

# Intellectual Property Protection of Traditional Handicrafts: Practical Foundations and Future Perspectives

Yijun Jin \*

Department of Law, University of Sheffield, Sheffield, United Kingdom

\* Corresponding Author Email: yjin67@sheffield.ac.uk

**Abstract.** Traditional handicrafts, a tangible manifestation of traditional culture and a significant cultural legacy, its related intellectual property issues have been controversial in recent years. This paper evaluates several common methods of intellectual property protection that could be adapted to traditional handicrafts and the current state of protection. Then finds that the existing IP system lacks a systematic approach or framework to the protection traditional handicrafts. Although many countries have already experimented with the use of geographical indications for the protection of their national intangible cultural heritage, it is clear that the legitimate and reasonable protection approach of many traditional and indigenous cultural expressions cannot be achieved by means of single type of IP law. By drawing on the shortcomings and dilemmas of previous protection experiences and combining the characteristics of traditional cultural expressions, this paper proposes a fundamental mechanism for the protection of intellectual property rights for traditional handicrafts and a framework for underlying IP law protection.

**Keywords:** Traditional handicrafts, intellectual property protection, Geographical indications, cultural expression, legal framework.

## 1. Introduction

The majority of traditional handicrafts have a long history of development and are a significant part of the historical and cultural legacy of many nations worldwide. They are not only cultural symbols but also vital contributors to local economies, especially in communities that are rural and indigenous. In the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (ICH), traditional crafts are recognized as an essential part of intangible cultural heritage. Traditions and knowledge passed down from one generation to the next comprise ICH. Being involved with this tradition can promote well-being, a sense of community, and understanding of various cultures. It has the power to unite people with their constructed and natural environment and play an essential part in placemaking and economic regeneration [1]. Handicraft, as a traditional main sector of craft making, deserve to have their unique skills, materials, and knowledge passed on.

However, the protection of intellectual property of traditional handicrafts has encountered a number of challenges in modernized era. With the advancement of industrialized production, the market dominance of the handicraft industry, which produces and creates with craftsmanship, is gradually declining. Large-scale automated production has essentially taken the place of traditional handmade products, and depriving numerous traditional craft methods of their practical value. In other words, in such situation traditional handicrafts can only turn to enhance their artistic characteristics and gain recognition in the art market for their rich expressiveness. Apart from the influence of external circumstances on legal protection, traditional skills and aesthetic characteristics associated with handicrafts, are also vulnerable to reproduced by piracy. Low-cost imitations erode the reputation for quality of authentic products and then reduce sales volume of traditional handicrafts and influence its economic benefits [2]. It is essential to preserve the unique aesthetic design of traditional handicrafts as well as the handicraft techniques that have been handed down through the generations.

Therefore, at present, the qualities of traditional handicrafts as cultural heritage or indigenous culture, such as unique raw material, aesthetic design with community character, and special handmade techniques, should receive more attention when it comes to intellectual property protection.

## **2. The Basic Information of Traditional Handicrafts**

### **2.1. Definition of Traditional Handicrafts**

Traditional handicrafts include creations artistically made by hand with basic traditional tools, for example, wooden carving, weaving, painting, printing textiles, metal works, leather works and the likes [3]. Usually, traditional handicrafts could literally be understood in three parts [4]. “Traditional” emphasizes the profound ties to indigenous or local communities, as well as the wealth of historical background and generational knowledge of each unique design and techniques. “Hand” emphasizes the human element and the laborious procedure by which local artisans shape each piece. “Craft” refers to the process of carefully transform raw materials into special and meaningful works of art. These elements together create not just an object, but a living cultural heritage.

### **2.2. Characteristics of Traditional Handicrafts**

Although there is not one general description of handicrafts, the following features are usually seen in them. First, traditional handicrafts made entirely by hand or with the assistance of simple tools, which means that the artisan’s direct manual labor constitute the majority of the final product and none of the pieces are exactly the same. Thus, the focus of intellectual property protection should be on craft methods and techniques, that is, traditional craftsmanship. Second, these creations represent the local culture and indigenous civilization. They are passed down from one generation to the next and have a connection to the local community. Their distinctive qualities could be functional, decorative, artistic, creative, culturally associated, or significant in terms of social and religious meanings [2]. Therefore, the possibility of using collective or geographic marks in the protection process needs to be noticed. Third, handicrafts include a broad range of products made from raw materials, which means that the unique characteristics of the geographical area where the raw materials are grown must be considered when protecting them. All of these factors have an impact on the IP protection.

