Curbing Cultural Appropriation in the Fashion Industry

Brigitte Vézina
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Isabel Marant and the Mixe huipil

“the Blouse of Tlahuitoltepec is in the public domain... such that anyone can freely draw inspiration.”

— Wikipedia, “Isabel Marant” (French version)
Presentation outline

• Main issues and concepts
• Cultural appropriation: causes and consequences
• Curbing cultural appropriation: principles and solutions
Main issues and concepts
Fashion designers draw inspiration from all corners of the world. Sometimes sourcing elements from traditional cultures and reusing them out of context can cause harm: this translates as cultural appropriation.
Respect for Indigenous rights and interests

Support for a dynamic fashion industry

Control over cultural representation

- diversity of cultural influences
- common practice of copying and “borrowing”
- “celebrating” traditions through a modern lens
- harm caused by misrepresentation
Article 31(1) [...] right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

**World Intellectual Property Organization**

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

Mandate (excerpts): objective of reaching an agreement on an international legal instrument(s), relating to intellectual property which will ensure the balanced and effective protection of traditional cultural expressions (TCEs).
What are Traditional Cultural Expressions?

TCEs can include expressions such as:
- Designs
- Patterns
- Signs
- Symbols
- Artworks
- Artifacts
- Rituals
- Songs
- Stories
- Dances
- Names
- etc.

Tangible or intangible forms in which traditional cultures are expressed or embodied

Passed down from generation to generation

Linked to an Indigenous community

Often the creation of authors unknown

Source: Brigitte Vézina, “Corbing: Cultural Appropriation in the Fashion Industry”
CIGI, CIGI Papers No 215, 3 April 2019
Characteristics of Cultural Appropriation

1. Change of cultural context
2. Power imbalance between the taker and the holder
3. Absence of the holder’s involvement (authorization and acknowledgment)


⚠️ WIPO uses the terms “misuse,” “misappropriation” and “unlawful use”
Not everything is cultural appropriation

Not all forms of cultural borrowing, inspiration, influence or taking are undesirable.

Cultures are fluid and to restrain their free flow would be to negate their very essence.
Cultural Appropriation: Causes and Consequences
Why is there cultural appropriation in fashion?

- The nature of the fashion industry
  - A culture of copying
  - A love of controversy
  - A taste for folklore

- The legal uncertainty around the use of traditional cultural expressions
  - Traditional cultures’ jarring relationship with copyright
  - A grey zone between permissible inspiration and harmful misuse
IP rules providing for free appropriation of fashion designs accelerate the diffusion of designs and styles. We call this process “induced obsolescence.” [...] Designers in turn respond to this obsolescence with new designs. In short, piracy paradoxically benefits designers by inducing more rapid turnover and additional sales.

Fashion is...
surprising
awe-inspiring
shocking?
Patchy protection of traditional cultures under copyright law

- Originality
- Ownership
- Fixation
- Authorship
- Duration
- Exceptions and limitations
A feeling of erasure

“First Peoples’ identity is intrinsically linked to their dress. Beyond its main purpose of protection, it tells observers the age and status of the individual, gives immediate information about the nation he or she belongs to, pays homage to the person’s remarkable achievements, and highlights the intimate relationship that exists between people and nature.”

An economic blow

“In many countries and for many indigenous and local communities, the handicraft sector plays a vital social and cultural function and contributes significantly to communal, local and national economies.”

— WIPO, *Intellectual Property and Handicraft*
Curbing Cultural Appropriation
Using cultures in an appropriate fashion

1. Understanding and respect
2. Transformation, not replication
3. Acknowledgement, attribution
4. Engagement, request for authorization and collaboration
Article 5 *Scope of protection*
Alt 3 Option 1

5.1 (a) (v) [prevent] prohibit use or modification which distorts or mutilates a [protected] traditional cultural expression or that otherwise diminishes its cultural significance to the beneficiary.

... (b) encourage users [to]:
attribute said [protected] traditional cultural expressions to the beneficiaries;

THE PROTECTION OF TRADITIONAL CULTURAL EXPRESSIONS: DRAFT ARTICLES
Panama sui generis law

Article 1. The purpose of this Act is to protect the collective intellectual property rights and traditional knowledge of indigenous peoples in their creations... as well as the cultural elements of their... traditional forms of artistic expression suitable for commercial use... in order to highlight the social and cultural values of indigenous cultures and guarantee social justice for them.

— Law No. 20 of June 26, 2000, on Special System for the Collective Intellectual Property Rights of Indigenous Peoples for the Protection and Defense of their Cultural Identity and their Traditional Knowledge

"We are not against our 'mola' being commercialized. What we oppose is it being done without consulting us first," said Belisario López, the traditional leader of the Guna Yala community.

— As told to Associated Press, May 21, 2019
Get designers to be proactive
Make consumers aware
Support Indigenous designers

“"I want our culture to be alive in modern clothing. Our native culture is not only in the past or the museums but can be anywhere.""

— Kim Picard, Designer based in Montreal from the Passamit First Nations community
THE path TO SUCCESS STARTS WITH investment

BRIGITTE CHARTRAND
“Investing in education will create stronger designers, photographers and creatives and build a community here that can lead to more homegrown opportunities; it will encourage talent to stay in Canada.”

BEN BARRY “The fact that fashion is not recognized as ‘culture’ by the federal government is a major challenge. That has done a big disservice to the industry. Fashion is how we express who we are as Canadians; fashion is culture.”

SAGE PAUL “We’re really lucky that Indigenous Fashion Week Toronto receives funding from the [Ontario] Arts Council, because it recognizes fashion as an art form that carries on important Indigenous traditions and cultural practices. But on the larger scale of fashion, we need to support our designers by creating the resources for them in the same way that we do for musicians. Musicians are able to apply for funding to produce their albums, and then they go on to a label or other infrastructure to mass-produce their albums.”

Kat Somerville, “Fashion Nation – What does the Future hold for the Canadian Fashion Industry?”
Elle Canada – June 2009
Thank you.

“Curbing Cultural Appropriation in the Fashion Industry” by Brigitte Vézina
CIGI Paper No. 213, available at:
https://www.cigionline.org/publications/curbing-cultural-appropriation-fashion-industry
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