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Legal protections for traditional cultural expressions: An exploratory review of literature

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Abstract

Introduction. Traditional cultural expressions are obviously an area of concern for Indigenous People but also for cultural heritage institutions (i.e., archives, museums and libraries) and international organizations. This review examines key literature relating to the legal protection of traditional cultural expressions in terms of international involvement, the levels of protection afforded traditional cultural expressions, and their connection with Intellectual Property law as it is currently written and understood.

Method. This is an exploratory review. HeinOnline, JSTOR, and Nexis Uni were searched for articles regarding legal frameworks for traditional cultural expression protection.

Analysis. The authors analysed the literature by using thematic analysis. The identified themes include international concerns about misappropriation of traditional cultural expressions. The authors also identified insufficiencies of Western IP systems in protecting traditional cultural expressions and discussed potential solutions to address these criticisms.

Results. This review identifies a possibility in the literature for which legal protection of traditional cultural expressions will be improved with changes in the way traditional cultural expressions interrelate with conventional intellectual property laws.

Conclusion. The numerous ethical and legal issues surrounding traditional cultural expressions can be addressed through *sui generis* laws and the amendment of intellectual property laws. Nevertheless, these legal frameworks do not fully address the problem of cross-border misuse of traditional cultural expressions. Therefore, an international legal framework for traditional cultural expression protection is essential to address the concern.

Introduction

The World Intellectual Property Organization (WIPO), the United Nations agency providing leadership to member states in debating and discussing traditional cultural expressions, defines traditional cultural expressions or 'expression of folklore' as 'the forms in which traditional culture is expressed', including 'music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts, and narratives, or many other artistic or cultural expressions' (WIPO, n.d.b). Traditional cultural expressions also 'form part of the identity and heritage of a traditional or indigenous community' and 'are passed down from generation to generation' (WIPO, n.d.b). Over the last two decades, many legal experts, policymakers, researchers, and other professionals have been working to establish legal protections for traditional cultural expressions at both national and international levels. This is likely due to a gap in protection created by intellectual property laws protecting human creativity, as well as misappropriation of traditional cultural expressions resulting from increased globalization.

Traditional cultural expression misappropriation is typically understood as unauthorized or improper use of cultural elements that belong to specific indigenous or local communities (see Robinson, 2025). For example, since 1926, the University of Illinois' mascot has been Chief Illiniwek, a fictional Native American chief in 'traditional' dress. After years of spirited protest and public debate because of the disparaging and wrongful appearance of Chief Illiniwek, the University of Illinois and the NCAA decided to retire it in 2006 (Cherney & Keilman, 2020). Cultural misappropriation has become increasingly prevalent with the help of advanced technology. Most recently, for example, generative artificial intelligence relies on training datasets that include indigenous artwork and music, ultimately using Indigenous People's cultural expressions without their permission (Dugeri, 2024). Hence, protecting traditional cultural expressions from being misused and misappropriated is imperative in our information era.

Cultural heritage institutions (i.e., archives, museums, and libraries) have been subject to scrutiny by governments, researchers, and the media for historic and ongoing misappropriation and mishandling of indigenous materials (Nicholas, 2022). A prominent example from the US is the Metropolitan Museum of Art, which has come under heightened scrutiny over ancient artifacts in its collection that show signs of having been looted. In response to the scrutiny, the museum is now considering repatriating some of the items (Pogrebin & Bowley, 2023). Those working in cultural heritage institutions provide access to and preserve cultural materials; therefore, they would greatly benefit from staying updated on the current scholarly landscape of the protection of traditional cultural expressions. In particular, when non-Indigenous librarians increase their cultural awareness, they can more ethically and respectfully manage indigenous works held in their collections (Oxborrow et al., 2017). We authors believe that such awareness can be enhanced through understanding the legal framework for protecting traditional cultural expressions. As fellow information science community members, we offer this literature review as a resource for our colleagues, especially archivists and librarians.

