Policy Brief

Intellectual Property Rights in India for Traditional Cultural Expressions

Recommendations for training and support FOR traditional artists
The National Intellectual Property Rights (IPR) Policy was issued by the Government of India in 2016 to spur innovation and creativity in the Indian economy. Recognising the need for a robust, equitable and dynamic IPR regime that promotes economic growth and social development, the policy lays down seven objectives, including plans for implementation of the recommendations. Among the objectives, there is a recognition of the need to engage with the ‘less-visible IP generators and holders’, especially in rural and remote areas. These include small businesses, farmers/plant variety users, holders of traditional knowledge (TK), traditional cultural expressions (TCEs) and folklore, designers and artisans (National IPR Policy 2016, p.5).

In light of these measures, this policy brief makes evidence-based recommendations on the methods and kinds of training in intellectual property (IP) skills that would benefit such communities, based on outcomes of the HIPAMS initiative. The HIPAMS (heritage-sensitive intellectual property and marketing strategies) project launched in 2018 has been working with four ICH (intangible cultural heritage (also referred to as TK)) communities in West Bengal, India: Patachitra painters, Purulia Chau dancers and Charida mask-makers and Baul Fakiri musicians. The aim has been to investigate how considered use of intellectual property rights (IP) can underpin marketing skills including digital storytelling and social media use, to help rural communities raise awareness about their art and make a living from it, while promoting and safeguarding the traditions that foster it. In an era of globalisation and rapid information sharing, it becomes all the more imperative to empower ICH communities to claim ownership over their art and exert control over its commercialisation. In the current pandemic, and because face to face contact has been impossible, many of these communities have resorted to online media to sustain their livelihoods. This trend of online communication is likely to continue into the future, further reinforcing the need to provide continuous training to support ICH holders and to ensure their visibility among diverse consumers and markets.

The National IPR Policy (2016) outlines several measures with respect to traditional cultural expressions (TCEs). TCEs include music, dance, art, performances, ceremonies, architectural forms, handicrafts and other artistic and cultural expressions. In the HIPAMS project we referred to these as tangible and intangible expressions of ICH knowledge and skills. Based on the evidence of the impact of the work done in the HIPAMS project, the measures outlined by the National IPR Policy, which are as relevant to expressions of ICH (or TK) as they are to TCEs, will be supplemented with recommendations that can help achieve the stated objectives.

1. **Objective 2** of the National IPR Policy pertains to the **Generation of IPRs**. Specifically, **Objective 2.30** concerns the place of ICH communities in the policy and seeks to:

[promote India’s rich heritage of traditional knowledge with the effective involvement and participation of the holders of such knowledge, [...and] provide necessary support**
and incentives [to such TK holders] for furthering the knowledge systems that they have nurtured from the dawn of our civilization.

The HIPAMS project, in line with international law, is clear that core ICH knowledge and skills handed down from generation to generation cannot be protected by IP. However, the tangible and intangible expressions of ICH can be protected by IP. Through working with the communities and providing training and capacity building on IPRs, the HIPAMS project has shown that community knowledge and use of the relevant IP rights can be significant in promoting ICH products and performances.

**Case Study 1: Not just on paper – Applying IPR to real life!**

The teachings and learnings through HIPAMS have started having an impact on real life decisions made by the artists. As part of the HIPAMS project, and through identifying training needs in consultation with the communities, the HIPAMS team delivered training on IP to the Patachitra community in Naya village, Pingla. Part of this training concerned copyright, and how copyright could protect contemporary renditions of scrolls created using ICH knowledge and skills. Suman Chitrakar, a young patua from the village attended this training. Recently he was contacted by a retailer who wanted him to paint a small scroll on a particular theme. Suman asked the retailer about the purpose of his art, where it would be used and how. The retailer said that he planned to reproduce Suman’s painting on candle stands and then sell them. On knowing this, Suman contacted the HIPAMS team asking how much he should charge, given that his work would be copied and reproduced on items which would then be sold to numerous customers. He thought he would be entitled to charge the retailer for more than just the physical scroll because the retailer was going to make many copies, but he was confused as to whether to ask for an amount based on the number of candle stands, or for a certain percentage of the profit. Finally, the retailer agreed to the terms proposed by Suman and agreed to remunerate him not just for the scroll, but also its reproduction on other items.

This case study shows the impact of raising awareness of IPRs among the scroll painters. The knowledge meant that they understood that they had the right to give people permission to make copies of their art works, and that they could negotiate to share in the proceeds of the sale of these copies.

The HIPAMS project has also shown how the failure of third parties to respect the IP of the ICH communities and its members could imperil their livelihoods.

