

Preservation of Malaysian *Batik* Heritage: Balancing Traditional Techniques and Digital Innovation through Intellectual Property Protection

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Abstract

This article explores the preservation of Malaysian batik heritage by balancing traditional techniques with digital innovation through effective intellectual property (IP) protection. It aims to analyse the current challenges faced by the *batik* industry in maintaining its traditionally produced *batik* while adapting to contemporary technological advancements. The focus is on how effective IP strategies can help maintain the authenticity and cultural value of batik amidst evolving production methods and technological progress. Employing a qualitative doctrinal methodology, the research includes a comprehensive review of Malaysian legislation, relevant statutes, scholarly articles, and online resources. The study identifies several critical challenges; insufficient registration and legal protection for *batik* designs jeopardise their unique cultural identity; widespread intellectual property rights (IPR) violations undermine the economic sustainability of local producers; and issues with territorial jurisdiction complicate enforcement against counterfeit products. Additionally, there is a notable lack of awareness and compliance among local designers regarding existing IP laws, further exposing traditional practices to risk. The competition from imitation products, often mass-produced and sold at lower prices, threatens the authenticity and marketability of genuine batik. Furthermore, the industry's limited focus on innovation hampers the creation of new designs, risking stagnation of traditional techniques. This research contributes to Sustainable Development Goals (SDGs) 8 (Decent Work and Economic Growth), 11 (Sustainable Cities and Communities), 12 (Responsible Consumption and Production), 16 (Peace, Justice, and Strong Institutions), and 4 (Quality Education) by advocating for stronger IP protections, promoting sustainable economic practices, and enhancing awareness of IPRs. The study offers actionable recommendations for policymakers and industry stakeholders to foster a supportive environment for local designers, ensuring the viability of Malaysia's rich batik heritage in the digital age.

Introduction

Digital printing allows for the easy reproduction of physical objects, with clear copyright protection. This article delves into the challenges of protecting intangible cultural heritage and folklore protection in safeguarding these traditional block and *canting* batik production techniques intersect with the issue of digital printed *batik*, explaining legal frameworks available in safeguarding batik produced via both methods, and discuss the importance of preserving cultural heritage and the ethical considerations of digital replication through literature review of statutes, scholarly articles, websites and others.

BATIK INDUSTRY IN MALAYSIA

The textile, apparel, and footwear sectors in Malaysia represent a diverse field that includes various products such as textiles, garments, leather items, shoes, and accessories. This sector is defined by a multifaceted value chain that spans the entire process from sourcing raw materials to designing and producing the finished goods across these categories.[1] The creative industry in Malaysia is composed of numerous sectors, one of which is the cultural and artistic sector. This area focuses on producing artistic works that reflect Malaysian culture, such as

crafts, visual arts, music, performing arts, literature, and the fashion and textile industries.[2] According to a report by The New Straits Times, the sales value of the *batik* craft industry from January to October 2022 was MYR 69.2 million, which is an increase from MYR 38.9 million during the same period in 2021.[3]

Batik is a traditional art form that embellishes fabric using wax as a resist technique. Originating from the Javanese words “*amba*” (meaning to write) and “*titik*” (meaning dot), *batik* can be loosely interpreted as “to dot”, though it is also described as wax drawing or writing with broken lines. This intricate art involves a careful and repetitive process of applying wax, dyeing, and boiling. Wax plays a crucial role in the colour-blocking process, as it is applied to areas of the fabric that should remain unaffected by certain dyes.[4]

In Malaysia, *batik* is primarily categorised into two types; hand-drawn *batik* and stamped *batik*. Hand-drawn *batik* involves creating designs on fabric by applying hot liquid wax with a metal tool known as a *canting*. [5] Traditionally, block *batik* is created by applying melted wax onto a copper block or occasionally a wooden stamp, which features a decorative design on its base. The intricate detail and artistic quality of the design carved into the block are key elements that define the elegance of block *batik* patterns.[5] This block is dipped in wax and pressed onto the fabric, which is subsequently dyed. Afterwards, the wax is removed, resulting in *batik* with a single colour.[4] The art of *batik* block has become an integral aspect of Malaysian society, deeply influencing its socio-cultural practices and forming an essential part of the traditional attire that enhances the distinctive lifestyle of the Malays.[5]