The following sections depict the process of achieving the review study aim. Initially, we formulate one research question that guides this exploratory review study. Following the method section, we showcase the analysis of findings. The analysis first addresses the rise of traditional cultural expression misappropriation due to increased globalization. Next, the study outlines the cross-border nature of traditional cultural expression necessitating a global response to its misappropriation. The work of WIPO and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is subsequently explored, and finally, there is discussion of the legal attempts at addressing the gap in traditional cultural expression global protection.

Research problem and sub-problem

The research questions guiding this exploratory review paper are as follows:

- What are the existing legal frameworks for the protection of traditional cultural expressions at both the international and national levels?

In the search for answers, sub-questions that complement the research question are as follows:

- What are the central issues surrounding the legal protection of traditional cultural expressions?
- How are legal and academic professionals confronting the issues of traditional cultural expression legal protection?

Methodology

Literature search

This study employs an exploratory research method to identify recurring themes relevant to the topic area of legal protection of traditional cultural expressions. We utilize several important but by no means exhaustive key terms to search for relevant articles among several accessible databases: “Traditional Cultural Expressions” AND “legal protection”; “Folklore” AND “legal protection”; “indigenous cultures” AND “legal protection” etc. The databases include HeinOnline, JSTOR, and LexisNexis, which were selected because they provide both primary (e.g., statutes and cases) and secondary legal sources (e.g., legal journals, government reports, and treaties on international law). Research articles that contain the key terms either in their title, keywords, or abstract were selected for analysis; they had to be written in English and offer full text. The criteria for further extraction of relevant literature mainly focused on the following aspects: 1) description of the existing legal framework for the protection of traditional cultural expressions; 2) key issues in existing traditional cultural expression legal protection; and 3) suggestions for alternative solutions of traditional cultural expression protection.

As a result, the body of literature on this topic area is vast, with approximately 10,000 items per database. In light of the exploratory research method, we did not focus on comprehensively or systematically reviewing all of the literature. Rather, we aimed to gain analytical insights into how key ideas, debates, and frameworks related to the legal protection of traditional cultural expressions are expressed across different texts. Therefore, we selected articles for review among a pool of candidate articles through a purposive sampling approach (Campbell et al., 2020). This sampling approach was employed to conduct an in-depth analysis of a manageable amount of relevant literature within the allotted timeframe. Articles were purposely selected if they met two of the following conditions: 1) they were published from the late 1990s to present; 2) they examine a country’s legal framework for the protection of traditional cultural expressions; or 3) they address international legal efforts regarding the protection of traditional cultural expressions. The articles identified through the sampling process are extracted for further review and analysis.

Thematic analysis

A total of fifty-eight articles that met the criteria were included for thematic analysis. As per Braun and Clarke (2006), the authors reviewed the selected articles and performed a qualitative coding of the data to identify key themes. The identified themes include international concerns about cultural misappropriation of traditional cultural expressions; they also explore how different types of traditional cultural expressions (e.g., sacred, folk art, dance) may require varying levels of protection. The authors also identified the theme of insufficiencies of Western intellectual property systems in protecting traditional cultural expressions and discussed the potential solutions for addressing these criticisms.

Findings of literature analysis

The findings are presented in a progressive order, beginning with the broad context of global efforts in protecting traditional cultural expressions. Following that, they indicate scholarly discussion on the applications of current legal mechanisms (intellectual property laws) in protecting these expressions at a national level. The findings on conflicts between intellectual property laws and traditional cultural expressions then showcase the limitations that arise from the use of conventional intellectual property laws when protecting traditional cultural expressions. Finally, the findings advocate revamping intellectual property laws to make them more suitable for traditional cultural expressions, or for solutions outside intellectual property laws as alternatives.

