and mixed forms. "These expressions include music, musical instruments, art, dance, performances, ceremonies, signs, symbols, handicrafts, designs, names, textiles, etc".[12] These TCEs are deeply connected to their history, beliefs, spirituality, cultural heritage, traditions, and, importantly, to their identity.[13] Yet, they are often misappropriated mainly in the fashion sector

7. Denise Nicole Green & Susan B. Kaiser, Fashion and Appropriation, 4 Fashion, Style & Popular Culture 145 (2017), https://doi.org/10.1386/fspc.4.2.145_2 (last visited June 5, 2025).
8. World Intellectual Property Organization, Intellectual Property and Traditional Cultural Expressions/Folklore: Booklet No. 1 (WIPO 2003), https://www.wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf (last visited June 5, 2025).
9. Denise Nicole Green & Susan B. Kaiser, Fashion and Appropriation, 4 Fashion, Style & Popular Culture 145 (2017), https://doi.org/10.1386/fspc.4.2.145_2 (last visited June 5, 2025).
10. Inspiration or Plagiarism? Mexicans Seek Reparations for French Designer's Look-Alike Blouse, The Guardian (June 17, 2015), https://www.theguardian.com/global-development-professionals-network/2015/jun/17/mexican-mixe-blouse-isabel-marant [https://perma.cc/S6BE-3XMB] (last visited Mar. 25, 2025).
11. Joyce Boland-DeVito, Fashion(ing) a Political Statement: A Review of the Legal & Social Issues that Arise from Banned Political Clothing and Other Controversial Fashion Items in Light of the U.S. Supreme Court's Decision in Minnesota Voters Alliance v Mansky, 30 Fordham Intell. Prop. Media & Ent. L.J. 493 (2020) https://ir.lawnet.fordham.edu/iplj/vol30/iss2/4 accessed 21 December 2025.
12. World Intellectual Property Organization, The Protection of Traditional Knowledge: Updated Draft Gap Analysis, WIPO/GRTKF/IC/47/8 (Mar. 21, 2023), https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_47/wipo_grtkf_ic_47_8.pdf (last visited Mar. 25, 2025).
13. World Intellectual Property Organization, Fashion and Traditional Knowledge, WIPO, https://www.wipo.int/en/web/traditional-knowledge/fashion#:~:text=These%20TCEs%20are%20deeply%20connected,creative%20input%20and%20fresh%20ideas (last visited Mar. 25, 2025).

without any monetary compensation or consent. The Tale of cultural appropriation by Fashion Brands is not new, but a long and complex story of colonized people mimicking the fashion trends of their colonizers.[14]. One such case that got a lot of attention was of Maasai beadwork from Kenya and Tanzania, which is a symbol of identity and cultural heritage, and has been extensively exploited by high-end brands like Louis Vuitton and Ralph Lauren without providing any acknowledgment or compensation to the community. Despite the existence of Kenya's Protection of Traditional Knowledge and Cultural Expressions Act (2016)[15], these brands appropriated the Maasai elements without consent by exploiting the legal gap in this act that recognizes individual ownership, making it difficult for the Maasai to protect their collectively owned TCEs.

GLOBAL AND NATIONAL LEGAL FRAMEWORKS FOR THE PROTECTION OF INDIGENOUS CULTURAL HERITAGE

International Legal Instruments Governing Indigenous Cultural Heritage and Traditional Expressions

The Contribution of WIPO to the Safeguarding of Traditional Cultural Expressions

The World Intellectual Property Organization (WIPO), a specialized agency of the United Nations, is a leading actor in the conversation about IP rights related to TCEs.[16] TCEs can involve a variety of cultural expressions, like traditional textiles, symbols, patterns, and designs, that are often communal expressions of the cultural heritage and identity of Indigenous and local communities. With the increasing commercialization and appropriation of TCEs, particularly in the fashion industry, WIPO formed the Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC)[17] in 2000 to initiate discussions on the potential for an international legal instrument that provides effective protection of TCEs and TK at the international level.[18]

Of the more than 20 years of discussions, no binding international treaty has emerged due primarily to the difference in approach between TCEs, which are collective, intergenerational, and cifikal in that they have no fixed duration, and traditional IP regimes that are founded on individual authorship, originality, and a limited duration for protection. WIPO's framework is still struggling with defining the scope of protectable expressions, who the rights holders are (which are often collective), and whether protection should be defensive or offensive.

Nonetheless, WIPO has made strides by creating holistic toolkits, model provisions, and databases to help communities document and assert their rights to their cultural heritage. WIPO also calls on national governments to create local legal protections that reflect their sociocultural realities. An example of this is the "Traditional Knowledge Documentation Toolkit,"[19] This provides Indigenous communities with tools to

14. Angela Sancartier, Colonialism and Imperialism, in Encyclopedia of Clothing and Fashion (Apr. 2, 2010).
15. Protection of Traditional Knowledge and Cultural Expressions Act, No. 33 of 2016 (Kenya), https://www.klrc.go.ke/ [https://perma.cc/TBQ7-MZZP].
16. WIPO Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, World Intellectual Property Organization, https://www.wipo.int/en/web/igc [https://perma.cc/45MN-X4W2] (last visited June 30, 2025).
17. World Intellectual Property Organization (WIPO), Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), https://www.wipo.int/en/web/igc [https://perma.cc/7U8D-KABH].
18. WIPO Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, World Intellectual Property Organization, https://www.wipo.int/en/web/igc [https://perma.cc/45MN-X4W2] (last visited June 30, 2025).
19. World Intellectual Property Organization, Documenting Traditional Knowledge – A Toolkit (WIPO Pub. No. 1049 2017), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1049.pdf (last visited Nov. 16, 2025).

