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Protecting Indian Textile Artisans Through IPR: A Critical Analysis of Challenges and Opportunities

Author
Zoya Khan



Protecting Indian Textile Artisans Through IPR: A Critical Analysis of Challenges and Opportunities

Zoya Khan

Amity Law School, Noida

Abstract

This research study explores how Intellectual Property Rights can act as a shield to empower Indian artisan weavers. The existing legal tools that are employed by the artisans are Geographical Indications, which falls under the Geographical Indications of Goods (Registration and Protection) Act, 1999; Trade Secret rights; Copyright rights in relation to new designs created; and finally Collective Trademarks. The Geographical Indication label has been identified as the one that stands out among these options, having helped more than 50 Indian textile GIs to gain recognition in the country. Additionally, this paper identifies other obstacles that hamper the effectiveness of IPRs, namely the oral transmission of craft knowledge across generations, the collectivity of authorship of traditional designs, insufficient documentation facilities, and the low level of awareness regarding IPRs on the part of craftspeople. The thesis is that the current IPR system is not well-suited for protecting traditional textiles due to its focus on industry, individuals, and businesses, while sui generis protection systems are better suited to address this problem based on the WIPO TK framework and the Nagoya Protocol. This includes efforts to enhance mechanisms for GI protection enforcement; the provision of cluster-level legal assistance; state-sponsored design documentation databases; and linking the market in a way that rewards authenticity. As the paper points out, IPR alone, though essential, is not enough. The safeguarding of Indian textile artisans entails more than mere legal protection – an ecosystem is required in which artisans become more than protected subjects but rather right-bearing entities capable of exercising control over their culture.

1.1 Introduction

India possesses a heritage going back thousands of years, which can be seen in the textiles and craftsmanship of its people. Whether one takes Dhaka muslin, block prints from Rajasthan, the Banarasi brocades of Varanasi, or the ikat weavings of Pochampally, each Indian tradition of textile making is more than simply a skill; it is an entire universe of knowledge regarding everything from dyeing techniques to finishing touches, not to mention what the patterns themselves are meant to convey. Traditionally, this knowledge was not even committed to paper, existing solely in the minds of artisans over many decades. However, this entire world of traditional practice now finds itself in danger. Low-cost replicas have flooded the market, available at a tiny fraction of the cost of authentic handmade goods. Artisans who invest months creating an individual garment find their unique design replicated within hours by large factories operating with power looms. The systems created to prevent theft of intellectual products – the very concept of intellectual property rights (IPR) – offer little protection to these workers.

The number of weavers and artisans involved in the handlooms and handicrafts industry in India comes to about 7.3 million and 6.5 *million* respectively. Thus, textile manufacturing remains one of the largest employers in the rural and semi-rural areas of India.¹ Many of the people working in these industries have skills which could never be replaced – these could not be obtained through any textbook or computer system. Thus, the association of such knowledge with the issue of intellectual property rights becomes a very crucial one indeed. However, these two remain poles apart. Intellectual property rights have traditionally been associated with the creation of intellectual property by an individual.²

This chapter will take a closer look at this question. This is how it will pose the question: What exactly does the framework of intellectual property rights in India provide to the textile artisans? In what way is it failing them? And why can't artisans benefit from their rights? The chapter draws on existing legal provisions, documented case studies, scholarly commentary, and policy reports to map out these questions. It is organised as follows: Section 1.2 provides a conceptual overview of traditional textile knowledge and why it matters; Section 1.3 examines the existing IPR framework relevant to textiles; Section 1.4 analyses the specific legal barriers; Section 1.5 turns to practical and structural obstacles; Section 1.6 discusses the particular challenges posed by collective versus individual ownership; and Section 3.7 concludes with reflections on the way forward.

¹ Government of India, Ministry of Textiles, Annual Report 2022-23 (New Delhi: Ministry of Textiles, 2023), p. 4.

² Arun Kumar Jain, *Handicrafts of India* (New Delhi: Rupa Publications, 2011), p. 12.