International involvement with traditional cultural expressions

Digital technologies have increased the ability for Indigenous Peoples to preserve and share their cultural heritage, but at the same time they have exacerbated the vulnerability of traditional cultural expression misappropriation. Fortunately, the Internet enables communities to more easily preserve traditional cultural expressions in digital formats (Burri, 2010). Digitization can also facilitate the creation, dissemination, and consumption of traditional cultural expressions, contributing to human creativity and cultural diversity (Burri, 2010). Nevertheless, aligning with the WIPO's articulation on the pros and cons of digital documentation of traditional cultural expressions, many researchers recognize that while digital technologies play a vital role in the vitality and sustainability of traditional cultural expressions, they also expose Indigenous Peoples to a greater risk of inappropriate exploitation of their cultural heritage (Fitzgerald & Hedge, 2009; Chisa & Ngulube, 2017).

The increase in traditional cultural expression misappropriation in the digital age requires timely action for workable protection mechanisms (Okediji, 2018). Therefore, many international organizations have worked toward crafting international-level protection against misappropriation. UNESCO has drafted a treaty, The Convention for the Safeguarding of the Intangible Cultural Heritage, which was ratified in 2003 and went into force in 2006. The Convention defines intangible cultural heritages as 'the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artefacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage'. (UNESCO, 2003). Ratifying countries must take it upon themselves to protect the intangible cultural heritage in their nation and report their progress to the committee every six years. In a pertinent section regarding the prevention of the misappropriation of cultural heritage, the treaty provides that each party to the treaty shall work to ensure 'access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage ...' (UNESCO, 2003). The treaty is aimed at ensuring respect for the intangible cultural heritage within communities, raising awareness of its significance, and fostering international cooperation to safeguard it (UNESCO, 2003).

WIPO has been struggling to fill gaps in intellectual property laws relating to traditional cultural expression protection since 2000. In that year, WIPO convened the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which is responsible for negotiating international legal instrument(s) to protect cultural heritage across borders through a more responsive intellectual property regime. The WIPO's Intergovernmental Committee has achieved milestones during each session; however, the current drafting process for cross-border protection of traditional cultural expression remains broad and lacks general consensus among the WIPO's Intergovernmental Committee (WIPO, n.d.a). One notable achievement of Committee has taken place in the area of protecting genetic resources, where a treaty was signed during June 2024, but a workable instrument for traditional cultural expression protection is still pending.

Realignment of traditional cultural expression protection levels

One of the contentious issues raised by the WIPO's Intergovernmental Committee in 2014 was whether to adopt a tiered or differentiated approach to traditional cultural expression protection. Under a tiered approach, for instance, secret or sacred expressions might receive higher levels of legal protection than works that have been largely disseminated to the general public. Ever since the tiered or differentiated approach was introduced, there has been a call for the active involvement of Indigenous Peoples at the Intergovernmental Committee to help better inform how degrees of protection should be enumerated (Masango, 2014; Oguamanam, 2019). However, this approach could be counter to Indigenous People's desire for secrecy and maintaining the sacredness of their traditional cultural expressions. For example, Masango (2014) took issue with the idea that Indigenous Peoples are interested in employing external interventions for protecting traditional cultural expressions imbued with sacredness, secrecy, or religious significance. A tiered approach in the law, he argued, could potentially endanger private and secret traditional cultural expressions by exposing them to the public.

Given the Committee's contributions to developing a tiered system of protection for traditional knowledge and traditional cultural expressions, scholars hold diverse viewpoints regarding the system. For example, Oguamanam (2019) discussed its rationale and potential challenges, elucidating various categories based on the system's specifications. He accordingly framed four interconnected and mutually inclusive categories: sacred, secret, narrowly diffused, and widely diffused.¹ This propounded that for secret and sacred traditional cultural expressions, given their sensitive nature, strong or exclusive rights should be afforded, while weaker forms of rights should attach to narrowly or widely diffused traditional cultural expressions, considering their exposure to the public. Oguamanam concluded that the classification of traditional cultural expressions as secret or sacred should be contingent on the self-determination and cultural norms of indigenous and local communities rather than on this kind of legal classification system (2019). Additionally, Vargas (2022) pointed out that affording heightened protection for sacred traditional cultural expressions is necessary to remedy their historical exploitation. They emphasized that the tiered system would only be effective if it clearly justified the need for this form of protection. Overall, while the tiered system seems reasonable as workarounds for protecting traditional cultural expressions, the system often poses practical challenges. Therefore, it is crucial to ensure that all stakeholders, including indigenous communities, scholars, and policymakers, are on the same page to develop more effective and equitable protection mechanisms.