## **3. Current Global Intellectual Property Mechanisms**

Traditional crafts are often considered to be intellectual creations that are in the public domain and have been co-produced over time. The terms “traditional knowledge” and “traditional culture” are often used by many people to define the cultural background associated with those handicrafts’ techniques and design concepts, such as folklore, family totems design, and traditional firing method. It is always a controversial issue that a large portion of “traditional knowledge” does not fit into any of the clear categories of IP. In addition, the “fixation” and “tangible” requirement for IP protection precludes the protection of many intangible cultural heritage or traditional cultural expressions unless they are fixed in a tangible medium. At present, many nations with a wealth of TK are working to preserve it from being misappropriated by individuals who are not accountable for its creation by enacting new framework of IPRs [5].

From the relationship between intellectual property legal system and traditional handicrafts, each component could potentially be protected by a distinct form of IP. Know-how, the skills and knowledge used to create and make handicrafts could be protected by patents or as a trade secret. Patent could indirectly protect traditional handicrafts by directly protecting the methods and tools used to make them. Craftsmen who have improved traditional processes or inventions into new processes with industrial and practical utility could apply for patents. For example, the use of woodworking tools, hand tools, looms, kilns, etc. with improved new functional features, or paints and weaving techniques that break away from the traditional methods. External appearance like shape and design, could be protected by copyright or industrial designs. Original traditional handicrafts creations, include enamel works, jewelry, sculptures, ceramics, etc., are of artistic and aesthetic quality could usually be protected by copyright, which could prevent the third parties from copying and adapting without the authorization of the craftsmen, thus could reduce circulation of pirated

handicrafts on the market. Reputation could be protected by trademarks, collective or certification marks, geographical indications (GIs) or unfair competition law [2]. The registration of collective or certification trademark could enhance the reputation status of genuine traditional handicrafts. Consumers could identify whether the handicrafts are authentic or not through the trademarks, which could also achieve the effect of combating the circulation of imitation products.

Of the above methods, GI is currently the method generally recognized by countries as the most relevant to the protection of traditional handicrafts, which refers to “a sign used on products that have a specific geographical origin and possess qualities, a reputation, or characteristics that are inherently linked to that location” [6]. There are many examples around the world show how GIs safeguard not only products but also the reputation and cultural legacy links to their original locations. Like Darjeeling tea is produced in the eastern Himalayas of India, where its special geographical environment gives it a unique smell and taste. As the same, the distinctive cultural, historical, and material importance of traditional handicrafts is often closely linked to their location of origin. For instance, the Aguadeño Hat from Colombia is crafted using palm straw from the Iraca Palm, unique to the region [7]. At present, GIs have been enacted in several of nations to safeguard the historical and geographical source of traditional handicrafts, for instance, Kanchipuram silk sari, Solapuri chaddars, and other Indian handicrafts have been recognized as a geographical indication officially under Geographical Indications of Goods (Registration and Protection) Act, 1999.

Other current one of significant international conventions or agreements which support GIs includes the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which is administered by the World Intellectual Property Organization (WTO), affirms the importance of GIs for the protection of traditional knowledge. In line with Articles 22-24 of the TRIPS Agreement, the international system of GIs’ standards is acknowledged as a substitute for the ordinary system of IPR, particularly copyrights. According to Article 22 of TRIPS, a GI could functionally prohibit producers outside the geographical area from falsely claiming that their goods are from the identified region.

## **4. Challenges in Protecting Traditional Handicrafts**

Traditional handicrafts are essentially an expression of traditional and indigenous cultures. In reality, most of traditional knowledge usually exposure to the public domain and is vulnerable to appropriation by third parties under traditional IP law system [2]. Usually, traditional handicrafts might conflict with the nature of traditional intellectual property protection due to their historical, cultural, and skill-sharing aspects. These features affect the protection of traditional IPRs such as patents and copyrights separately and interactively.