1.2 Traditional Textile Knowledge: What It Is and Why It Matters

The term "traditional knowledge" covers a wide range of subject matter — medicinal plants, agricultural practices, astronomical systems, and cultural expressions among them. In the context of textiles, traditional knowledge refers to the accumulated understanding that communities have developed over time about how to make cloth: which fibres to use and how to prepare them, how to create natural dyes and fix them to fabric, how to construct patterns using specific weaving or embroidery techniques, and what those patterns mean within the cultural life of the community. UNESCO has defined traditional knowledge as knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.³

What makes traditional textile knowledge distinctive — and what makes protecting it so difficult — is precisely the way it is held and transmitted. It does not exist in laboratories or design studios. It exists within the workshop where it takes form through the hands of weavers taught by their parents, the mind of dyers who inherently know the right proportion of the dye, in the conversation of grandmothers and their grandchildren as the child gets introduced to her first pattern. This is one of the reasons why it has managed to exist for centuries. And this is also one of the reasons why its existence defies conventional intellectual property rights.

The economic importance of such intangible knowledge can be understood only after one realizes the significance of textiles and handicrafts in forming part of India's identity as cultural exporter and source of foreign exchange earnings. Yet, despite the economic benefit generated, artisans receive nothing but a small share of the commercial benefits arising out of their craft. The hand-woven Banarasi silk saree, which could cost tens of thousands of rupees in a boutique in Delhi or London, might actually belong to an artisan who earned merely a small share of the money. The imitation of these goods in the form of machines is further a threat to their survival.

Beyond the economic aspect of the issue, there is also an underlying cultural aspect that deserves consideration. Culture and identity are intrinsically related to each other. The patterns woven into the Manipuri Phanek or embroidered on the shawls from Kashmir are not just decoration; they are embedded with societal and historical significance. The moment they are exploited without proper recognition or contextualized as a mere product of ethnic design, an act of cultural dispossession takes place.⁴

³UNESCO, *Intangible Cultural Heritage and Intellectual Property: Challenges and Approaches* (Paris: UNESCO, 2014), p. 3.

⁴WIPO, *Intellectual Property and Traditional Knowledge*, Booklet No. 2 (Geneva: WIPO, 2015), p. 7.

1.3 The Intellectual Property Framework for Textiles in India

1.3.1 Geographical Indications

The most critical legal instrument explicitly designed for protecting traditional goods, including textile products, is the Geographical Indications (GI) system. In India, the Geographical Indications of Goods (Registration and Protection) Act of 1999 governs the process of GI registration. This law was enacted in 2003. A GI label confirms that the good in question is produced within a certain geographical region and possesses some qualities or a reputation due to its production in this region. One of the oldest examples of a GI in India is the "Darjeeling Tea" mark registered in 2004. Some of the essential GI marks used in the textile sector include "Kanchipuram Silk" (from Tamil Nadu), "Banarasi Silk" (from Uttar Pradesh), "Pashmina" (from Jammu & Kashmir), "Pochampally Ikat" (from Telangana), and "Mysore Silk" (from Karnataka).

To date, more than 400 GIs have been registered in India, with a considerable percentage being related to handicrafts and textiles. There are real strengths to the GI system. Firstly, this approach enables a producer community from a specific region to protect its name and quality standard. It prevents manufacturers from other regions from falsely using the protected name. In principle, this should help consumers make informed choices and support genuine artisans over imitators. In practice, however, the results have been mixed. Studies of the impact of GI registration on artisan incomes — including research on Pashmina weavers in Jammu and Kashmir — suggest that registration alone does not automatically translate into better earnings.⁵ The problem is that getting a GI tag is only the beginning. For the tag to have any commercial effect, there needs to be a system of inspection and certification to distinguish genuine products from fakes, enforcement mechanisms to take action against violators, and market awareness among consumers about what the tag means. All three of these downstream requirements tend to be weak in practice.⁶

1.3.2 Trade Marks and Certification Marks

The Trade Marks Act, 1999 offers protection to marks that distinguish the goods or services of one person from those of others.⁷ Individual artisans or craft enterprises can register trademarks for their products. Collective marks and certification marks — which can indicate that products conform to certain standards of quality, material, or geographic origin — can also, in theory, be used by artisan organisations to protect textiles. The Government of India's "Handloom Mark" scheme, launched in 2006, was an attempt to use certification marking to

⁵Meenu Bhatt, "Artisan Livelihoods and the GI Framework: A Study of Pashmina Weavers in Jammu and Kashmir", *Economic and Political Weekly*, Vol. 53, No. 12 (2018), p. 44.

