

Intellectual Property Rights (IPR) for Traditional Cultural Practitioners

Summary Notes from the Earthlore Fellows 2025 Workshop (Conducted by Senior Advocate Shyam Padman)

This document outlines the core Intellectual Property Rights (IPR) protections available under Indian Law, focusing on the rights over traditional folklore, original compositions, and the mechanism of royalty for cultural works.

This guide is essential reading for all traditional cultural practitioners. (Please refer to the full class recording/document for complete details.)

Access the presentation on the subject [here](#).

Listen to a deep dive Podcast on the same in [English](#) | [Malayalam](#) | [Kannada](#)

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Rights over Traditional and Original Songs

Issue 1: What rights do they have over their traditional songs that have been passed down through generations?

1. Traditional Knowledge, Folklore, and Copyright

1. Traditional songs/folklore often fall under the category of traditional cultural expressions or folklore. These are collective, community-owned or passed-down works that often lack a single identifiable author and may not be fixed in written form in a "final medium." Because of these features, conventional copyright law faces challenges in protecting them. (ijsr.net)
2. In Indian law, the Copyright Act, 1957 does not expressly provide a "folklore copyright" or sui generis regime for traditional cultural expressions or oral tradition. (Kautilya Society, RMLNLU)
3. One partial protection is via Section 31A of the Copyright Act, which deals with unpublished Indian works whose author is unknown or cannot be traced. That gives some protection if someone later publishes or exploits a "work" whose authorship is unknown. (Kautilya Society, RMLNLU)
4. But that protection is limited (in terms, scope, and enforceability). Many traditional songs will not qualify under Section 31A (because they may already be publicly known, or do not satisfy "work" in a fixed medium, or their community cannot be identified clearly). (Kautilya Society, RMLNLU)
5. For traditional knowledge more broadly (e.g. medicinal formulations), there is the Traditional Knowledge Digital Library (TKDL) in India, which catalogues and documents traditional knowledge to prevent misappropriation (especially in patents). But TKDL is focused more on medicinal, scientific, and botanical knowledge than songs or musical folklore. (WIPO)
6. Because of the limitations, many communities try to use alternative mechanisms (e.g. customary laws, community protocols, documentation, licensing, contracts, collective trademarks or geographical indication (GI) in some cases) to assert control. (Maheshwari

& Co.)

Conclusion for traditional songs:

They may not have strong, automatic copyright protection under standard copyright law, especially if the song is in oral tradition, lacks a fixed author, or is not "fixed." If someone later records or fixes the traditional song into a recorded medium (audio/video) or transcribes it, that specific recording or transcription may itself acquire copyright (in that rendition) with its makers. The community can attempt to assert rights by documenting, registering, or licensing the use of the traditional songs, and by negotiating with users who wish to use them. They should also keep evidence (archives, community documentation) of usage, origin, communal claims, customary rules, etc.

Original New Songs in Indigenous Languages

Issue 2: When they write new songs in their indigenous languages for films or other projects, who owns the copyright?

When a musician writes an original new song (melody + lyrics) in an indigenous language, that is clearly an original musical work + lyric work. This is within the domain of copyright law, if the work satisfies the threshold of originality and is fixed in a tangible medium (recorded or written down). The composers) of the melody, and the lyricists) of the text, are typically the original authors. They own copyright initially (unless there is an agreement to transfer or share) under Section 17 of the Copyright Act. (indialawoffices.com)

If multiple persons collaborate (composer + lyricist + arranger), then the copyright is joint among them in the proportion agreed (or default proportion).

If they are hired (for example, by a film producer) to write a song under contract, the contract may specify ownership or assignment (subject to the legal rules).

The authors also have moral rights under Section 57 (right of paternity, right to integrity), which persist even if they assign copyright. (Kautilya Society, RMLNLU)

Protecting Collective Cultural Heritage & Individual Creative Workage

O bj e ct iv e	St ra te g y / M e c h a n i s m	N ot es / Li m it at io n s
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Pr ot e ct in g tr a di ti o n al so n g s / c o m m u ni ty h er it a g e	D o c u m e nt in w rit in g or a u di o/ vi d e o, m ai nt ai n ar c hi v es a n d m et a d at a a b o ut c o m m u ni	T h o u g h th is d o es n' t in it se lf gr a nt le g al ri g ht s, it h el p s in as se rti n g cl ai m s a n d p er s u as
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Pr ot e ct in g th ei r in di vi d u al w or ks	R e gi st er th e c o p yr ig ht (t h o u g h n ot m a n d at or y re gi st ra ti o n gi v es pr i m a fa ci e e vi d e n	U n d er In di a n la w, re gi st ra ti o n is v ol un t ar y; it h el p s in f or c e m e nt . (A C C D o ck et) S p
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In sum, their traditional heritage works more through documentation, community protocols, and controlled licensing, while their new works should be treated as copyrightable works with contracts, registration, and enforcement.

Understanding Royalty

Issue: Many of them do not understand the concept of royalties or how it applies; they are often paid a one-time fee, which may be insufficient.