Applicability of the intellectual property system for traditional cultural expressions

Scholars recognize the inadequacies of conventional intellectual property systems in protecting traditional cultural expression from misappropriation. Among scholars from nations with large indigenous populations, there is a consensus that the intellectual property systems and the worldview of indigenous communities have fundamentally different perspectives on protecting cultural artifacts (Chisa & Hoskins, 2016; Graber, 2009). The conventional intellectual property provisions primarily benefit industrialized nations and industries by protecting commercial interests (Daes, 1995). While these protections can shield traditional cultural expressions from

¹ Oguamanam (2019) provides three examples to illustrate how traditional cultural expressions can fall into multiple categories. The first example, Kente Cloth from Ghana, is both categorized as sacred (historically linked to Asante royalty) and widely diffused, as it has become a global commercialized product. The second example, Aboriginal bark paintings from Australia, is categorized as sacred, secret, and widely diffused traditional cultural expression. Although these paintings are widely accessible via museums or tourist materials, their sacred and secret meanings remain restricted to specific Aboriginal custodians. The third example is Cowichan Weaving, which is practiced by Coast Salish peoples in Canada and the United States. This traditional cultural expression is considered partially sacred and falls somewhere between narrowly diffused and widely diffused. Specifically, while the weaving technique has spiritual meaning to their communities, the sweaters produced from this technique are globally marketed and featured in the Olympic Games.

commercial exploitation and potentially generate financial benefits for indigenous communities, the main concern for these communities is often not financial loss. Instead, they generally react with moral indignation at the lack of respect for their cultural heritage (whether sacred or not) when their traditional cultural expressions are misappropriated (Britz & Lor, 2004). Therefore, Torsen (2006) proposed creating a legal framework for protecting traditional cultural expressions that differs from the conventional intellectual property system by focusing on moral interests.

Scholars have discussed which, if any, areas of intellectual property laws (such as copyright, trademark, patent, and ancillary categories like trade secret law) could adequately protect traditional cultural expressions. Among these areas, copyright law seems most promising for protection from misappropriation, as it protects creative works (Bussey, 2014). Many Indigenous People, including approximately 40%-43% of Native Americans, engage in artistic practices and rely on the Copyright Act to protect their creative works during distribution (First Peoples Fund, 2013). Despite this, copyright law is generally ineffective for adequately protecting traditional cultural expressions.

Conflicts between IP system and traditional cultural expressions

On a national level, the shortfalls of copyright laws in protecting traditional cultural expressions include the limited term of copyright (Farley, 1997), the concept of the public domain, the focus on sole authorship, the requirement of fixation, and the definition of originality. Kallinikou (2005) explored various options for traditional cultural expression protection in Greece and highlighted certain requisite elements of copyright protection that are at odds with the characteristics of traditional cultural expressions, such as the statutory term of protection. She noted that copyright law grants limited protection for a defined period, whereas many traditional cultural expressions are created to exist perpetually or as long as the communities that created them exist. Consequently, many might be considered public domain materials under copyright law and thus free from restrictions. Paterson and Kajala (2003) examined the deficiencies of intellectual property protection, including copyright law, noting that in the United States, the challenge of identifying authorship or ownership of traditional cultural expressions, which often arises from collective community efforts, complicates copyright protection. Although copyright law can recognize multiple authors in some circumstances (e.g., work-for-hire and joint works), the work is still not treated as collectively owned (Paterson & Kajala, 2003). Additionally, many traditional cultural expressions are not fixed in a tangible medium of expression as required for copyright protection, such as dances, rituals, and festive events that are viewed as intangible cultural heritage. Ruesch (2008) illustrated this issue with examples from Australian Dreamtime or ritual ceremonies, which fall outside the scope of copyright protection.