document and manage their cultural expressions while respecting confidentiality and customary laws. Nonetheless, the limitation of WIPO's work to a non-binding instrument significantly hampers its capacity to effectively regulate the cultural appropriation of the fashion industry practically. Without enforceable obligations, Indigenous communities do not have concrete means to confront the unauthorized use of their culture or to receive remedies across different countries. Therefore, world fashion brands are still free to exploit TCEs without being held accountable. The stalled talks, hence, emphasize the crucial gap that WIPO's work is mostly normative and not operational, which puts into question its capability to provide genuine protection instead of just giving a symbolic show of support.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Protection of Indigenous Cultural Expressions

First and foremost is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[20], which recognizes the rights of Indigenous peoples to control, protect, and develop their heritage. Among the most important articles to understand in terms of cultural appropriation and intellectual property are two in particular are Article 11(1)[21] and Article 31(1).[22] These provisions clearly articulate a collective right to cultural heritage, including fashion-related TCEs such as motifs, weaving techniques, and textile elements frequently misappropriated by global fashion brands. UNDRIP provides transformative recognition and legitimization of Indigenous rights with their cultural heritage, traditional knowledge, and expressions. A few of the relevant provisions, including Article 11(1)[23] and Article 31(1),[24] Specifically affirm Indigenous peoples' rights to control, develop, and protect their tangible and intangible cultural property, like textiles, motifs, and weaving techniques, and any TCE that might be relevant to fashion.

Even though UNDRIP is not legally binding, but has begun to influence domestic legal reform around the world. Canada, New Zealand, and Norway have begun to implement UNDRIP principles into national legal frameworks. For example, Canada's newly passed UNDRIP Act mandates the government to ensure that all of its legislation is in alignment with UNDRIP.[25] UNDRIP also empowers Indigenous communities to advocate for Free, Prior, and Informed Consent (FPIC)[26] in matters concerning their cultural property. Particularly relevant as many fashion' companies' market Indigenous designs without any input from Indigenous peoples on how their design will be used or if it reflects their cultural integrity.

Despite the UNDRIP's symbolic impact as a vehicle for Indigenous peoples, it still has several legal, structural, and practical limitations within both national and international legal frameworks, which

20. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (last visited Nov. 16, 2025).
21. United Nations Declaration on the Rights of Indigenous Peoples art. 11(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), https://undocs.org/en/A/RES/61/295 [https://perma.cc/2XZ7-WJFS].
22. United Nations Declaration on the Rights of Indigenous Peoples art. 31(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), https://undocs.org/en/A/RES/61/295 [https://perma.cc/2XZ7-WJFS].
23. United Nations Declaration on the Rights of Indigenous Peoples art. 11(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), https://undocs.org/en/A/RES/61/295 [https://perma.cc/2XZ7-WJFS].
24. United Nations Declaration on the Rights of Indigenous Peoples art. 31(1), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), https://undocs.org/en/A/RES/61/295 [https://perma.cc/2XZ7-WJFS].
25. An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, S.C. 2021, c. 14 (Can.), https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html [https://perma.cc/FDR3-B33N].
26. Office of the United Nations High Commissioner for Human Rights (OHCHR), Free, Prior and Informed Consent of Indigenous Peoples (2005), https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf (last visited Nov. 16, 2025).

limit its ability to combat cultural appropriation in areas like fashion. The limits to UNDRIP can be summarized in four main approaches: (1) soft law legal status: While UNDRIP has considerable moral or political authority, it is not a source of binding international law or legal obligation for member states.[27] Therefore, the safeguards provided by UNDRIP are in danger of being only figurative, that is, merely acknowledging the rights without the tools necessary to ensure that there is oversight and that there are solutions in the commercial sphere for which most people are not aware. (2) Acceptance of State implementation at domestic and theoretical levels: One of the main reasons for the inequality that exists between different states in the matter of the implementation of the UNDRIP is that the latter is mostly left to be adopted voluntarily by the countries. Even in Canada, where the UNDRIP Act [2021][28] aims to develop policy and harmonize all federal laws with the Declaration, the implementation has been gradual and limited, and there is no strong move to reform intellectual property policy to protect TCEs.[29] Thus, it has become highly unstable and unreliable to ensure safety at these times due to political will; hence, commercial exploitation can go on without any control. (3) conflicting realist conceptions with conventional IP systems: "The essential nature of Indigenous heritage is that it is collective, transmitted across generations, and inalienable".[30] While most contemporary IP law supports individual ownership, it requires novelty to be created within a set time. TCEs often rely on a community of creation of cultural heritage over many centuries; there is not a single clear "creator". TCEs are likely not "created" as we understand the term in the West; TCEs are often not "novel," which has implications for originality and copyright. This incompatibility leaves Indigenous fashion designs exposed, as global brands can legally reproduce collective cultural symbols without consent or compensation. By privileging individual authorship and novelty, existing IP law legitimizes appropriation rather than protecting community ownership and (4) non-consideration for sectoral enforcement: UNDRIP lacks an explicit enforcement mechanism and regulatory procedure to address cultural appropriation in specific areas of commerce, including fashion, which has the most egregious appropriation. Consequently, fashion brands exploit gaps in jurisdiction and appropriate Indigenous aesthetic experience with impunity.