Guidance Needed:

1. What is a royalty (in simple terms)?

A royalty is a payment made to a copyright owner, based on the ongoing use or earnings of the work (rather than a one-time flat payment). It is often a percentage of income the work generates (from sales, streaming, performance, broadcasting, licensing, etc.). For example: "You pay me 10% of net receipts from the film's soundtrack sales whenever it's used."

2. Types of royalties

- Performance royalties / Public performance royalties: When the song is played in public (concerts, radio, TV, streaming, restaurants, malls), the composer, lyricist, performer may receive payment from a performance rights organization (PRO) or through collecting societies.
- Mechanical royalties / Reproduction royalties: When the song is reproduced (e.g., CDs, digital downloads, streaming, film soundtrack reproductions) — the rights to reproduce the composition must be licensed, and the composer/lyricist is paid a royalty per reproduction or as a share.
- Synchronization (sync) royalties / synchronization license: When the song is synchronized with visuals (e.g., in a film, TV show, advertisement), a sync fee and/or royalty is payable.
- Print / sheet music royalties: If lyrics or music sheets are printed and sold.
- Digital streaming / download royalties: Platforms pay per stream or per download, and a share goes to composers/lyricists (via mechanical or performance rights).
- Neighbouring / performer royalties: For performers (singers, session musicians), when their recorded performance is played publicly or broadcast.

3. Examples of royalty application

- Suppose a film uses a song written by a composer. The composer may negotiate: upfront license fee + 5% of gross revenue from soundtrack sales.
- If the song is streamed 1 million times, and per-stream revenue is 80.10, the total revenue is €100,000; if royalty share is 10%, the composer would get 710,000 (minus intermediaries).
- A singer whose recorded performance is used on radio may get performance royalties via the collecting society.
- A producer might license the song only for use in the film (territory: India; term: 5 years), and after that, rights revert to the composer, who continues to earn from performance and other uses.

4. How to negotiate for royalties instead of a flat fee

Some tips:

- Always ask for a minimum guarantee + royalty: i.e. a base fee plus a contingent royalty beyond a threshold.
- Limit the scope of rights you grant: for a certain term, territory, medium (e.g. film only, not merchandising).
- Include audit rights: allow you or an independent auditor to check accounting of usage and revenues.
- Specify clear payment timing, accounting periods, statements.
- Seek a reversion clause: after the term, rights revert to you.
- Insist on a percentage share for long-term usage (e.g., streaming, re-broadcast).
- Use comparable market benchmarks (if other artists in your field command 5-10 %, you can argue similarly).
- Avoid "all-use-perpetual" grants: push back unless compensated for full rights.

Legality of Contracts Giving Away "All Rights"

Issue: When they are presented with contracts stating that they have no further rights to their songs after one-time payment. Are such contracts enforceable? What options do they have?

1. Assigning / Transferring copyright - basic concept

- Under Indian law, copyright assignment is the legal mechanism by which a copyright owner (assignor) transfers some or all of their rights to another (assignee). This is governed by Section 18, 19, and related provisions of the Copyright Act, 1957. (indialawoffices.com)
- For an assignment to be valid:
 - It must be in writing and signed by the assignor (or authorised agent). (indialawoffices.com)
 - The work and rights assigned, territorial extent, duration, and any royalties to be paid must be specified. (indialawoffices.com)
 - If term or territory is not specified, the law provides default rules: term = 5 years, territory = India. (indialawoffices.com).
- An assignment can be full (all rights) or partial (certain rights). The assignor may retain some rights (e.g. moral rights, future rights, rights in other media).
- Authors also have moral rights under Section 57, which survive even after assignment, unless specifically waived. (Kautilya Society, RMLNLU)

2. Are "all-rights forever" contracts enforceable?

- Legally yes — partly, but subject to conditions and possible challenge:

- If the contract is properly drafted (writing, signature, specification of rights, term, territory), courts will generally enforce it.
 - However, if the contract is grossly unfair, unconscionable, or obtained by coercion, misrepresentation, undue influence, there may be grounds to challenge it (in contract law).
 - Also, as per Sections 19(5) & 19(6): if term or territorial extent is not specified, the assignment is deemed limited (5 years, India) — so a purported "forever, worldwide" grant might not automatically hold if those terms are absent. (ACC Docket).
 - In practice, weaker parties (like individual artists) may face pressure to sign unfair agreements; courts may sometimes find unconscionability or inequitable terms, but such challenges are difficult and require legal proceedings.
- Example: In the "Pine Labs vs Gemalto" case, the Delhi High Court held that assignment documents that did not specify duration or territory would be deemed limited to 5 years and India, not perpetual, worldwide. (Wikipedia)
 - Also, Section 19A of the Copyright Act allows for revocation of assignment in certain circumstances, e.g. if the assignee fails to "exercise" the rights or comply with their terms. (indialawoffices.com)

3. Red flags to look for in contracts

Some clauses that may unfairly prejudice the artist:

- "All rights forever, worldwide" with no defined duration or territory.
- "No future claims ever" / waiver of moral rights / no credit.
- "No royalty, only one-time lump payment, no sharing of downstream revenue."
- "Exclusive rights in all media (now known or unknown) in perpetuity."
- "Artist must waive or assign all derivative rights, adaptation rights, merchandising rights, sync rights, etc."
- "No audit rights, no transparency in accounts or usage statement."
- "No reversion clause" (i.e. rights never revert to artist).
- "No termination rights" or "no recourse."
- "Artist indemnifies producer / licensee from all claims."
- "Grossly low consideration / unfair pricing."