Other domains of conventional intellectual property systems, such as trade secret laws, are also inadequate to protect traditional cultural expressions. For example, Bussey (2014) not only affirmed the inadequacies of copyright laws but also highlighted the shortcomings of trade secret law in this context. While trade secret law might offer some protection, international standards established under the Agreement on Trade-Related Aspects of Intellectual Property Rights require that secret knowledge has actual or potential economic value. This requirement conflicts with the efforts of many Indigenous Peoples to keep certain traditional cultural expressions out of commercial markets (Bussey, 2014; Varadarajan, 2011). In addition, some scholars have emphasized that while trademarks can prevent the registration of offensive marks, they do not prevent all offensive uses of marks (Johnsson, 2012; Nguyen, 2023; Rohde, 2024). Moreover, the impracticality of registering all indigenous signs, names, and symbols, coupled with the cost of registration fees, compounds the challenges faced by Indigenous Peoples wishing to protect traditional cultural expressions.

For indigenous and local communities looking to use traditional cultural expressions (notably, indigenous names, signs, and symbols) as a reliable source of income, trademarks present a

potential avenue for legal protection. However, they often do not receive the financial benefits. Over the past decades, the unauthorized appropriation of indigenous names, signs, and symbols by third parties has been widespread (see Behrendt, 2000; Prażmowska-Marcinowska, 2020; Young, 2018). In the United States, for example, there are many cases of sports teams exploiting Native American names and imagery as mascots and logos (Behrendt, 2000). In response to such challenges, Indigenous Peoples have sought legal tools to regulate the use of traditional cultural expressions and to ensure fair and equitable sharing of benefits arising from such use. Overall, while traditional cultural expression can be partially protected within the conventional intellectual property system, it often fails to provide comprehensive protection.

Revamping the intellectual property system

Because conventional intellectual property systems currently fail to provide comprehensive protection, much of the literature attempting to better protect traditional cultural expressions focuses on possible improvements to these systems (e.g., China: Li, 2016; Ghana: Torkomoo, 2012; Indonesia: Hapsari et al., 2021; Santyaningtyas & Noor, 2016; Wesna, 2022; United States: Bussey, 2014). Bussey found that while legal protections for traditional cultural expressions do exist, they are primarily centred around branches of the intellectual property systems (such as copyright, trademark, and trade secret law) and these protections are less robust than is necessary. Bussey suggested that changing intellectual property laws could offer more comprehensive protection for traditional cultural expressions. This suggestion aligns with other works published around the same time: Carpenter (2014) and Torkornoo (2012) provide targeted strategies to amend intellectual property system to better protect traditional cultural expressions. Specifically, Carpenter pointed out the systems' historical and ongoing role as the predominant avenue for protecting artistic and literary works on a global scale. Thus, instead of introducing original legislation, she argued for augmentation of the systems, especially emphasizing the need for expanding copyright law to ensure sufficient protection for indigenous cultures. From there, Carpenter outlined three pivotal amendments to copyright law, including recognizing communal ownership, broadening originality prerequisites, and extending copyright protection durations. One of the amendments they proposed, which acknowledges communal authorship, aligns with the perspectives presented by Steffe (2023) to protect a broad range of traditional cultural expression types.

Nevertheless, many scholars criticize expanding intellectual property rights, arguing that such an expansion may grant excessive protection to indigenous cultures and shrink public domain and creative activities (Boyle, 2003; Brown, 1998; Yang, 2009). Conversely, other scholars argue that the decision on whether, and to what extent, an improved intellectual property system should be applied to tribal lands as a framework for indigenous creativity should remain with the tribes themselves. For example, Reed (2020) explained that enforcing copyright unilaterally on tribal lands in the United States could undermine Tribal sovereignty over cultural creations and lead to disrespectful appropriations. Therefore, any legal framework should be developed bilaterally, incorporating both policymakers' perspectives and the cultural sensitivities and wishes of the tribes involved.