**Case Study 2: Of Credits and Claims – Chau dancers and Performers’ Rights**
Film and documentary makers, professional photographers and researchers often visit the Chau dancers in Purulia to meet with them, and record, photograph or write about their dances. Often, however, little or no benefit is passed back to them either in terms of remuneration or attribution. In 2019, Zee5, an Indian digital entertainment streaming service streamed a film called Jobordokhol, which featured a young Chau dancer, Moushumi and other dancers from an all-girls Chau dance group from Maldi, Purulia. While the Chau dancers were paid for their performances in the film, they were not credited individually, and instead were mentioned simply as ‘The Mitali Chau Dance Group’. Mitali was the name of the actress in the film.

Working with HIPAMS team, the Chau dancers identified that training in IPRs would be beneficial to help them understand their rights in performances. After this training the Chau dancers understood that the law on Performers’ Rights in India allows performers, including dancers, to claim to be identified as the performer of a performance. This credit could be crucial for dancers in the Chau community as it could help to raise their profiles, and to provide future opportunities thus helping to safeguard their ICH skills. However, they also recognised how difficult it would be to negotiate with a large and powerful company such as Zee5 for appropriate recognition.

To address this problem, and a number of others that the Chau community in Purulia face while dealing with film-makers, performance organisers and researchers, the Chau community co-created a Chau Dance Code with the HIPAMS team. The purpose of this code is to lay out the hopes and expectations of the members of the Chau dance community in their transactions with different groups who draw on and often profit from their dance. It asks third parties to respect Chau dance heritage, and contains a number of principles that are embedded in Indian law, such as the right of attribution for performers, and the right to remuneration. The Chau Dance Code will be widely distributed, and each time the Chau dancers interact with one of these groups for a particular project or event, the organisers will individually be given a copy of this code. The process aims to garner respect for the Chau dancers and their ICH, and ensure that they are duly acknowledged and remunerated for their work.


Recommendations
These case studies have shown how important training in IP rights is for ICH communities to enable them to use these rights. The recommendations that arise from this evidence are:

Regular training on IPRs, their purpose, managing their use and the relationship between individual and collective interests among ICH communities and relevant stakeholders.

The HIPAMS project found that step by step training on the different IP rights, what they are used for, and how they are used was important for the communities. In addition, it was important to acknowledge the tension between collective IP rights, such as geographical indications, and individual rights, such as copyright. This is particularly so given the community nature of ICH, and the individual nature of some IP rights.

Providing guidance for community members on licensing copyright and performers rights for films, publications, custom-made products etc.

The HIPAMS project found that it was important to understand the communities, their ICH, and discuss what IP rights would be most relevant to their work. For some communities this could include information on licensing IP rights – an aspect that
emerged as significant for Patachitra painters. For Chau dancers, understanding performers rights, and in particular the right to be attributed in films was essential.

Assisting communities in creating ethical codes of practice to highlight to stakeholders such as journalists, researchers, festival managers, photographers and the general public, how the ICH community would like to be treated.

The HIPAMS project, in co-creating IP strategies with the communities, emphasised that it was essential to recognise the limitations of IP rights, and in particular the practical challenges around enforcement. As a consequence, the HIPAMS team co-created a series of ethical codes with the communities, designed to ask audiences to respect their heritage, and their IP rights.

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<th>Box 1: HIPAMS scrolls and associated performances</th>
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<td>After undergoing training on IP including copyright and attribution, GIs and Craftmark, two senior artists - Swarna Chitrakar and Monu Chitrakar – created Patachitra frames about IP to sensitise others [Fig.1 and Fig.2]. Patachitra song on GI by Swarna Chitrakar can be found at <a href="https://www.youtube.com/watch?v=SF5hhOjc1Dr&amp;feature=emb_logo">https://www.youtube.com/watch?v=SF5hhOjc1Dr&amp;feature=emb_logo</a></td>
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2. Objective 2.26 of the National IPR Policy concerns Geographical Indications (GIs) and seeks to:

*e]ncourage the registration of Geographical Indications (GIs) through support institutions; assist GI producers to define and maintain acceptable quality standards, and providing better marketability.

GIs can be particularly useful for traditional artists and craftsmen as they lend authenticity to the product, which in turn can boost visibility of their products among consumers while simultaneously improving awareness about the use and importance of GIs.
Case Study 3: The two-way boost - Geographical Indications and better packaging

The use of Geographical Indications (GIs) has been heralded as an important tool to bolster markets in India. GIs can help establish an article as ‘authentic’, for example, that it comes from a specific area and is handmade. GIs can also help to underpin a premium brand.