4. What to do if pressured to sign such a contract

- Seek advice (legal counsel or trusted mentors) before signing.
- Negotiate: try to limit the rights you give, or insist on royalties, term/territory, audit, credit, reversion clause.
- Use a standard contract template that protects your interests (see next section).
- Refuse the "take-it-or-leave-it" clause: insist on carve-outs or modifications.
- Annotate (draft) your own version and ask the other party to sign that.
- Leave room for termination / reversion in the contract.
- If forced under duress, you may later argue the contract is voidable in court (if duress / undue influence / misrepresentation can be shown).

Contracts & Other Practical Tips

Issue: They need to learn how to create simple contracts and invoices that protect their rights and avoid giving away their songs completely.

1. Why written contracts matter

- Oral agreements are weaker in enforcement; written contracts clearly record terms, protect you in disputes, and show your intent.
- For copyright assignments or licenses, writing and signature are legally required under Indian law. (indialawoffices.com)
- A written contract also gives clarity to both sides on expectations (payment timing, usage, rights, obligations).

2. Tips / Best Practices

- Keep copies (physical & digital) of all agreements and invoices.
- Use simple, clear language; avoid ambiguous terms.
- Avoid granting "all-in perpetuity" unless very well compensated or negotiated.
- Include audit rights and regular accounting statements.
- Use reversion and termination clauses to protect against default or non-use.
- Insist on credit/attribution in all uses.
- Stamp the contract if required under your state's Stamp Act (unstamped agreements may not be admissible in court). (ACC Docket)

Issue: When they post songs online (e.g. YouTube) and others use them without permission, what legal recourse do they have?

Copyright infringement: basic concept

- Copyright infringement occurs when someone uses (reproduces, distributes, publicly performs, adapts, broadcasts) a copyrighted work without authorization of the owner or licensee, thereby interfering with the exclusive rights of the owner. ([MyAdvo.in](#))
- Under Section 51 of the Copyright Act, the copyright owner is entitled to remedies (injunctions, damages, accounts, etc.) against infringers. (Maheshwari & Co.)

Practical Steps / Process

1. Document the infringement thoroughly

1. Take screenshots, URLs, dates, times, copies of the infringing use.
2. Save metadata, archived pages (Wayback, etc.).
3. Preserve evidence (download copies, preserve original source).
4. Maintain your own record of when you published your work, registration, agreements, drafts, etc.

3. b. Issue a "take-down / cease-and-desist notice"

- In India, under Rule 75 of the Copyright Rules, 2013, the copyright owner can send a written notice (a "copyright infringement notice") to the intermediary (e.g. YouTube, website host) whose platform displays or allows access to infringing content. (iPleaders)
- The notice should include:
 - Identification of the copyrighted work (with details)
 - Proof or affirmation that you are the owner (or licensee)
 - The location (URL) of the infringing content
 - A statement that the copying is not permitted (i.e. not fair use)
 - A statement that you will take legal action if not removed
 - Your contact information and signature
- Upon receiving, the intermediary is required to act within 36 hours to disable access and prevent further access for 21 days, unless a court order restrains the owner from doing so. ([MyAdvo.in](#))
- If they don't comply, you may file a suit. (iPleaders)

4. c. Platform-specific mechanisms

- For platforms like YouTube, you can use their Content ID / copyright claim / takedown tools to request removal of infringing videos.
- Provide proof of ownership (registration, original files, date stamps).
- If the infringer files a counter-notice, you may need to escalate to legal action.

5. d. Legal action / formal suit

If the takedown route fails or the infringer is persistent:

- File a suit for copyright infringement in civil court (district/divisional high court, depending on jurisdiction).
- Seek injunctions (stop further use), damages or account of profits, search & seizure, etc.
- If infringement is willful and commercial, criminal remedies may also apply under Indian law (though less common in practice).
- Use the evidence, contracts, registrations, invoices, etc., to prove ownership, infringement, harm, etc.

6. Importance of proof of ownership

- Having a registered copyright (though not mandatory) gives you prima facie evidence of ownership.
- Keep original drafts, dated versions, recordings, emails, contracts, etc.
- Maintain consistent metadata (creation timestamps) and back-ups.
- Always issue "notice of claim / copyright notice" when you publish your work (e.g. "© 2025 Artist Name. All rights reserved").

7. When to consult a lawyer

- If the infringer ignores takedown notices.
- If the infringer is local and you want to send a strong legal demand letter.
- If you want to file suit, negotiate settlement, or require cease-and-desist with formal backing.
- Especially when infringement is large-scale, commercial, or damaging.