The inherent insufficiencies of applying conventional intellectual property systems to traditional cultural expression protection have spurred ongoing proposals for alternative approaches over the past three decades, aiding the WIPO's Intergovernmental Committee in exploring available protection options. Halbert (2005), in her book, *Resisting Intellectual Property*, consistently emphasized that adopting the conventional intellectual property rights model for protection could ultimately lead to the commercialization of indigenous cultures against Indigenous People's wishes (2005). As a result, there is a growing focus on implementing alternative measures or protocols to protect these cultures, with many cultural protocols addressing the wishes and rights of indigenous communities.

Alternatives to the intellectual property systems

Scholars have discussed various alternative measures or protocols that extend beyond conventional intellectual property systems for the protection of traditional cultural expressions. Specifically, several protocols empower indigenous communities to exercise control over the authorization process involving non-Indigenous individuals seeking to engage with their cultural expressions. For example, the *Protocols for Native American Archival Materials* (PNAAM) grants Native Americans a moral right to control access to their traditional cultural expressions held in cultural heritage institutions, such as libraries, archives, and museums (Mathiesen, 2012). Maguipuunamei (2016) recommended a community-based documentation approach. This approach includes the Tribal Knowledge Management System, which was created to protect undocumented traditional cultural expressions transmitted orally within the tribes located in northeastern India. The System aims to inventory, codify, and register traditional cultural expressions, providing proof for patent offices or aiding in the resolution of intellectual property disputes, thereby offering legal reinforcement for traditional cultural expression. However, these protocols may have limited efficacy beyond their jurisdictional boundaries. For instance, Agyei (2019) examined the Swakopmund Protocol, which was designed to protect traditional cultural expressions within African national borders. While ratifying the protocol into national legislation can ensure protection among signatories, it does not extend to non-signatories. Recognizing the Protocol's limited global impact, Agyei advocated a global measure with the same aim.

A number of scholars have engaged with the discussion that Western courts often consider indigenous customary laws (based on traditions and customs accepted as binding by the relevant communities) when dealing with cases of cultural heritage misuse (Torsen, 2008). This consideration has led to increased scholarly discussion about the application of indigenous customary law. Bowrey (2006) argued that indigenous communities should rely on customary law to protect their cultural heritage and ensure self-determination rather than depending on external legal systems. In practice, however, customary law primarily governs the interaction of community members with their culture, leaving outsiders largely unchecked. To address this, Chisa and Hoskins (2016) utilized a Delphi method to gather experts' opinions on how customary laws could be used by indigenous communities in South Africa to protect their cultural heritages. The authors underscored the importance of educating outsiders about customary practices to heighten awareness of them. Moreover, given the widespread appropriation of indigenous cultural heritage both domestically and internationally, they proposed integrating customary laws into relevant multinational mechanisms to enhance their enforcement (Chisa & Hoskins, 2016).

Other scholars support the establishment and implementation of comprehensive *sui generis* laws for traditional cultural expression protection. Torsen (2006) argued that Western legal frameworks and current *sui generis* laws fail to fully address the needs and desires of indigenous and local communities in protecting their cultural expressions. Torsen proposed creating new, comprehensive *sui generis* law by examining case precedents from various jurisdictions and adapting them to suit a broad range of situations. Stoianoff and Wright (2018) acknowledged that Western intellectual property laws, particularly the Australian copyright system, lack adequate protection for most traditional cultural expressions. Even for traditional cultural expressions that are eligible for Australian copyright protection, fair use exceptions established within the copyright system may not align with indigenous communities' cultural and legal needs (Stoianoff & Wright). These exceptions often overlook the communities' need to control the use of the traditional cultural expressions and to receive appropriate compensation. Therefore, Stoianoff and Wright highlighted the necessity for a more holistic approach, *sui generis* legislation, to address these nuances by managing access and benefit-sharing arrangements. Likewise, Kanyabuhinya and Athanas (2022) found the *sui generis* model effectively protected traditional cultural expressions in Kenya and suggested that it could provide valuable insights for neighbouring Tanzania.