UNDRIP establishes a profound moral and political basis for the promotion of Indigenous rights globally. However, it is not current or designed to be the law on which cultural appropriation is examined in the practice of fashion. UNDRIP needs to be coupled with national legislation, embedded in IP law reform, and, preferably, be part of an enforceable international instrument related to Traditional Cultural Expressions and the commercial appropriation of TCEs.

Convention on Biological Diversity (CBD): Bridging Cultural and Biological Protection in the Fashion Industry

The Convention on Biological Diversity (CBD), adopted in 1992 at the Earth Summit in Rio de Janeiro, is a significant international treaty intended to promote the conservation of biological diversity, the sustainable use of its components, and fair and equitable sharing of benefits of genetic resources.[31] Although originally not written with fashion and cultural appropriation in mind, the CBD is also a necessary legal instrument in the field discussing biodiversity, traditional knowledge, and Indigenous rights, especially in

27. S. James Anaya, International Human Rights and Indigenous Peoples 273–75 (2009).
28. Canada, United Nations Declaration on the Rights of Indigenous Peoples Act, S.C. 2021, c. 14.
29. An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, S.C. 2021, c. 14 (Can.), https://laws-lois.justice.gc.ca/eng/acts/U-2.2/page-1.html [https://perma.cc/FDR3-B33N].
30. Erica-Irene A. Daes, Protection of the Heritage of Indigenous People, U.N. Doc. E/CN.4/Sub.2/1995/26, at 4 (June 21, 1995), https://digitallibrary.un.org/record/210438 [https://perma.cc/HR9Y-5AEB].
31. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, https://www.cbd.int/doc/legal/cbd-en.pdf [https://perma.cc/M5XF-9C9K].

sectors like fashion that commodify biological and cultural properties.

Article 8(j)[32] of the CBD is the basis for recognizing Indigenous peoples as knowledge holders and rights-holders rather than merely passive custodians of biodiversity. Importantly, concerning fashion, which increasingly incorporates and is influenced by natural dyes, flora motifs, weaving ideas, and fauna symbols, the recognition that Indigenous people are bearers of rights and responsibilities to their culture and ecosystems is strategic. When cultural practices come from local knowledge and from local ecosystems, the practices described in this clause are sometimes referred to as TCE, inextricably tied to traditional ecological knowledge. The accounting of Indigenous people for the use of these techniques without permission by worldwide fashion brands constitutes both biopiracy and cultural appropriation that in no way adheres to Article 8(j)[33].

The Nagoya Protocol: A Procedural Advancement

The Nagoya Protocol[34], adopted in 2010 as a supplementary agreement to the CBD, strengthens the treaty's third objective, fair and equitable benefit-sharing. It operationalizes access and benefit-sharing (ABS) mechanisms through a legally binding framework that requires:

- Prior informed consent (PIC) of Indigenous peoples and local communities before accessing their traditional knowledge;
- Mutually agreed terms (MAT) for the use of such knowledge and related biological resources;
- Equitable benefit-sharing, whether monetary (royalties) or non-monetary (technology transfer, recognition).

This has profound implications for the fashion industry, which often commercializes Indigenous cultural and biological resources without such agreements. While the CBD offers many progressive principles, it has many limitations in protecting TCEs in the fashion space: (1) Focus on biodiversity, not cultural expression only: The CBD's main objective is biological conservation, not cultural conservation per se; TCEs that do not have a tie to biodiversity may not fit within CBD considerations. Consequently, a considerable portion of the Indigenous fashion culture is not covered by the CBD, as the majority of the motifs and designs borrowed are cultural and not biological. Thus, brands have the liberty to use these patterns for their commercialization without any legal restrictions. (2) Limited enforcement and weak implementation: Despite widespread adoption of over 190 parties, enforcement of Article 8(j)[35] has been limited in countries of past and/or current colonization, and Indigenous communities' awareness of the status of laws of ABS continues to be limited, or access to legal recourse remains elusive. This weak enforcement allows fashion industries to continue exploiting Indigenous knowledge without meaningful accountability or accessible legal remedies. (3) vagueness in regards to fashion and the legality of IP: The CBD does not specifically regulate commercial industries like fashion, nor does it stipulate how IP systems should recognize collective ownership of traditional knowledge or designs. Such a legal gray area in effect allows the big fashion houses to defy Indigenous rights altogether, thereby turning the culture of the Aboriginal peoples into

32. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, art. 8(j), https://www.cbd.int/convention/text/ (last visited Nov. 16, 2025).
33. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, art. 8(j), https://www.cbd.int/convention/text/ (last visited Nov. 16, 2025).
34. 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, Oct. 29, 2010, https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf [https://perma.cc/XF9H-QEGA].
35. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79, art. 8(j), https://www.cbd.int/convention/text/ (last visited Nov. 16, 2025).

a resource that can be marketed without those communities having any legal grounds to oppose the co-optation of their culture. (4) US Exclusion; The CBD's lost regulatory power due to the absence of the US, the very country that houses major global fashion giants, has been a key factor in the rise of these brands. These are some of the most powerful brands in the world, which are now able to take Indigenous cultural expressions at their will without the need to share profits or obtain consent, thus diluting the possibility of a unified international account being held.