⁶Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (New Haven: Yale University Press, 2012), p. 89.

⁷Trade Marks Act, 1999 (Act No. 47 of 1999), Government of India, Section 2(1)(zb).

distinguish genuine handloom products from mill-made imitations.⁸ Again, the gap between theory and practice is significant. Individual artisans rarely have the resources or legal literacy to register and maintain a trademark. Collective marks require an organised association of producers to manage the mark, monitor its use, and take enforcement action. In many traditional textile communities, such institutional structures are weak or absent. Even where they exist — as in some weaving cooperatives — the capacity to pursue legal action against infringers is generally lacking.⁹

1.3.3 Copyright

Copyright law protects original literary, artistic, and other creative works. Under the Copyright Act, 1957, original artistic works including drawings, paintings, and two-dimensional designs enjoy copyright protection.¹⁰ This would, in theory, cover original textile designs. Some design elements used in traditional textiles — a specific weaver's interpretation of a traditional motif, for example — might qualify for copyright if they are original enough. However, copyright has significant limitations in the textile context. Traditional motifs and patterns that have been passed down for generations are generally in the public domain and cannot be individually owned by any one artisan or community.¹¹ Copyright protects the specific expression of an idea, not the idea itself, and it protects individual creators, not communities. This means that the cultural heritage embedded in traditional designs — which is precisely what needs protection — falls outside copyright's scope. Moreover, copyright protection arises automatically but enforcing it requires litigation, which artisans can rarely afford.

1.3.4 Designs

The Designs Act, 2000 provides protection for novel or original industrial designs — the features of shape, configuration, pattern, or ornamentation applied to an article.¹² The designer who comes up with an innovative design on a fabric can protect it by registering the design and gaining five years' protection, extendable up to a total of fifteen years. The limitation is clear: it pertains to new and original designs, not traditional ones. Traditional textile designs, by definition, have been around for a long time and cannot meet the novelty criterion.¹³ Beyond this, artisans who do create variations on traditional motifs often lack awareness of the Designs Act, and the registration fee and procedural complexity remain barriers for most individual weavers.

⁸Indira Jaising, "The Handloom Mark Scheme: Efficacy and Limitations", *Indian Journal of Law and Society*, Vol. 9 (2018), p. 100.

⁹Prabha Chand, "Collective Marks as a Tool for Artisan Communities: Lessons from Darjeeling Tea", *Journal of Intellectual Property Rights*, Vol. 22 (2017), p. 152.

¹⁰Copyright Act, 1957 (Act No. 14 of 1957), Government of India, Section 13.

¹¹James Boyle, *The Public Domain: Enclosing the Commons of the Mind* (New Haven: Yale University Press, 2008), p. 45.

¹²Designs Act, 2000 (Act No. 16 of 2000), Government of India, Section 2(d).

¹³Rajiv Nayan, "Design Law and Textile Artisans: A Critical Analysis of India's Legal Framework", *Asian Journal of Comparative Law*, Vol. 14, No. 1 (2019), p. 22.

1.3.5 Patents

Patent law protects inventions — new, non-obvious, and industrially applicable technical solutions. The Patents Act, 1970, as amended, is the primary legislation.¹⁴ In the textile domain, patents can theoretically protect new weaving technologies, novel dyeing processes, or innovative finishing techniques. However, traditional textile methods — by definition long-standing and publicly known — fail the test of novelty and non-obviousness. Traditional knowledge cannot be patented by artisans themselves, but it can be and has been exploited by others who file patents for processes derived from traditional practices. This phenomenon, sometimes called "biopiracy" in the biological context, has its equivalents in textiles.¹⁵

1.4 Legal Barriers in Securing IPR Protection

1.4.1 The Requirement of Individual Authorship

Perhaps the most fundamental legal barrier is that intellectual property law, at its core, is built around the concept of an individual creator. Copyright requires authorship by an identifiable person or legal entity. Patents require an inventor. Even GIs, while being a more collective form of protection, must be registered and managed by a legal entity (often a producers' association or state government body). The traditional knowledge about textiles is, however, not owned by an individual but by a community. Pochampally ikat's weave patterns are part of the inherited tradition of the Pochampally community of weavers; no one person invented them.¹⁶ This concept of collective or community ownership is out of place in a system based on individual rights. While the certification mark/GI strategy is helpful to an extent, it does not wholly address the issue. It may be argued that the community cannot claim legal ownership over its tradition in India today.