Many scholars have proposed a combination of rights as a more robust approach for traditional cultural expression protection. Spangler (2009) suggested integrating customary law into the conventional intellectual property systems to rectify its fundamental limitations in protecting traditional cultural expression. Spangler noted, for example, that customary law could enhance protection for communal authorship of a work, despite debate concerning the role of indigenous customary law within the conventional legal context. Dharmawan (2017) also supported integrating laws for the protection of traditional cultural expressions but from a different angle. Their advocacy was inspired by the principles of the *Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions* (1982), adopted by WIPO and UNESCO. These Provisions highlight that *sui generis* laws need not stand alone; rather, they can be integrated into an existing intellectual property system to provide comprehensive protection for traditional cultural expressions. Dharmawan proposed that this integration (adopting *sui generis* measures within the broader context of the intellectual property system) could be a viable solution to address the inadequacies of Indonesian copyright in protecting traditional cultural expressions.

The implementation of the *sui generis* intellectual property framework has also proven successful in protecting Panamanian traditional cultural expressions and generating economic benefits for indigenous communities (Figueroa, 2021). While some critics argue that *sui generis* models may encroach on the public domain and negatively impact innovation and creativity (Munzer & Raustiala, 2009), Figueroa contended that the public domain's construction has often been at the expense of indigenous communities, allowing for the exploitation and misuse of their creations. Figueroa further expressed confidence that a *sui generis* regime could be adapted to protect Guatemalan traditional cultural expressions, unlocking potential economic opportunities for these communities. In Indonesia, Widyanti (2021) responded to the call for a synergistic approach by combining intellectual property systems with *sui generis* protection for indigenous ownership of traditional cultural expressions. This approach provides positive protection, which grants intellectual property rights to owners of traditional cultural expressions, and defensive protection, which focuses on preserving, safeguarding, and promoting traditional cultural expressions. Widyanti anticipated that this approach would offer comprehensive and flexible protection for all forms of traditional cultural expressions.

Some scholars have recognized traditional cultural expressions as local assets and foregrounded the pivotal role of local governments or authorities in their protection. However, Indonesian scholars Asri (2018) and Djulaeka and Zulkifli (2018) argued that these governments have not fully maximized their protective capabilities. Djulaeka and Zulkifli emphasized that local governments in the Madura region did not adequately provide legal protection for traditional cultural expressions or shield them from foreign claims. Similarly, Asri (2018) noted that although the Yogyakarta government's regulatory initiatives underscored the importance of protecting local traditional cultural expressions, given their economic benefits as tourism products for the local economy, the government has not effectively prevented potential claims or misappropriations by other countries.

Several scholars highlighted a prominent regional legal instrument and showcased its potential strengths in protecting traditional cultural expressions located in Pacific regions (see Sali, 2020; Sand, 2003). Sand (2003) described the *Model Law for the Protection of Traditional Knowledge and Expressions of Culture for the Pacific Peoples* as addressing the shortcomings of the intellectual property system while meeting the specific requirements of indigenous communities toward traditional cultural expression protection. The Model Law can compensate for some deficiencies of intellectual property systems by tackling contentious issues such as communal ownership, material form requirements, and limited duration of protection. It supports the appropriate use of the traditional cultural expressions for further creation and ensures that indigenous communities retain equitable benefits from such use. However, due to the complexity of implementation,

political sensitivities, and intensive resources required, only a handful of Pacific Island countries have adopted the Model law (Sali, 2020). Therefore, Sali suggested advancing the Model Law such as through involving local communities and traditional custodians to the law drafting process. While regional laws or legal instruments can eventually benefit traditional cultural expressions at a national level, there is a growing call among indigenous groups for international protection of their cultural heritage.

