

Forum: United Nations Educational, Scientific and Cultural Organization

Issue: Tackling cultural appropriation in the fashion industry

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Table of Contents

Introduction	2
Term Definitions	3
Traditional Cultural Expressions (TCE)	3
Intellectual Property (IP)	3
Heritage	3
Traditional knowledge	3
Defensive protection	3
Positive protection	4
Background Information	5
Countries and Organisations Involved	7
World Intellectual Property Organisation	7
WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore	7
WeRNative	7
Lakota Peoples	7
Relevant UN Treaties/Resolutions	9
Convention for the Safeguarding of the Intangible Cultural Heritage	9
UN Declaration of the Rights of Indigenous Peoples	9
Previous Attempts to Solve Issue	10
Possible Solutions	12
Bibliography	13

Introduction

The fashion industry has a major importance in today's society, many people have expressed even an obsession with it. The industry generates 2,4€ billion annually throughout the world, meaning that there is a huge number of imports and exports, not only of final products, but of raw materials to produce them. Nowadays many styles and genres of fashion exist, nevertheless, there is a growing tendency towards producing ecotypes that resemble, or even, copy traditional costumes and clothing pieces from other cultures, especially minorities. Cultural appropriation in fashion is "qualified as almost any access to and use of cultural expressions by someone who is not part of the source community." It must be stated that culture and fashion are extremely closely related, however, the appropriation of other cultures must be tackled in order to make the fashion industry fairer.

Many experts are considering that cultural appropriation with the consent and appropriate compensation to the community from which it has drawn inspiration is a fair practice, nevertheless, what is not a fair practice is the cultural misappropriation, considered as "the harmful act of accessing, and/or using traditional knowledge or traditional cultural expressions from a people, community, tribe, or group that shares a common cultural identity, values, worldviews and history. And using them in a different context for commercial purposes without the authorization, acknowledgment, and compensation to the original custodians".

Some examples of previous misappropriations are: American clothing retailer Urban Outfitters issued Navajo-themed items, including underwear with traditional patterns, much to the discontent of the Navajo Nation. Likewise, French designer Isabel Marant was criticised in 2015 for designing a dress similar to a traditional blouse that has been made for centuries by the Mixe people, an Indigenous community in Mexico. Many designers justify it by referring to it as cultural appreciation, given that they incorporate patterns or symbols without the intention to cause any harm but to export the beauty of it and to celebrate their heritage. However, even if not intentional, they cause profound damage to the community, socially and economically.

Term Definitions

Traditional Cultural Expressions (TCE)

Traditional cultural expressions, often the product of intergenerational and fluid social and communal creative processes, reflect and identify a community's history, cultural and social identity, and values. In addition, they can hold spiritual meaning, religious significance, or links to political notions such as self-determination. Although TCEs are passed down from generation to generation, they are subject to an infinite number of evolutionary adaptations, imitations, revitalizations, revivals, and recreations along the way.

Intellectual Property (IP)

Intellectual property (IP) refers to creations of the mind such as inventions, designs, literary and artistic works, and symbols, names, images, and performances. IP is typically protected by laws that establish private property rights in creations and innovations in order to grant control over their exploitation, particularly commercial exploitation, and to provide incentives for further creativity.

Heritage

Heritage is the full range of our inherited traditions, monuments, objects, and culture. Most important, it is the range of contemporary activities, meanings, and behaviours that we draw from them.

Traditional knowledge

Traditional knowledge refers to the knowledge, innovations and practices of indigenous peoples. Developed from experience gained over the centuries and adapted to the local culture and environment, traditional knowledge is often transmitted orally from generation to generation.

Defensive protection

Defensive protection refers to a set of strategies to ensure that third parties do not gain illegitimate or unfounded Intellectual Property rights over Traditional

Knowledge. These measures include the amendment of WIPO-administered patent systems (the International Patent Classification system and the Patent Cooperation Treaty Minimum Documentation).

Positive protection

Two aspects of positive protection of Traditional Knowledge by Intellectual Property rights are being explored via this method (a) Preventing unauthorised use, and (b) Active exploitation of Traditional Knowledge by the originating community itself.