ISSUES AND CHALLENGES SURROUNDING *BATIK* AND TRADITIONAL TECHNIQUES

Traditional *batik* block in Malaysia is the country’s heritage and treasure. However, it has slowly faded nearing extinction, particularly in the east coast region of Malaysia. The uniqueness of a *batik* block very much relies on its pattern is championed by a master craftsman called the master block maker. Currently, not many master *block* makers are left in Malaysia with only a few remaining on the east coast.[6] Someone who wants to make *batik* has to make a block first. The block maker should be referred to create a design. Modernisation should be made on *batik* stamps to nurture interest in new groups, to place it in line with current modern trends. Most block operators especially the block owners do not want to change, they prefer to adopt old techniques and techniques in the manufacture of blocks. It is obvious and evident how our neighbouring country is very much aware of ensuring the preservation of their *batik* heritage compared to Malaysia’s *batik*. [6] If the number of *batik* block makers continues to decrease, soon, Malaysia will lose its most treasured asset in the name of development and modernisation.[6]

Nonetheless, according to Gatut Budiono and Aryanto Vincent, *batik* innovation continuously occurred. Malaysia has ambiguously to produce the handwritten *batik* craft massively with the help of computerised *canting* machines, to overcome the scarcity of *batik* crafters.[7] Nevertheless, the *batik* technological design is not directed to strip off older classic motifs. Just the technological design intended for the *batik* art would still be beautiful to be looked at always following the art development era, nevertheless with always discipline in defending the *batik* source as well as a national high-value cultural heritage. Hence, the *batik* philosophy will not be swallowed by the savages of civilisation. Hence, the technological contemporary design has a complementary role to the original cultural heritage design. To maintain the original cultural heritage design does not mean avoiding creative innovations, nevertheless in just such innovations possibly to be executed with discovering and developing the national cultural heritage roots in a variety of *batik* motifs.[7] In addition, Wandah Wibawanto *et al.* have highlighted that research indicates digital tools can accelerate the creation of *batik* patterns. To enhance usability, the software should be designed to replicate the traditional motif-drawing experience on paper.[8]

Wandah Wibawanto *et al.* contend that the D-*Batik* application offers a range of tools designed to aid in the creation of *batik* patterns, including features for drawing lines and curves and applying repetition and reflection, which mirror traditional techniques. This application aims to replicate the conventional *batik* motif creation process in a digital format with a user-friendly interface. It is anticipated that traditional *batik* artisans will benefit from D-*Batik* by enhancing both the volume and quality of their *batik* designs. Future development

of the D-*Batik* application should focus on integrating it with other technologies, such as printing methods, 3D printing for *batik* stamps, and additional technological advancements.[8]

Nevertheless, Rohaida Nordin and Siti Safina Abu Bakar emphasise the adverse impact of product imitations from other countries on the local industry.[9] Further, as per their findings, the progress of the local *batik* industry in Malaysia faces impediments from international *batik* producers through two distinct manners. One is through infringement activities. Firstly, foreign producers undermine Malaysian handicraft efforts and harm the *batik* product's overall image by infringing on Malaysian *batik* patterns. Secondly, foreign producers sell low-quality products that further damage the reputation of Malaysian *batik*. [9] They add that Malaysia's *batik* style and product stand apart from other regional countries as Malaysian *batik* artists employ hand drawing techniques and *canting* to create intricate paintings on white cloth, using hot wax to outline patterns and dye the fabric accordingly. This unique approach sets Malaysian *batik* design elements apart from those of foreign producers who often use printing presses. Consequently, there is a price disparity, with foreign *batik* options being cheaper due to their mass production methods which has led to a decline in the Malaysian *batik* industry as consumers opt for more affordable foreign alternatives.[9]

Therefore, Nordin and Abu Bakar emphasise the crucial role of government agencies and local *batik* entrepreneurs in addressing the issue of *batik* piracy. They propose various actions to prevent its continuation, with *batik* entrepreneurs playing a pivotal role in combatting piracy through civil and criminal measures. While the ministry has taken steps to tackle counterfeit sales, they advocate for additional proactive measures from other agencies, including customs authorities exercising stricter control over imported foreign *batik* garments.[9] They point to European States that have established domestic laws for IP, such as the EU's Office of Harmonisation in the Internal Market (OHIM), which allows design registration and protection within the EU and suggests that Asian countries should consider establishing a regional system for the registration and protection of IPRs to enhance protection and competitiveness.[9]