On the whole, the Convention on Biological Diversity (CBD) and the Nagoya Protocol, although they have a forward-looking intention, do not provide significant safeguards for Indigenous cultural expressions in the fashion sector. Thus, the outcome is a system in which the knowledge of the Indigenous can be taken and used for commercial purposes without the giving of consent, sharing of benefits, or accountability, thereby strengthening the global fashion economy that is based on asymmetry, dispossession, and cultural erasure instead of being an equitable partnership.

The analyzed international agreements, when considered in total, reveal a deep-rooted defect at their core: they essentially acknowledge Indigenous cultural rights symbolically but do not provide any mechanisms that can be enforced to prevent their commercial exploitation. The lack of binding obligations, clear accountability routes, or sector-specific enforcement has, in effect, paved the way for a legal environment in which global fashion corporations can appropriate Indigenous cultural expressions without fear of consequences. This gap between rights discourse and legal reality is colonial in nature, and therefore, it still allows for the extraction of Indigenous cultural resources without the reparative redistribution of benefits, economic power, rather than justice, being allowed to determine the outcomes. Consequently, international standards will be regarded as mere performance if they lack enforceable obligations and remedial avenues, because in that case, the burden of resistance is imposed on the communities whose heritage is the most exploited. This failure is an indication of the necessity for national frameworks that are not only capable of recognizing the rights of Indigenous peoples but also must be able to provide these rights with legal protection.

NATIONAL LEGAL FRAMEWORKS FOR INDIGENOUS CULTURAL PROTECTION: A COMPARATIVE PERSPECTIVE

While global standards such as the UNDRIP and the Convention on Biological Diversity provide general principles, safeguarding TCEs in fashion remains mostly a matter of domestic legislation. Standard IP systems, on the other hand, are not designed to protect knowledge that is owned collectively and is culture-based. The following part looks at the ways these four countries - India, Kenya, Australia, and Peru - have tried to handle issues related to Indigenous fashion and the use of traditional patterns, to varying extents of success.

India: The Geographical Indications (GI) Model — A Limited Approach to Protecting Indigenous Fashion Heritage

India is a diverse cultural and ethnic nation that comprises an enormous array of traditional art forms, textiles, and handicrafts based on Indigenous ways of knowing, and where those expressions are not just products but are associated with communities. To protect such community-based expressions, India adopted the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the "GI Act").[36]Although India has made strides in protecting origin-based goods associated with reputation, the GI Act does not have a significant ability to protect as a means to protect traditional fashion or cultural expressions on a commercial level.

The GI Act was developed under India's obligations under the TRIPS Agreement of the World Trade Organization, namely, Articles 22–

36. The Geographical Indications of Goods (Registration and Protection) Act, No. 48 of 1999 (India).

24[37], which set out the requirement to protect products that originate in a specific geographical origin with qualities, reputation, or characteristics that are intrinsically linked to that geographical origin.[38] India has registered over 400 GIs, including major fashion and textile crafts such as Banarasi Brocade, Pochampally Ikat, Kanjeevaram Silk, and Chikankari Embroidery. These GIs help communities distinguish their products in the marketplace, allowing rural and tribal artisans to access branding rights and prevent unauthorized commercial use of the GI-tagged name by non-local producers.[39]

Despite these benefits, the GI Act faces significant limitations in the cultural appropriation discourse, especially in the global fashion industry: (1) Focus on Economic Origin, Not Cultural Meaning: GIs primarily protect the economic goodwill and regional reputation of products, but do not recognize the spiritual, ceremonial, or ancestral significance that many Indigenous garments carry.[40] (2) Product-Based, Not Motif-Based Protection: The GI registration protects the name of the product but not the individual motifs, symbols, or designs embedded in it. As a result, foreign or domestic fashion brands can copy the design elements without using the protected name and escape liability[41]. (3) No Protection Against Cultural Misuse or Misrepresentation: GIs do not prevent inappropriate or disrespectful use of the cultural context, such as converting sacred textiles into commercial fashion accessories, nor do they demand free, prior, and informed consent of the Indigenous community. (4) Lack of Global Enforcement Mechanisms: While India provides domestic protection, international recognition and enforcement of Indian GIs are limited. Except for a few reciprocity arrangements with the EU, fashion brands operating outside Indian jurisdiction can replicate TCEs without legal consequences.[42]

The Indian GI regime, while positioned as a mechanism to empower artisans and preserve cultural heritage, fundamentally reproduces the same market-centered logic that enables cultural appropriation. By protecting only the commercial reputation of geographically linked goods rather than the cultural sovereignty or collective custodianship of the communities that create them, the GI framework reduces living heritage to an economic asset rather than recognizing it as a continuing cultural right. This legal architecture aligns with TRIPS-driven trade priorities rather than Indigenous epistemologies, reinforcing a system where protection is granted only if culture is rendered legible to the market. In doing so, it privileges commercial branding over cultural meaning and perpetuates a hierarchy in which multinational fashion corporations retain the upper hand. This exposes a deeper structural flaw: the GI system treats culture as a resource to be packaged and sold rather than as a living, relational system of identity, spirituality, and community belonging. In global fashion markets, where enforcement beyond borders is practically non-existent, the GI regime offers symbolic legitimacy but little tangible power, creating a façade of protection that obscures the continuation of colonial appropriation under neoliberal intellectual property law.