Background Information

In the past 100 years, many designers have helped themselves by imitating indigenous designs, many examples exist, such as French designer Paul Poiret's harem pants and tunics in the 1910s, inspired by the cultures of the Middle East and Turkey, to Yves Saint Laurent's beaded and feathered African collection in 1967, inspired by African handicrafts. Coco Chanel applied traditional Russian embroideries on tunics in her early collections in the 1920s. The ethnic influence became more widespread at the end of the 1990s and beginning of the 2000s. For instance, French fashion house Hermès featured stylised Indian saris and jodhpurs in its Spring/Summer 2008 collection. Belgian designer Dries van Noten creates colourful and "exotic" pieces of clothing drawing inspiration from cultures, as well as Italian fashion brand "Etro" which is well known for incorporating "ethnic" features into its creation, for example, in the 2018 Fall collection, including Peruvian, Patagonian and Navajo designs.

Nevertheless, there have been many cases in which the appropriation of culture and tradition has created widespread outrage. For example, in the Victoria's Secret show in 2012 angels walked the runway representing holidays. One represented Thanksgiving with a Native headpiece and leopard-print lingerie, outraging communities that said the outfit glorified the genocide of Indigenous people. Another example is when Gucci faced backlash for cultural appropriation following its fall 2018 runway show, which featured white models wearing turbans. Further discontent ensued when the brand had the turban on sale at Nordstrom for \$790.

These are all examples of very well known clothing marks that have appropriated designs, patterns, colours or even textiles, from indigenous and minorities without their consent or fair compensation. TCE are considered to be from the public domain, however, there are some limitations to their use. Given the nature of TCEs; many designers justify that they are just drawing inspiration from a public property and celebrating it by exporting it to the world. However, as already stated, when used by third parties, even if no harm is intended, it causes a deep distress in the community, a clear indicator of it is the high rate of suicides within Native communities, moreover, it

has been found that people suffer from severe psychological problems given the situation in which they found themselves, for example, humiliation by society or state powers, another example could be distress of their natural habitat, as in Brazil, where the Amazon forest is benign destroyed at an increasing rate, finally, the appropriation of culture makes the native feel as if they had lost their whole identity, meaning that they do not find themselves to be complete. Moreover, the non-compensation for the appropriation means a loss of economic resources very much needed by the majority of the native tribes, as they often find themselves in precarious situations.

TCEs have helped communities to define themselves and create a feeling of togetherness, as well as their own culture, especially after colonisation. Indigenous people were considered savages by the colonisers, and the government wanted to strip them of their ancestral culture and assimilate them into the colonisers' culture, their native language was often banned, traditional names and traditions were considered illegal, folklore and worshipness was heavily restricted. All these practices had an incredible negative effect on native people, given that they had build their culture throughout many years and it was taken away from them, they lost the feeling of belonging and history. By clothing brands imitating and copying TCEs it creates a common vision that the culture is being erased and subject to other powers. Another example of derogatory appropriation is the Milan-based fashion brand Squared, which presented a collection featuring designs taken from Indigenous cultures in Canada, entitled DSquaw - squaw is a name used to describe negatively North American Indigenous women.

Countries and Organisations Involved

World Intellectual Property Organisation

The World Intellectual Property Organization (WIPO) is one of the 15 specialised agencies of the United Nations. WIPO's two main objectives are:

1. to promote the protection of intellectual property worldwide; and
2. to ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers.

Given that it is private brands that carry out cultural appropriation in the fashion industry, it must be considered the countries that suffer the most from it, that is, where the communities are from. They are mainly based in Africa and North America, such as the Navajo and Inuit, there are also in Australia, New Zealand, Peru, Puerto Rico or Asia.

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) undertakes text-based negotiations to finalise an agreement on an international legal instrument(s) for the protection of traditional knowledge (TK), traditional cultural expressions (TCEs) and genetic resources (GRs).

WeRNative

It is a comprehensive health resource for Native youth, by Native youth, providing content and stories about the topics that matter most to them. They aim to promote holistic health and positive growth in our native local communities and nation at large. They provide information about appropriation and similar topics, as well as a forum for native tribes and individuals to learn about it.