Similarly, according to Hartini Mohd Razali *et al.*, however, the reputation of Malaysian *batik* is being threatened by the trend of plagiarising it by other countries, which has led to its uniqueness and identity loss. Local *batik* operators encounter obstacles such as the unauthorised use of trademarks and breaches of exclusive rights safeguarded by copyright and industrial design legislation.[10] Local *batik* operators encounter various challenges, including the increase in the number of imitation *batik* products originating from international origin and the competitive landscape posed by contemporary *batik* products from more technologically advanced foreign markets. The worsening of this situation is further intensified by the inadequate attention and action directed toward addressing this pressing issue.[10] The authors suggest that local entrepreneurs and designers' lack of proper registration of designs could lead to the loss of *batik*'s unique identity. The authors argue that irresponsible external authorities are copying the original work of local designers, and if this continues, the designs will be widely imitated, and the authenticity of *batik* will be compromised. The authors emphasise that registering designs is crucial to protecting local artists' IP and maintaining Malaysian's integrity.[10] They add that the difficulties encountered by operators go beyond mere trademark infringement. They assert that challenges also encompass violating proprietary rights safeguarded by copyright and industrial design laws. International producers imitating indigenous designs have caused damage to the local industry. Counterfeit products sold at lower prices have made the situation worse. The authors advocate for thorough research on IP legislation by designers and entrepreneurs to ensure compliance with the law and safeguard against potential infringements.[10] They go on to discuss that another challenge is territorial jurisdiction, restricting the enforcement of IPRs and fostering widespread counterfeiting. Comparable issues have been addressed by regional organisations like the EU. The abundance of counterfeit *batik* garments from countries where they are produced suggests inadequate enforcement, presenting a significant challenge for local *batik* producers. Additionally, Malaysian *batik* producers face the crucial task of preserving their traditional designs and production techniques.[9] The industry has leaned towards modifying existing products rather than innovating and creating new designs, posing a second significant challenge.[10]

The local designers in Malaysia face several challenges in the realm of design and the *batik* industry, which include issues of local design plagiarism and IP, which have negatively impacted the uniqueness and image

of local *batik*. The rise in imported artificial *batik* items presents a notable obstacle for the domestic *batik* industry, given the competition with contemporary foreign *batik* goods. The insufficient focus and proactive measures addressing these issues exacerbate the existing challenges.[10] They further add that copyright infringement cases require proof of copying and originality. Legal actions can be civil or criminal proceedings.[9] Therefore, Malaysia's local fashion industry faces challenges in preserving its cultural heritage, protecting IP, and staying competitive in the face of foreign competition.[10]

Ahmad Shamsul Abd Aziz and Nor Azlina Mohd Noor draw attention to the lack of official recognition for Malaysian *batik* by international organisations like UNESCO. They advocate for a collective effort to restore *batik*'s status as a national heritage, emphasising the need for *batik* businesses to understand the significance of registration and compliance with regulations. They also urge legal measures to safeguard it from unauthorised replication.[11] Additionally, they aspire to achieve recognition of other Malaysian *batik* types, like Kelantan *batik* and Sarawak *pua kumbu* under the Geographical Indications Act 2022 (GIA 2022). This includes *Sabah Batik* and *Batik Terengganu*, which were already registered with MyIPO, ensuring legal protection against unauthorised imitation.[11] Further, they also emphasise the need to register Malaysia's cultural products, such as Pahang woven cloth, under the National Heritage List 2015 and the Geographical Indications Act 2000 (GIA 2000).[12]

Wan Juliana Emeih Wahed *et al.* (2022)[13] refer to the research by Afiqah Izzati Sobri and Rafeah Legino (2020)[14] to highlight the issue of imitation *batik* replacing traditional Malaysian *batik* due to technological advances. The study found that the replicated *batik* closely resembles the traditional *batik*. This was achieved by adapting and imitating the design and wax staining. The authors emphasise the significance of innovation to conserve traditional *batik* while upholding its cultural heritage. Meanwhile, Afiqah Izzati Sobri and Rafeah Legino (2020) address the same issue concerning the imitation of *batik*, which is a significant problem in Malaysia, particularly on the East Coast, where it harms the local *batik* industry since mass-produced imitations sold at lower prices than authentic *batik* attracts customers who are unaware of the artistic value of genuine *batik*. They emphasise the need for awareness in differentiating between genuine and imitation *batik* based on price and quality.[14]