Kenya: Protection of Traditional Knowledge and Cultural Expressions Act, 2016 — A

37. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, arts. 22–24.
38. Agreement on Trade-Related Aspects of Intellectual Property Rights art. 22–24, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.
39. Ranjan, Pratyush N., Geographical Indications in India: A Case for the Misappropriated Communities, 17 J. World Intell. Prop. 88, 95–96 (2014).
40. Madhavi Sunder, Cultural Dissent, 54 Stan. L. Rev. 495, 502–03 (2001).
41. Peter Drahos, The Cultural Significance of Intellectual Property, 17 Austl. J. L. & Soc'y 161, 167 (2001).
42. European Union–India Bilateral Trade and Investment Agreement (proposed), available at https://policy.trade.ec.europa.eu/ (last accessed June 27, 2025).

Holistic Community-Centric Approach to TCEs

Kenya's Protection of Traditional Knowledge and Cultural Expressions Act, 2016, represents one of the most comprehensive and community-sensitive national laws aimed at protecting Indigenous knowledge and creativity.[43] Unlike many IP regimes that operate within Eurocentric, individualistic frameworks, Kenya's law is explicitly designed to reflect Indigenous customs, collective ownership, and customary governance structures, making it particularly relevant in the context of cultural appropriation in fashion.

The preamble of the act[44] reasserts the importance of communities' right to cultural heritage by incorporating protection for IP that stems from their knowledge systems, as well as safeguarding Indigenous knowledge for sustainable development. A distinguishing feature of the Act is that it does not rely on traditional IP categories such as copyright and trademarks. Instead, it provides discrete rights for communities over TK and TCEs. The Act is also, importantly, not dependent on fixation, duration, or authorship – not to mention the law addresses significant gaps identified in traditional IP systems.[45] Kenya, as a country that has TCE-rich cultures, has provided the world with iconic symbols and materials in fashion through Beadwork patterns, Color schemes, accessories that represent tribal identities, draped garments, and embroidery that represent specific ceremonies and rituals. Under the 2016 Act, these things can include:

- Registered with the Kenya Copyright Board (KECOBO) in a national database
- Governed under community protocols
- Commercially used only with free, prior, and informed consent (FPIC)
- Protected through benefit-sharing agreements (licensing, royalties, etc.).[46]

Rights Conferred by the Act

Under Section 5 of the Act, communities have the following rights:

- Moral rights to be acknowledged as creators and custodians;
- Economic rights to authorize or prohibit use;
- Remedies including injunctions, compensation, and an account of profits in case of unauthorized use;
- Right to control adaptation and distortion of their TCEs.

These rights are inalienable, perpetual, and not subject to expiration, unlike typical IP rights. Kenya's Protection of Traditional Knowledge and Cultural Expressions Act[47] is a major change from typical Western IP laws, as it focuses on collective ownership and customary governance structures. Nevertheless, while the Act is a significant conceptual idea change, its actual ability to stop cultural appropriation in the

43. Protection of Traditional Knowledge and Cultural Expressions Act, No. 33 of 2016 (Kenya), https://www.klrc.go.ke/index.php/constitution-of-kenya/103-chapter-five-land-and-environment/part-2-environment-and-natural-resources/263-protection-of-traditional-knowledge-and-cultural-expressions-act-no-33-of-2016 [https://perma.cc/TBQ7-MZZP].
44. Constitution of Kenya (2010), arts. 11, 40 & 69, https://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010 [https://perma.cc/7U8D-KABH].].
45. See Peter Munyi, Protection of Traditional Knowledge in Kenya: The Legal and Policy Framework, 17 Afr. J. Int'l & Comp. L. 226, 229–30 (2017).
46. Kenya Copyright Board (KECOBO), TK & TCE Registry Guidelines, https://www.copyright.go.ke/tk-tce-registration.html [https://perma.cc/76AU-9F2A].
47. Protection of Traditional Knowledge and Cultural Expressions Act, No 33 of 2016 (Kenya) https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/103992/KEN103992.pdf accessed 21 December 2025.

global fashion industry is still quite low.[48] The model presupposes that FPIC-based licensing and benefit-sharing procedures can restore the balance of power between global brands and Indigenous communities. However, these procedures work in commercial settings where enforcement depends on the jurisdiction and economic power. The law, therefore, often enables empowerment rhetorically but fails to translate authority into material protection where appropriation is most profitable.[49] These communities, however, are often short of the necessary financial and legal resources to be involved in the transnational disputes.[50] Therefore, even though Kenya offers one of the most culturally based local frameworks, it still reveals the boundaries of national law in controlling a globally spread fashion industry, which is architecturally made to benefit the movement of corporations rather than the self-determination of cultures.

Australia: Customary Law and Copyright - An Inconsistent, but Improving Model for Protecting Indigenous Fashion Heritage

The Australian model is different from the sui generis system in Kenya or the GI-based system in India, and relies on copyright law, supported by moral rights legislation and some judicial promotion of customary practices. Ultimately, this model is, at best, inconsistent and does not engage sympathetically enough in the realm of collaboratively owned, sacred, or ceremonial fashion related to Aboriginal and Torres Strait Islander communities.

Australia's Copyright Act 1968 (Cth)[51] Governs the protection of artistic work and unambiguously encompasses textile, design, and pattern design.[52] The Copyright Act automatically protects original works that: Are fixed in a material form; are created by an identifiable author; and are expressive, not functional. At face value, the copyright law excludes most unwritten, orally transmitted, and collectively created Indigenous TCEs. However, some court decisions and government policy have made some moves toward creating a bridge between statutory copyright and Aboriginal customary law.