1.4.2 The Requirement of Fixed and Novel Expression

Copyright demands that there be "originality" in the work, which should also exist in some physical form. Novelty is a necessity for design registrations. Patents need to be non-obvious. Together, they ensure that traditional knowledge is excluded from intellectual property because the same is old and commonly known information. A weaver who has inherited a family pattern has nothing new to claim; and unless she writes it down or otherwise fixes it, she may not even satisfy the requirements for copyright in her specific rendering of it. This creates a structural paradox: the older and more established a tradition is — and therefore arguably the more culturally significant and worthy of protection — the less it

¹⁴Patents Act, 1970 (Act No. 39 of 1970) as amended by the Patents (Amendment) Act, 2005.

¹⁵Shamnad Basheer and Prashant Reddy, "Protecting the Rights of Traditional Knowledge Holders: Challenges and Options", *NUJS Law Review*, Vol. 3, No. 4 (2010), p. 389.

¹⁶Leena Mehendale, "Community Rights and the Common Pool: Rethinking Ownership in Traditional Crafts", *NALSAR Law Review*, Vol. 11 (2017), p. 78.

qualifies for protection under existing IP law.¹⁷ Only innovations and novelties receive protection, while the inherited wisdom that underlies them goes unprotected.

1.4.3 The Time Limitation Problem

Even where IP protection is available, it is time-limited. Copyright in India lasts for the lifetime of the author plus sixty years. Design registrations last up to fifteen years. Patent protection lasts twenty years. Traditional knowledge, by contrast, is meant to be permanently and communally held. A fifteen-year design registration gives no lasting security to a tradition that has existed for five hundred years and needs to continue indefinitely.¹⁸ Once protection expires, the work falls into the public domain, where it can be freely used by anyone — including large manufacturers who were precisely the ones the artisans needed protection from.

1.4.4 Inadequate Enforcement Mechanisms

Even where legal protection formally exists, enforcement is deeply problematic. The GI Act, for instance, does not provide for an active government agency tasked with monitoring the market and pursuing violators. This burden falls on the authorized user and the GI owner, who needs to file suit on their own behalf and pay for it. For a community of impoverished artisans, this is simply impossible. Litigation in India is known to be time-consuming and costly. A lawsuit filed in civil court could drag on for years before reaching resolution.¹⁹ All the while, counterfeits keep entering circulation, eroding artisan incomes.

The issue of awareness at the market and judicial levels is also serious. Consumers are unable to differentiate between a mechanically produced counterfeit and the authentic handmade one. The judge who presides over such cases and the law enforcer who implements regulations might not have sufficient expertise to establish conformity to the GI standards. This information and expertise deficit further weakens enforcement.²⁰

1.4.5 Lack of a Sui Generis Framework

Many scholars and policymakers have argued that the solution to these problems is a separate, purpose-built legal framework — a sui generis system — specifically designed to protect traditional knowledge.²¹ The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore has been working for over two decades on

¹⁷B.K. Keayla, "Traditional Knowledge Systems and Intellectual Property Rights", *Economic and Political Weekly*, Vol. 36, No. 27 (2001), p. 2502.

¹⁸TRIPS Agreement, Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the WTO Agreement, 1994, Article 22.

¹⁹Geographical Indications of Goods (Registration and Protection) Rules, 2002, Rule 32.

²⁰Intellectual Property India, Annual Report 2021-22 (Office of the Controller General of Patents, Designs and Trade Marks, 2022), p. 31.