A geographical indication for ‘Bengal Patachitra’ as a handicraft was registered in 2018 in classes 16 (painting) and 24 (textiles). The description of the goods focuses on the most traditional forms of the painted scrolls using natural paints with accompanying songs. ‘Chau Mask of Purulia’ has also been accredited with GI status in 2018 under product class 27 (handicrafts-masks). Here, the focus is on the materials and methods used to make the masks, and the different characters they portray.

The HIPAMS project worked with GI registration institutions in Kolkata to determine what the user registration for Bengal Patachitra could cover. During training on IP with the Patachitra community, information was disseminated on how the GI could be used to educate the consumer about the origin and properties of the products. Furthermore, recognising the need for improved packaging options, the communities and HIPAMS team co-created eco-friendly packaging and highlighted how a number of different IP rights could be used on this packaging to promote the ICH holders and their work. The packages also contain QR codes which redirect users to community-run websites and the pater gaan performances, thus linking two important parts of the ICH of the communities (dedicated to Patachitra and Purulia Chau).

Inclusion of the GI logo on Patachitra and Chau mask packaging is a great example to understand how the effective use of IP tools and marketing strategies can lead to more visibility and awareness - not just about the ICH products but also about IP rights. By making the products more buyer-friendly and using intellectual property in this way, the artists can expand their market, and simultaneously spread awareness about the core elements of the ICH and of their community. The use of the GI logo also enables consumers to know, remember, and share knowledge about the origin and characteristics of the scrolls/masks.

Recommendations:

These case studies have shown how important a GI can be to ICH communities in raising the visibility of their work in the market. Combining this with other IP rights and innovative solutions to real-world problems can further enhance the promotion of the communities and their work. The recommendations that arise from this evidence are:

1 http://ipindiaservices.gov.in/GirPublic/Application/Details/564
Working with the communities to disseminate information about the potential and importance of GIs to the promotion of handicraft products.

The HIPAMS project has shown the importance of working together with the ICH communities to enhance the understanding of the scope of a GI and how they can be used to send signals to the consumer about the origin and properties of the artists’ work.

Co-creating innovative solutions with communities to address new markets which can incorporate GIs and other IP rights to aid visibility and promotion of the communities’ handicrafts and art work.

The HIPAMS project showed how working with communities to co-create eco packaging for transportation of Patachitra scrolls and Chau masks which may otherwise be damaged in transit, could lead to greater consumer awareness of the provenance of the art works. It also demonstrated how IP could be used in those solutions to heighten the visibility of the artists’ work with consumers.

3. **Objective 5** of the National IPR Policy concerns the **commercialisation of IPR**. Specifically, **Objective 5.13.3** of the policy encourages the provision of:

   [g]uidance and support to IPR owners about commercial opportunities of e-commerce through Internet and mobile platforms.

The HIPAMS project has shown how important internet platforms are to the ICH communities, and how increasing their individual and collective visibility on spaces such as Facebook and Instagram can have a significant impact on audience appreciation of their work and lead to increased income. The HIPAMS project has also shown how important it is to underpin these strategies with the correct IPRs to ensure that the communities and the individuals are recognised as authors and owners of their work, thus strengthening links between the communities and the consumers.

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**Case Study 4: Ethics and Awareness – CC-BY-NC at POTMaya**
The Pot Maya Festival is an annual festival dedicated to varied events and activities around Patachitra organised in Naya, Pingla. After training in IP rights with the HIPAMS team, the community disseminated a notice at the festival in 2020 to raise awareness about the IP rights of the artists, and asking visitors to respect them. This poster, containing information both in English and Bengali encouraged visitors (including international and domestic tourists, photographers, researchers etc.) to take photographs and videos of the Patuas and their works and to post these on social media using a Creative Commons CC-BY-NC license. By using this licence the artists give permission to the visitors to take photographs of their works and to make copies – such as posting the images on social media – but when they do, they must mention the name of the artist and Naya village. This allows information about the artists and their work to be circulated widely, while making sure that the artist and the village are acknowledged. In addition, the licence states that the visitors are not allowed to make money from selling copies of the photographs of the work – and copies must be for non-commercial purposes. The notice also requested stakeholders to use hashtags like #POTMaya, #BengalPatachitra, and #Pingla and credit artists by tagging them when they shared their work on digital platforms. Having received a good response from audiences, permanent signages will now be used in craft villages like Pingla and Charida (Chau Mask village) which attract visitors throughout the year.

This is an example of how the right kind of guidance and support to ICH artists can allow for greater recognition of them, their work and their villages on digital platforms, thus increasing their visibility and marketability on social media. It also raises awareness among the general public about the need to respect the IPR of the communities.

Recommendations:
This case study has shown how important training in IPR is, and in particular in the digital market. This ensures visibility of the artists and the communities, establishing lasting links with consumers while also protecting their work from misuse. The recommendation that arises from this evidence is:

Working with the communities to understand their ICH, and thus which IPRs are most important to their heritage.

