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 One partial protection is via Section 31A of the Copyright Act, which deals with unpublished Indian works whose author is unknown or cannot be traced.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.

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