Suggestions for further action

For the next steps, we offer suggestions at both a concentrated and a broad level. On the concentrated level, we intend this literature review will act as background information for professionals working in cultural heritage institutions, especially librarians and archivists. Regarding the themes identified in the Findings section, we analysed scholarship focusing on how increased globalization has led to the misappropriation of traditional cultural expressions, necessitating an explicit global response. Themes also emerged from how intellectual property laws function effectively and ineffectively, as well as from the efforts of those who have proposed new legal approaches for protecting traditional cultural expressions. Within the context of cultural heritage institutions, increasing globalization makes many institutions house materials from other countries while also including indigenous materials. Managing indigenous materials could be part of the professionals' daily responsibilities within cultural heritage institutions, as they are likely to engage in digitizing some traditional cultural expressions for preservation or curating the materials for the public's educational purposes. From this literature review, those professionals will recognize the importance of identifying more inclusive and culturally appropriate approaches deduced from alternative solutions to manage traditional cultural expressions, especially given the lack of a more extensive global standard.

On a broad level, we have several recommendations for legal experts, policymakers, scholars, and other stakeholders throughout the world. First, we recommend developing a more comprehensive and international legal regime for traditional cultural expression protection. Traditional cultural expressions have been addressed through *sui generis* laws or through the expansion of existing intellectual property laws. According to the latest information from WIPO, 116 of 118 countries employ either conventional intellectual property laws or a *sui generis* law to protect traditional cultural expressions (WIPO, n.d.c). However, in none of these countries are cross-border traditional cultural expression issues adequately addressed. To resolve these cross-border concerns, many experts assert that addressing wrongful appropriation (at the very least) can be achieved by establishing legal principles and objectives in an international arena (see for example, Agyei, 2019; Antons, 2013; Coombe, 2009; Kalliniko, 2005; Torsen, 2008). Additionally, it is worth noting that international measures will also face challenges due to the necessity of regional and national ratification for effective enforcement (Janke et al., 2020). Therefore, we support and advocate for an international legal instrument, such as the much-anticipated agreement from the WIPO's Intergovernmental Committee, crafted with the advocacy of Indigenous People and the member states, that would be an inspiration for those who wish to enact legislation for the sake of protecting cultural heritage within their constitutional environments. Moreover, Indigenous Peoples' right to self-determination in all decisions concerning how their cultural heritage should be accessed and stored is critical to ensuring respectful and ethical stewardship of their traditional cultural expressions (Boey et al., 2025). In addition, we suggest that further work could focus on research into the legal protection of other artifacts from indigenous cultures, particularly genetic resources and traditional knowledge. These types of cultural heritage have been of major concern to the WIPO's Intergovernmental Committee, because they have also encountered problems of misappropriation that have harmed Indigenous Peoples. Future articles on these two types, together with traditional cultural expressions, could finally coalesce into a uniform, holistic perspective on the issue of cultural heritages.

Conclusion

This review explores the literature on the legal protection of traditional cultural expressions, which can contribute to the information sciences field and international legal dialogue. The review summarizes research in the area of national and international legal protections for traditional cultural expressions since 1990s and includes current and potential modifications to intellectual property laws such as traditional cultural expression protections as well as *sui generis* laws; these are intended to protect traditional cultural expressions where intellectual property laws fail. As a result, the findings suggest that Western notions of ownership of property and financial benefit are often not in rapport with Indigenous People's views of their cultural heritage, leading to misappropriation and debasement of traditional societies. In a narrower sense, the authors hope that this review covering the current or proposed legal regime for protecting traditional cultural expressions can serve as a reference for librarians and archivists to legally and ethically manage cultural material held within their institutions. In a broad sense, we expect this review to serve as a catalyst for advancing the agenda of the international community through organizations such as WIPO's Intergovernmental Committee. Indeed, comprehensive, international-level protection for traditional cultural expressions is long overdue and urgent; the preservation of the cultural identity of Indigenous Peoples and the cultural prosperity for all of humanity is at stake.

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