²¹Nidhi Bhatt, "Sui Generis Systems for the Protection of Traditional Knowledge: Exploring Options for India", *Journal of World Intellectual Property*, Vol. 12, No. 3 (2009), p. 200.

developing international instruments for this purpose.²² In India, the National Biodiversity Act, 2002, and the associated access and benefit-sharing framework attempt something similar in the biological domain. But there is no equivalent for traditional textile knowledge. The absence of such a framework leaves artisans to navigate legal instruments that were never designed with them in mind.

1.5 Practical and Structural Barriers

1.5.1 Low Awareness of IPR Among Artisans

The overwhelming majority of India's textile artisans have little or no knowledge of intellectual property rights. Surveys conducted by the Development Commissioner for Handicrafts have consistently found that most artisans are unaware of GI registration, do not know what a trademark is, and have never heard of the Designs Act.²³ It is no wonder. Rural or semi-urban artisans, who often do not even have formal education, need to be concerned about the immediate concerns of production and marketing. It is natural that legal jargon would escape them. The campaigns by government or NGOs to sensitize the IPRs issue have been successful in selected clusters, but are still limited in scope. This issue is more than just awareness; it is also about relevance. An artisan may know all about the GI mark, but see no value-added for them in using it to fetch better prices or enter new markets.

1.5.2 High Transaction Costs and Financial Barriers

Even for artisans who are aware of their options, the financial and procedural barriers to accessing IPR protection are substantial. GI registration requires filing an application with the GI Registry, producing detailed documentation about the product's history, characteristics, and production methods, and paying the prescribed fees. For an individual artisan — or even a small artisan collective — these requirements are daunting.²⁴

Legal advice is expensive. Preparing documentation requires time and expertise that most artisan communities do not have. Once protection is obtained, renewing registrations, monitoring the market for infringements, and pursuing legal action against violators all involve ongoing costs that most artisan communities simply cannot afford.²⁵ The result is that even where IPR protection is technically available, it remains practically inaccessible to the people who need it most.

²²WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, The Gap Analysis on the Protection of Traditional Knowledge, WIPO/GTRKF/IC/13/5(b) (Geneva: WIPO, 2009).

²³Office of the Development Commissioner (Handicrafts), Annual Survey of Artisans 2021-22 (New Delhi: Ministry of Textiles, 2022), p. 18.

1.5.3 Documentation Challenges

A recurring theme in discussions of traditional knowledge protection is the need for documentation — systematically recording what techniques, designs, and processes constitute a particular tradition. Documentation serves multiple purposes: it establishes prior art (preventing others from patenting traditional techniques), provides a basis for GI registration, and preserves knowledge that might otherwise be lost.

Yet documentation is itself deeply problematic. Traditional knowledge is often context-specific: a technique that is described in writing loses important dimensions of meaning that are only communicated through demonstration, through the relationship between teacher and student, or through the social and ceremonial context in which the craft is practised.²⁶ Documentation also creates its own risks. Once knowledge is written down and made publicly accessible, it becomes easier for outsiders to access and commercialise without the community's consent.²⁷

1.5.4 Gender Dimensions of Exclusion

In many traditional textile crafts, women are the primary knowledge-holders and practitioners. Women constitute the majority of workers in the handloom sector and dominate many embroidery traditions. Yet they are systematically excluded from the institutional structures through which IPR protection is negotiated and managed.²⁸ GI producers' associations are frequently dominated by male traders and middlemen rather than women artisans. If women are without any title to land, bank account, or artisan status in the formal sector, then they cannot be called "authorized users" as per GI laws. Women's contribution to the knowledge system is made invisible due to a legal framework that ignores them.

1.6 The Collective versus Individual Ownership Problem

Running through all of the barriers discussed above is a deeper conceptual tension: the conflict between collective cultural ownership and the individual rights model of intellectual property. Traditional textile knowledge is, by nature, a shared inheritance. Thousands of weavers in Varanasi weave Banarasi brocades using techniques that none of them individually invented; all of them are, in a meaningful sense, co-inheritors and custodians of the tradition. No single weaver can credibly claim the tradition as her own; yet no single weaver is excluded from it. The system of intellectual property rights, however, depends on the principle of private property. Ownership has to be owned by some individual. For example, associations, cooperatives, or societies have to be organized out of these traditional communities before collective IPRs such as GIs can apply to them.