One of the most significant moments in the copyright case of Milpurrurru v Indofurn Pty Ltd[53] made clear how deeply Australia's copyright system was insufficient to deal with the issue of cultural harm to Indigenous people. The Federal Court, in recognition of the injury to the spiritual and cultural aspects of the above-described unauthorized reproduction of the sacred Dreaming designs, awarded exemplary damages. However, the court stressed that the protection was only available because it was possible to identify individual artists and, therefore, they could be named as copyright holders. Due to this dependence on Western ideas of authorship, the wider Indigenous community, whose way of life is traditionally communal and passed on from generation to generation, was still legally invisible. The law thus revealed a structural contradiction in the case: it was able to acknowledge cultural harm at a symbolic level, yet it did not have the doctrinal capacity to safeguard communal heritage or stop the appropriation of the cultural products in industries like fashion for commercial purposes. The main point of the case is to show that judicial recognition is still reactive, piecemeal, and insufficient to challenge systemic

48. Stephanie Isobel Lackner, Who Wore it Better? Cultural Appropriation in the Fashion Industry: How International Law Fails to Safeguard Indigenous Peoples' Traditional Clothing (MA thesis, Aristotle University of Thessaloniki, 2024) https://repository.gchumanrights.org/server/api/core/bitstreams/8aab450d-6766-4e15-9b8e-dab6a89aa6c0/content accessed 21 December 2025.
49. Deacon, Harriet & Munyi, Peter. Law and the Politics of Traditional Knowledge in Kenya. Cardiff University Research Paper, 2021.
50. Deacon, Harriet & Munyi, Peter. Law and the Politics of Traditional Knowledge in Kenya. Cardiff University Research Paper, 2021.
51. Copyright Act 1968 (Cth), 1968 Austl. Acts No. 63 (Cth).
52. Copyright Act 1968 (Cth) (Austl.), https://www.legislation.gov.au/Series/C2004A07338 [https://perma.cc/YRP5-K3BA].
53. Milpurrurru v. Indofurn Pty Ltd (1994) 30 I.P.R. 209 (F.C.A.).

cultural extraction unless there is a sui generis system based on customary law.

Australian fashion has a long and complicated history of incorporating Aboriginal motifs into commercial designs, often without permission, credit, or benefit-sharing. While some brands collaborate ethically, others have faced backlash for misappropriating sacred symbols or fabric designs. For example, in 2016, a fashion brand released a swimwear line using sacred Warlpiri designs without community consultation, prompting calls for reform.[54] Under the current law, unless a specific artist can be identified and their work is sufficiently original and fixed, no copyright claim can succeed.[55] This poses a fundamental challenge for collectively owned and orally transmitted TCEs.

Australia's hybrid copyright–customary system is a case of the deeper epistemological conflict, where Indigenous cultural expression has to fit the ontological assumptions of Western IP law. The copyright system, instead of acknowledging culture as a living law and a collective inheritance naturally embedded within kinship, cosmology, and territory, treats creative expression as a product of an isolated author made for commercial exchange. By authorizing fixation, authorship, and limited ownership periods, the legal system forcibly introduces an artificial temporality and individuality of cultural forms, which are continuous, sacred, and relational.[56]Australia demonstrates, through cases and broader critiques of copyright, that forcing Indigenous art into individual-authorship paradigms can recognise harm in isolated instances but cannot structurally prevent future appropriation or protect communal interests.[57]

Peru: A Model for Collective Trademarks – Branding Cultural Identity in Global Fashion

Peru takes an interesting and pragmatic approach to Indigenous knowledge and traditional fashion expressions by utilizing collective trademarks and certification marks, so that Indigenous communities can control the commercial exploitation of their cultural heritage.

Peru's traditional knowledge protection strategy utilizes the Law on the Promotion of Craft Activity.[58] and the Industrial Property Law Program[59], and allows Indigenous communities and craft cooperatives to register collective and certification marks.[60] The rights and frameworks taken to protect Indigenous traditional knowledge by collective and certification marks were promulgated, implemented, and overseen via INDECOPI.[61]

These marks don't protect an isolated motif or the outright prevention of misappropriation, but they do allow communities to commercialize their own identity and craft while protecting the notions of place and culture. While the Government in Peru

54. Nicola Scarpellini, Sacred Symbols and the Law: Intellectual Property Protection of Indigenous Designs in the Fashion Industry, 40 U. New S. Wales L.J. 1, 12–14 (2018).
55. Jennifer Anderson, Protecting Aboriginal Art Under Australian Copyright Law, 22 Eur. Intell. Prop. Rev. 222, 228 (2000).
56. Peter Drahos, Indigenous Knowledge and the Duties of Intellectual Property Owners, 11 Austl. J. Human Rts. 1, 7 (2005).
57. Vasu J., Pandora's Wardrobe: Traditional Cultural Expressions v. Fashion Brands (International Journal of Legal and Modern Humanities May 2023), https://ijlmh.com/wp-content/uploads/Pandoras-Wardrobe-Traditional-Cultural-Expressions-V.-Fashion-Brands.pdf (last visited Nov. 16, 2025).
58. Ley N.º 29073, Ley del Artesano y del Desarrollo de la Actividad Artesanal (Perú), https://example.gov.pe/…, (last visited Nov. 16, 2025).
59. Legislative Decree No. 1075, Approving Supplementary Provisions to Decision 486 of the Andean Community Establishing the Common Regime on Industrial Property (Peru), June 27, 2008.
60. Law on the Promotion of the Craft Activity, Law No. 29073 (Peru); Industrial Property Law, Legislative Decree No. 1075 (2008) (Peru).
61. Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), https://www.indecopi.gob.pe/ [https://perma.cc/Y6QY-V5EG].

has a long road ahead to empower a diverse range of Indigenous communities and activities, emerging developments indicate that TCEs are increasingly being recognized and valued as unique marketing opportunities in and for Indigenous communities.