Lakota Peoples

Dedicated to reversing the slow genocide of the Lakota People and destruction of their culture, the Lakota People's Law Project partners with Native communities to

protect sacred lands, safeguard human rights, promote sustainability, reunite indigenous families, and much more. This is an example of an organisation that is helping through different campaigns to protect a specific tribe, it has also brought to people's attention the fact that cultural appropriation is not cultural appreciation.

Relevant UN Treaties/Resolutions

Convention for the Safeguarding of the Intangible Cultural Heritage

The Convention for the Safeguarding of the Intangible Cultural Heritage is a UNESCO treaty adopted by the UNESCO General Conference on 17 October 2003. The convention entered into force in 2006, after thirty instruments of ratification by UNESCO Member States. The purposes of this Convention are to

- (a) safeguard the intangible cultural heritage;
- (b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned;
- (c) raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof;
- (d) to provide for international cooperation and assistance.

UN Declaration of the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on Thursday, 13 September 2007. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples. It recognises the importance and need of protecting indigenous peoples' rights to their traditional knowledge.

Previous Attempts to Solve Issue

Previous efforts to tackle this problem have been mostly carried out by activists and famous and influential people, who have expressed concerns and critics towards certain brands that have carried out cultural appropriation, either in fashion shows, marketing or commercialization of items. There are little to no important groups that have carried out any important mobilisation or campaign. Many individuals, such as Beatriz Gutierrez Muller, wife to Mexico's President, have used their role in society to express their concerns about certain campaigns or items carried out by closing brands, however, there has not been an initiative to tackle this problem from governments or the public sector.

In 2019, influencer Kim Kardashian West got mail on June 28 from the mayor of Kyoto, Japan about her newly unveiled shapewear line, called "Kimono." In an open letter on Facebook, Kadokawa Daisaku said it is his "strong wish" that KKW rethink her use of the name, given that Kimono has nothing to do with underwear, it is a traditional Japanese costume.

In 2015, Salome Awa, a woman of Inuit descent, accused KTZ of appropriating a sacred Inuit design. To substantiate her allegations and brand the TCEs featured on KTZ's Inuit-inspired garment as Inuit property, Salome was able to reference Northern Voices: Inuit Writing in English, a book that has a photo of Salome Awa's great-grandfather wearing the garment with the TCEs of interest, and The Journals of Knud Rasmussen, an Isuma-produced film with scenes that show Inuit actors wearing a replica of Salome's great-grandfather's garment. Salome's efforts sparked consumer backlash and led KTZ to remove their Inuit-inspired garments from sale online and in stores.

As part of her Spring/Summer 2015 Étoile collection, Isabel Marant integrated embroidery elements in her collection that are stylistically identical to those that the Mixe people apply on their huipil, a traditional blouse with a rich cultural heritage. Since Isabel did not ask the Mixe people for permission to use their TCE, compensate them, or

acknowledge the community as a source of inspiration, she was rightly accused of appropriating Mixe culture.

Possible Solutions

The idea of intellectual property is common in the law and it aims to protect intangible creations of human intellect and creativity using copyrights, patents, and trademarks. Essentially it's used to prevent theft and plagiarism.

But traditional knowledge and traditional cultural expressions have been historically excluded from intellectual property law. This means they are not lawfully protected from theft, misappropriation, and extraction. This is why it has been proposed to create the term cultural intellectual property, in order to protect heritage, culture and traditions. The 3Cs rule has been created, that consists in:

1. Consent: Free, Prior, and Informed consent of the craftsperson, Indigenous or local community.
2. Credit: Acknowledgement of the source community and inspiration.
3. Compensation: monetary or non-monetary compensation or sharing of benefits resulting from the commercialisation of the derived work.

On top of this, campaigns of awareness and education are a viable solution for both brands and customers, given that it could give enough information for companies to consider if it is a fair practice, it would enable them to develop way to find inspiration that are more respectful, and to assess the impact it could have on that community; and for customers to be reluctant to buy such products and to distinguish between original products and copied.

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