### **4.1. Difficulties of Patent Protection**

Most of traditional handicrafts’ techniques are generally passed down from generation to generation and have an obvious historical and religious significance, which means that many manual techniques and product designs lack novelty. The purpose of patent is to safeguard novel ideas and advancements in technology. The definition for patentable matter includes “any novel and practical machine, process, product, or material composition, or any innovative and feasible enhancement of any of these” [8]. Traditional handicrafts usually use methods and patterns that have been handed down through many years, and their traditional artisanal techniques and designs are “pre-existing technology”, meaning that if there is no actual innovation and improvement in the function, many traditional handicrafts will be ineligible for patent protect due to lack of originality, practicability, and novelty.

On the other hand, patent might also not be an appropriate and practical protection approach to expressions of indigenous and local cultures. While a patent is an exclusive right that effectively prevents the production and sale of counterfeit artifacts, it requires disclosure of the protected invention to the public in exchange. According to Article 29(1) of TRIPS, there is a clear condition of patent law that the applicant have a duty to provide specific and complete information about the

invention so that someone “skilled in the art” might replicate the final product or finish the procedure. Many applicants held some opposite viewpoints that the privileges of indigenous and local people might be undermined by public disclosure requirements since it would make traditional knowledge readily accessible to commercial subjects or open market. And it is easier for the third parties to recreate and adapt these traditional crafts, which might increase the danger of traditional techniques plagiarized and monopolized by bigger modern corporations. Especially as indigenous and local people lack the organizational and financial capacity to observe and enforce patents in the contemporary market situation, the traditional knowledge would simply get used with certain adequate pay [9].

At the same time, many crafts would not meet the requirement of industrial applicability for patent application. Technological innovation and making sure their inventions have industrial applicability is also a hardship for creators, which requires not only skillful craftsmanship, but also creative thinking and certain scientific and technological supports. On the whole, indigenous and local people often lack legal frameworks and awareness to protect their property rights, have unstable resource tenure, and are financially vulnerable [9].

#### **4.2. Difficulties of Copyright Protection**

Another potential difficulty that comes with a long history is that the original creator of many crafts is not identifiable and no way of verifying, and there is definitely not a “rightsholder” in the common sense of the term. Moreover, many creations are co-created by a whole community and diffused by group of people, which means that a variety of handicrafts with slightly different techniques but the same pattern might be available on the market at the same time. This might occur where several authors exist for similar handicrafts. The World Intellectual Property Organization (WIPO) also noted that identifying rights holders and beneficiaries of traditional cultural expressions (TCEs) is one of the great difficulties faced in the protection of their intellectual property rights, especially when it comes to copyright protection [2].

Even if original craftsmen could be found, the actual protection of intellectual property rights could also be quite challenging. Many original craftsmen make their living by making and selling traditional handicrafts and their entire families might live in rural. They tend to be older and, most indigenous people, especially in China, are choosing to support their next generation to higher education in order to escape from life in underdeveloped areas, which is largely the main reason why much of the intangible cultural heritages and technologies are hard to find young successors. Besides, many of them do not even have the sense to use the law to protect their handicrafts creations, let alone the notion of “ownership” of their works, which might also be very strange to many indigenous peoples as well [2].

Finally, traditional handicrafts inevitably involve collective knowledge protection, both in terms of technology and physical product protection, which is one of the difficulties of protection. The notion of private property ownership is often alien to people of indigenous origin. It is also certainly possible for traditional knowledge to be owned collectively. However, the idea of shared rights is typically excluded from traditional western legal conceptions. The focus has always been on the rights of the individual versus the rights of the state or national institutions [9]. Thus, collective protection of a certain kind of traditional knowledge in those countries is then particularly problematic. But in the socialist country like China, collective intellectual property rights might go more smoothly, for example, in China’s judicial practice in recent years, many traditional handicrafts have registered GIs in accordance with their regional characteristics and obtained effective intellectual property protection, such as Zhenhu embroidery’s unique “drop stitch” technique, Li Brocade, and Qingtian stone carvings. But the only reasonable method of protection found in current judicial practice is also the GIs, and one method of protection is not enough and has certain limitations.

### **4.3. Difficulties of Defining “Traditional Knowledge” under Legal Framework**

The protection of traditional handicrafts’ technique and background notion, like other traditional knowledge (TK) and traditional culture, is often seen as ancient and unchanging. However, it might evolve over time in the actual process of legal protection. Many communities might adapt and innovate on the basis of their original and traditional techniques, which make it difficult to clearly determine the time scope between TK and novel knowledge. Uniform global intellectual property law is difficult to protect traditional knowledge due to the vastly different geographic origins of traditional cultures, and many traditional crafts that are nationally or geographically distinctive require special protection schemes, in addition to the fact that knowledge that is “traditional” in one place might be completely unknown in another. Therefore, the territorial scope of IP protection for traditional handicrafts is also difficult to clarify.