Strategic Differences of the Customary Model of Collective Marks in Peru are that Collective marks are not an individualized trademark or copyright owned by the creator: they are owned collectively by the community or association. The collective mark appears on items exported to the U.S and EU, which allows all consumers to be aware of the authenticity and cultural origin of the designs.[62] Due to this, instead of an insight statement about the use or appropriation of culture, a collective mark is a proactive marketing statement about a culture that supports rural livelihoods, cultural pride, and the transmission of cultural design and art. Some of the collective marks found in Peru are already recognized through international trade treaties and bilateral agreements, including with the European Union, allowing them to export monitored TCE-based fashion goods overseas.[63]

The collective trademark model in Peru is frequently praised as a means for Indigenous communities to market their cultural identity. However, the framework still operates within the logic of market participation rather than cultural protection. The system, by only protecting the collective name and not the inherent motifs or designs, exposes the aesthetic side of Indigenous art to be freely copied. This limited commercial perspective establishes a hierarchy in which only market-oriented cultural expressions receive legal recognition, leaving cultural symbols that are not commercially empowered structurally unprotected because they are not meant to be sold. In addition, the task of registration and enforcement is physically and practically on the side of Indigenous artisans who are usually lacking in legal literacy, financial resources, and institutional support. Consequently, instead of redistributing power, the system in Peru is likely to deepen economic inequality by turning cultural identity into a brand while the richer substance of Indigenous knowledge remains beyond the law's reach.

TOWARD A CULTURALLY SENSITIVE INTELLECTUAL PROPERTY FRAMEWORK: LEGAL REFORMS AND GLOBAL STRATEGIES

The frequent appropriation of Indigenous TCEs in the global fashion industry highlights a major mismatch between current intellectual property (IP) regimes and the realities of source communities. Existing IP laws, which have been constructed using Euro-American notions of individual authorship, originality, finite periods of protection, and respective falsities, will frequently fail to protect Indigenous cultural assets that are inherently collective, spiritual, and intergenerational. These criteria exclude many forms of Indigenous fashion expressions that exist as communal traditions, are part of ritual, or exist in oral tradition in some way, or a combination of all three.[64] For example, Australia's Copyright Act 1968 (Cth)[65] does not identify communal moral rights, although some Indigenous people believe that systems of laws link sacred designs to clans or ancestors.[66] Conventional forms of IP law also do not address cultural appropriation, unless a registered IP right is being infringed, and so copying certain sacred patterns or motifs may be viewed as morally objectionable but not illegal; therefore, failing to respect the cultural and

62. World Intell. Prop. Org. (WIPO), Empowering Indigenous Communities Through Collective Trademarks: The Peru Model (2017), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_ind_2017_1.pdf [https://perma.cc/TX89-KFM3].

63. EU–Peru Trade Agreement, Off. J. Eur. Union, L 354/3 (2012), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22012A1221(01) [https://perma.cc/YJU7-ZCVS].

64. Rosemary J. Coombe, The Recognition of Indigenous Peoples' and Community Traditional Knowledge in International Law, 14 St. Thomas L. Rev. 275, 280 (2001).

65. Copyright Act 1968 (Cth), 1968 No. 63 (Austl.).

66. Jennifer Anderson, Protecting Aboriginal Art Under Australian Copyright Law, 22 Eur. Intell. Prop. Rev. 222, 228 (2000).

spiritual tenets of Indigenous communities.[67] With Indigenous communities around the world calling out for justice and recognition, we are obligated to consider legal and policy frameworks that are not only protective but also culturally considerate and inclusive. In light of these failures, there is a growing consensus among scholars, policymakers, and Indigenous advocates that a sui generis (unique, stand-alone) legal regime should be established to support the protection of TCEs in the fashion and clothing industry.[68] Such a regime would:

- Acknowledge the collective ownership of TCEs by Indigenous communities;
- Provide perpetual protection rather than limited protection of the found value;
- Require "Free, Prior, and Informed Consent" (FPIC) as a prerequisite for commercial use;
- Include benefit-sharing agreements.
- Utilize customary law rather than just statutory law.

So, a change in the legal environment is radically necessary - not just to change the Western IP categories but to acknowledge Indigenous culture as a source of authority by itself. There is no other way but a unique, community-based model to be able to bridge the deep gap between the market-driven fashion systems, which keep appropriating the living cultural heritage for their benefit.