²⁶Debaditya Bhattacharya, "Documentation and the Digital Divide: Traditional Textile Knowledge in the Age of Information Technology", *Comparative Studies in Society and History*, Vol. 60, No. 3 (2018), p. 610.

²⁷Vandana Shiva, *Protect or Plunder? Understanding Intellectual Property Rights* (London: Zed Books, 2001), p. 63.

²⁸Anupama Singh, "Gender, Labour and Weaving Communities: Women's Invisible Contributions to Textile Heritage", *Indian Journal of Gender Studies*, Vol. 25, No. 2 (2018), p. 178.

This institutional restructuring is not inherently wrong, but it often distorts community structures in ways that can create internal conflicts, exclude marginalised members, and shift power toward those who are more legally and commercially sophisticated. The Nagoya Protocol (2010) on access and benefit sharing, while primarily concerned with biological genetic resources, offers some guidance on how to structure frameworks for collective rights over community knowledge.²⁹ In the textile domain, India lacks an equivalent framework. The result is that communities are forced to use legal structures designed for other purposes, with predictably imperfect results.

Some scholars have proposed a "community intellectual rights" model, under which a defined community would hold perpetual, collective ownership over its traditional knowledge, with rights to control access, use, and commercialisation by outsiders.³⁰ Others argue for a benefit-sharing model, under which anyone who commercially uses traditional knowledge must pay a royalty into a community fund.³¹ Neither model has yet been adopted in any comprehensive-way in Indian law, though elements of both can be found in various policy documents and in the discourse of the Ministry of Textiles.³²

1.7 Conclusion: The Way Forward

The relationship between traditional textile knowledge and intellectual property rights in India is one of persistent mismatch. The knowledge is real, valuable, and under threat. The legal framework exists and has been partially adapted — through GIs, certification marks, and other mechanisms — to address this threat. However, the gap between the written law and the reality of protection enjoyed by artisans remains wide.

There are legal and practical obstacles, which reinforce each other. From a legal perspective, the individual authorship rule, the novelty requirement, the limited duration of protection, and the lack of *sui generis* laws for traditional knowledge have exposed artisans. In terms of practical factors, there are low awareness levels, high transaction costs, difficult documentation, gender barriers, and the structural advantages of middlemen to prevent even the legal mechanisms from being utilized effectively by artisans.

No single legal mechanism is capable of solving this problem. It will require an array of efforts. Firstly, a separate *sui generis* legal regime for traditional

²⁹Convention on Biological Diversity, Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, 2010.

³⁰Upendra Baxi, "The Place of the Human Rights of Traditional Communities in Trade Negotiations: A Comment", *Indian Journal of International Law*, Vol. 49 (2009), p. 7.

³²Ministry of Textiles, National Textile Policy 2000 (New Delhi: Government of India, 2000), para. 3.4.

knowledge – especially traditional textile knowledge – is required, which would include provisions for collective ownership of rights unlimited in time and which would place the burden of enforcing protection on the government, not on artisan groups themselves. Secondly, the GI regime must be significantly improved, including through effective state supervision and enforcement, product certification, and market development support.

Thirdly, there is an urgent need to increase awareness and capacity-building programmes for the artisan community, which must be made available to women artisans, as they are the main holders of knowledge and, at the same time, are systematically kept out of the formal IPR process.

Fourthly, any documentation must be done in such a manner that it involves and obtains the consent of the concerned communities, taking into consideration what can and cannot be disclosed. Legal protection against the misuse of documented knowledge must be ensured.

Fifthly, the Indian government should actively push for greater international recognition of traditional knowledge through international bodies such as WIPO and WTO, where it can negotiate for binding international commitments.

However, beyond the legal and economic concerns lies a deeper cultural one: what cultural legacy does India wish to pass down to future generations? Weavers and embroiderers are not only manufacturers of goods for trade and commerce; they represent the guardians of living traditions which have helped mold human civilization throughout history. An inadequate legal structure can do more than let down those whom it seeks to help; it can actually undermine the very cultural mission it was created to support, markets, and international relations.³³ The time has come when the artisan society has waited enough for the system to function as expected. The problem now is not one of acting but rather of timing and seriousness.

³³B.L. Wadhera, *op. cit.*, p. 445.

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