In addition, since much of this traditional knowledge is created collectively, it is difficult to confirm individual ownership and exclusive rights, which might conflict with the existing legal framework for IPR that focus on the protection of individual innovations and creations, especially copyrights and patents. Besides, many TK might have been used by external third parties in the course of being shared between different communities, making it troublesome to determine and identify what is protectable TK that is publicly accessible, as well as private, which complicates the definition of the scope of protection. This requires the legal framework to accommodate the need to protect confidential knowledge while at the same time taking into account the need that creators would continue to use publicly available knowledge. Moreover, the sources of TK might be orally transmitted and not documented in writing, which means that many specialized techniques are unsubstantiated. This lack of formalization makes it more challenging to meet the documentation requirements necessary for IP protection.

## **5. Suggestions of Intellectual Property Methods towards Traditional Handicrafts**

### **5.1. GIs Protection as the Main Approach**

GIs have already been proposed in Part 3 as a relatively good approach of protecting traditional handicrafts with geographical characteristics, which also obtain international recognition. Trademarks belonging to the group of traditional handicrafts could be protected in the collective name by using GIs, which could also be an effective protection against counterfeiting. Although the fact is that GIs do not directly safeguard the actual knowledge or expertise related to handicrafts, they might contribute to their indirect protection in several ways, which include they could help prevent the misappropriation of traditional knowledge (TK) and cultural expressions (TCEs) and ensure the preservation of their practices within the original communities [2]. They could also prevent others from using a protected GI on products that do not come from the designated area or lack the required quality. Besides, GIs protect against misleading and deceptive trading practices and ensure consumers get authentic products, which could enhance the market value of traditional handicrafts and promote cultural preservation. GIs provide artisans with both economic and cultural benefits, ensuring their traditions thrive around the world. The qualities of traditional handicrafts as cultural heritage or indigenous culture, such as unique raw material, aesthetic design with community character, and special handmade techniques, should receive more attention when it comes to practical GI protection.

### **5.2. Other “Marks” as the Supplement**

At the same time, trademarks, collective, and certification marks could also be used in combination with “labeling” methods of protection to establishing brand identity and quality assurance, as well as, help cultivate and strengthen the reputation and distinctiveness of handicrafts. Trademarks law could help preserve traditional cultural products by prohibiting the registration of misleading trademarks and the use of exposed traditional crafts and cultures to create similar crafts. Indigenous communities

could identify and distinguish their handicrafts and the artists who create them locally as well as globally by registering collective and certification mark, which could guarantee that they receive equitable returns and improve their economic conditions [2]. The Regional Commission of the Crystal Industry in Portugal registered the MGLASS collective mark, which is applied to mouthblown glass and crystal artwork produced by craftsmen in the Marinha Grande area. One example of certification mark is the authenticity labels on “Mola”, a kind of unique textile panels made by Kuna craftswomen in Panama. This is for counteracting the widespread sale of low-quality mola imitations [2].

In addition, other laws might also be invoked to restrict counterfeit handicrafts in the market. For instance, unfair competition law could be beneficial against deceptive and false claims regarding authenticity or origin [2].

## 6. Conclusion

In conclusion, this paper assesses the mismatch and dilemma of patent and copyright protection for handicrafts through a fundamental study of the current situation of IP protection for handicrafts. It arrives at a basic protection proposal with GIs as the primary mean, other trademarks as the supplementary methods of protection. When using IPR to protect the market position as well as the reputation of traditional handicrafts, significant attention should be paid to the attributes of their special geographical location or special raw materials and to the registration of trademarks. Besides, when utilizing copyrights and patents to protect traditional handmade techniques and pattern designs, extra care should be taken to ensure that they are sufficiently innovative and industrially useful, as well as the identification of the original creator.

Finally, the future protection system needs stronger international cooperation, more cultural communication and standardized legal framework. While the lagging nature of cultural heritage and the increasing sophistication of IP regimes might be conflict or incompatible, there has been a growing public demand in recent years for the protection of traditional cultural expressions, and the protection of the IPR of indigenous cultures and traditional craftsmanship must be taken into account seriously, with legal frameworks around such issues needing to be continually developed and explored.

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