THE FUNCTION OF INTERNATIONAL INSTITUTIONS

As fashion is a global industry, any meaningful reform will have to incorporate binding commitments on an international scale. While WIPO has taken steps to develop voluntary toolkits and model laws, it has yet to produce a binding international instrument on TCEs. The only potential for TCE protection on an international legal front comes from the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)[69] Of WIPO. The IGC is currently negotiating a Draft International Legal Instrument.[70] On TCEs. Furthermore, it is plausible to amend TRIPS+ agreements (e.g., EU–Peru) such that they establish obligations for TCE protection, such as a prohibition on registering trademarks for sacred symbols and re-labelling or advertising cultural origin. Nevertheless, the present text is still a soft law that lacks binding force and thus leaves states and corporations that do not comply with obligations without consequences.[71]

For the IGC draft to have a real effect, it should be transformed into a binding treaty having the following elements:

1. compulsory Free, Prior, and Informed Consent (FPIC) for any commercial use of TCEs;
2. benefit-sharing agreements being mandatory and enforceable internationally;
3. penalties and injunctive relief for unauthorized appropriation; and
4. acknowledgment of Indigenous communities as the collective legal rights-

67. Peter Drahos, Indigenous Knowledge and the Duties of Intellectual Property Owners, 11 Austl. J. Human Rts. 1, 7 (2005).
68. World Intell. Prop. Org. (WIPO), Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions (2006), https://www.wipo.int/edocs/pubdocs/en/tk/913/wipo_pub_913.pdf [https://perma.cc/V4P8-TY3U].
69. World Intellectual Property Organization (WIPO), Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), https://www.wipo.int/en/web/igc [https://perma.cc/7U8D-KABH].
70. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Draft Articles on the Protection of Traditional Cultural Expressions, WIPO/GRTKF/IC/44/4 (2022), https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=589866 [https://perma.cc/WJY3-AGK7].
71. Stefanie I. Lackner, Who Wore It Better? Cultural Appropriation in the Fashion Industry: How International Law Fails to Safeguard Indigenous Peoples' Traditional Clothing 17–20 (2024) (arguing soft-law frameworks lack enforceable power).

holders who have the right to bring claims before an international dispute body.

Such standard clauses would go beyond mere symbolic recognition and would create legal power to redistribute, rather than simply recognize that cultural harm has occurred.

In addition, the TRIPS Agreement also requires amendment to expressly include safeguards for TCEs, incorporating the following elements:

- prohibition of trademark registration of sacred symbols or culturally restricted expressions;
- mandatory disclosure-of-origin requirements for copyright, design, and trademark filings; and
- automatic royalty-based benefit-sharing that is triggered by the commercialisation of Indigenous cultural materials.

The EU–Peru TRIPS-plus agreement is an example of how trade frameworks can integrate the rights of Indigenous cultures and thus be a source of ideas for the incorporation of enforceable cultural provisions into global trade law.[72] Together, these reforms signal a necessary shift from symbolic acknowledgment toward enforceable cultural sovereignty. Without binding international mechanisms and structural redistribution of legal power, the fashion industry will continue to profit from Indigenous heritage while communities remain without remedy or recognition.

BALANCING DESIGNER FREEDOM AND COMMUNITY PROTECTION

One of the most commonly cited opposing arguments is that tightly defining Indigenous TCEs could restrain the creativity of designers and slow down the cultural exchange process in the fashion industry. Supporters maintain that fashion would lose one of its main sources of life if it were not allowed to borrow from global aesthetics and that any attempts to regulate how to access the motifs would put the brakes on innovation.[73] Nevertheless, this way of presenting the issue fails to consider the difference in power between large multinational fashion brands and Indigenous communities whose cultural heritage is taken without giving back or providing any benefits.[74] The fact is that as a result of mutual cultural inspiration, independent designers may benefit each other, however, large fashion entities which operate with economies of scale, global supply chains, and marketing resources that are not available to the communities from which they source, thus their "creative freedom" is built upon structural inequality, are not in the same playing field. Besides, regaining control over the cultural heritage of the Indigenous peoples is not about limiting the designers, but it is about redirecting them to the creative freedom they have under the terms of "free, prior, and informed consent" (FPIC), equitable benefit-sharing, and cultural authenticity verification, thus ensuring that the source of inspiration becomes collaboration rather than exploitation.

CONCLUSION

In a rapidly globalising fashion industry, the boundary between cultural appreciation and cultural appropriation remains deeply contested. The comparative analysis of India, Kenya, Australia, and Peru demonstrates that while each jurisdiction offers valuable insights, none provides a complete solution capable of protecting Indigenous TCEs against transnational commercial exploitation. The fundamental limitation lies in the continued reliance on Western intellectual property

72. Trade Agreement Between the European Union and Peru, 2013 (TRIPS-plus obligations relating to geographical indications and traditional knowledge).

73. Stephanie I. Lackner, Who Wore It Better? Cultural Appropriation in the Fashion Industry: How International Law Fails to Safeguard Indigenous Peoples' Traditional Clothing 22 (2024) (arguing that cultural closures risk limiting artistic exchange).

74. Kristin Scheel Lunde, Ancient, Indigenous and Iconic Textile Motifs in Contemporary Fashion: Case Study – Defining Concepts Through Textile Designs: Appropriation, Collaboration, Provenance and Identity, Textile Soc'y of Am. Symp. Proceedings (2018) (noting the structural power imbalance between global fashion giants and Indigenous artisans).

frameworks that privilege individual authorship and economic value over collective, spiritual, and intergenerational cultural rights.

The lessons from these jurisdictions underscore the need for a pluralist and enforceable legal approach grounded in Indigenous authority, incorporating sui generis protection, FPIC, benefit-sharing, and cross-border enforceability supported by international institutions such as WIPO and TRIPS-plus mechanisms. Meaningful reform demands structural rather than symbolic change, shifting from mere recognition to genuine legal accountability. The future of fashion must centre Indigenous agency and cultural sovereignty if it is to move beyond extractive appropriation toward equitable cultural exchange.

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