The HIPAMS project highlighted how important it is for communities to understand and apply principles of ownership, and the right to ask to be identified. Existing tools – such as Creative Commons licenses – and new ways to encourage the dissemination of photographs and other information by consumers about their work were co-created. These proved to be effective marketing and promotion methods which also enabled communities to retain a sense of control by according limited permission for re-use, such as that the images may not be used for commercial use.

April 2021
Annex

HIPAMS evaluation report 2021

The evaluation report from the HIPAMS project can be found on the HIPAMS-India.org website. The following extract is taken from the HIPAMS evaluation report 2021 and highlights the evidence of the impact of IP training for the Patachitra, Chau dance and Chau mask-makers and Baul Fakiri communities.

To what extent was the relationship between economic and socio-economic development and between protecting IP rights and safeguarding ICH better understood?

Artists have become aware of their rights, ensuring attribution, and negotiating with stakeholders.

Increasing awareness of IP rights, attribution, acknowledgement, seeking permission before taking photos or videos, negotiation in the case of third parties reproducing art works, CC-BY-NC licensing for digital media were the focus of the workshops with the artists in their villages. The artists are now more conscious about the attribution and commercial use of their art. This awareness has empowered the artists to negotiate more professionally with stakeholders like event organizers, craft retailers, audiences, and buyers.

The Baul Fakiri artists are asking the audience to give the names of the artists when sharing photos and videos of them on social media. Young artists are aware of the commercial benefit of being named: “when a photograph or work of any artist is being promoted, if the name of contact is given the artist also gets promoted with the art form” but note that “in most of the cases the artists are used without any recognition”, which is “not at all a good practice”.

The Patachitra artists ask the people who visit their village to take photos and videos to mention the name of the village in order to promote the artist village. All of the artists think taking permission from the artists for capturing photo or recording video is important. Equally adding artist’s names and village name while posting photo/video on social media is important. All of them feel that festival signboards requesting visitors to attribute the artists and to use hashtags was very effective and they would like to use it in future.

A Chau group leader, said that he and his group had previously worked in seven films and none of those had attributed them, after the HIPAMS workshops now he is aware about his rights and specifically asks the producer to mention the name of his group in videos and productions. “I worked in 7 movies . . . where our art was recognised but our names were not given. The names of the cast and crew are given but our names are nowhere to be found. Now I have understood, so I will claim the recognition whenever a booking comes”.

General understanding of copyright has improved among the artist communities especially Patachitra artists, who are now able to negotiate better regarding royalties or licensing of their work for commercial purposes. The response by young Patua is a good example of how the artists are empowered to negotiate using IP. Recently he was contacted by a retailer who wanted him to paint a small scroll on a particular theme which the retailer planned to reproduce on candle stands and then sell them. He knew that he should be able to charge more because copies were to be made of his work. After negotiation, the retailer agreed to remunerate him not just for the scroll, but also its reproduction on other items.

Graph capturing responses on artists’ rights from all the four target communities
Art Codes to help artists in their commercial dealings were developed in consultation with the artist communities. Four Art Codes (also called ethical codes in the project) have been developed for Patachitra, Baul Fakiri, Chau dance and Chau mask makers’ communities to address IP and ethical behaviours. These Art Codes were developed in consultation with the communities. The main objective of the codes is to make the stakeholders such as NGOs, publishing houses, culture experts, and craft houses aware about the concerns, expectations and rights of the communities when participating in creative collaborative projects. These Art Codes have been shared with the stakeholders on online meetings and widely disseminated among the community artists. Copies of the art codes have been distributed to the artists. The artists said that they will use the Art Code henceforth while interacting with stakeholders. “The Art Code will help musicians who are introvert like me and cannot always speak up, we can give a copy of the Art Code to the stakeholders we work with” said a young Fakiri singer. It created awareness that it is both wrong and unethical for anyone to take what is not theirs for personal gain or for exploitation.

The artists are aware of GI and taking interest in registration. All the Patachitra painters and 95% of mask makers were aware of GI. Twenty seven Patachitra artists and 32 Chau mask makers have received individual GI registration at the end of the project, compared to none at the beginning. The Patachitra and Chau mask makers are using their GI registration to collectively promote their art form. The artists are sharing about GI with their customers via packaging tags, business cards, conversation during sales, in fairs and in a way helping in collective promotion of the art form.

Greater awareness of IP thus informed and empowered artists in their relationships with clients, festival organizers, distributors, film makers, and other third parties. Artists have looked at the way they were treated in the past by third parties and have realized that these behaviours not only did not follow the law (e.g. right of attribution), but were also disrespectful. As a result, they now have expectations of what constitutes appropriate behaviour.