MALAYSIAN LEGAL FRAMEWORK FOR *BATIK* PROTECTION

Suzi Fadhilah Ismail and Ida Madieha Abdul Ghani Azmi (2015) discuss the criminalisation of misusing TCEs in developing countries such as Malaysia. Traditional cultural expressions (TCEs) are vital to these countries' cultural heritage, and their misappropriation threatens their preservation. Developing countries have made significant efforts to establish legal frameworks to protect TCEs. This has resulted in the inclusion of specific provisions in national copyright laws. Overall, the article emphasises the importance of finding effective legal mechanisms to protect and preserve TCEs.[15] Many legal experts and authors have suggested that copyright law has several limitations in protecting TCEs. The oft-cited limitations include the originality and the fixation requirement.[15] They suggest that due to the widespread misappropriation of TCEs, urgent action is required. United Nations Educational, Scientific and Cultural Organisation (UNESCO), World Intellectual Property Organisation (WIPO), and countries such as Nigeria and the Philippines recommend extending copyright protection to TCEs and criminalising their misuse, which is crucial. Malaysia can utilise its existing copyright framework, create a specialised section in the criminal code, and leverage Article 61 of the TRIPS Agreement to protect its cultural heritage and the rights of TCE holders.[15]

Rohaida Nordin and Siti Safina Abu Bakar shed light on the importance of IP protection within the fashion industry, focusing specifically on the local industry. They emphasise the significance of local IP protections, particularly the Malaysian legal framework, Copyright Act 1987 (CA 1987) and the Malaysian Industrial Designs Act 1996 (IDA 1996). The authors suggest that legal frameworks can be used to protect the IPRs of fashion designers in the industry. These frameworks prevent the unauthorised copying or use of their designs, making them a viable option for safeguarding the industry. However, the authors exclude trademarks and

geographical indications since they do not apply to *batik* designs. The authors highlight that the issues faced by local *batik* producers go beyond trademark infringement and involve violations of their exclusive rights, which are protected by copyright and industrial design laws.[9]

Malaysian National Heritage Act 2005 (NHA 2005)

In 2005, heritage preservation was added to the Concurrent List of the Ninth Schedule of the Federal Constitution, which means that now it falls under joint jurisdiction between the Federal and State Governments.[16] Section 60 of the NHA 2005 emphasises the public's role in preserving cultural heritage in Malaysia.[16] Malaysian *batik* attained acknowledgement in the 2012 National Heritage Register within the category of intangible heritage items as per the National Heritage Department's report in the year 2019. This category covers a wide range of heritage aspects, including traditional clothing, textiles, decorative objects, and handcrafted items. Actions that undermine Malaysian *batik*, such as replicating its designs and patterns, are liable to prosecution under Section 118 of the NHA 2005.[11]

The preservation of the national heritage *batik* is safeguarded by various legislative measures. Its distinct characteristics and designs are upheld by the NHA 2005, in addition to being fortified by IP statutes like copyright and industrial design laws.[11] Nevertheless, Yulia *et al.* (2018) reveal a gap in legal protection for TCEs in Malaysia. The NHA 2005 only defines cultural heritage as tangible objects, structures, or artefacts and does not cover intangible cultural heritage. TCE is at risk of exploitation or loss due to lack of legal protection. A comprehensive legal framework is recommended to safeguard and preserve TCE, including a *sui generis* system to regulate the protection of traditional knowledge and TCE.[17] Ahmad Shamsul Abd Aziz and Nor Azlina Mohd Noor also point out that NHA 2005 lacks specific penal provisions regarding intangible cultural heritage (ICH), focusing solely on tangible cultural heritage under Section 113. The paper concludes by suggesting potential improvements to the Act, such as incorporating IP laws, providing clear definitions, and enhancing penal provisions to safeguard the ICH of Malaysia.[12]

Protection of Traditional Cultural Expressions (TCEs)

According to the WIPO, TCEs encompass a wide array of creative outputs, which may be either tangible or intangible. These expressions span various forms of communication, such as spoken word, music, and sounds, alongside manifestations through actions or physical objects.[18] Established in 1985, the UNESCO-WIPO created the Model Provisions for The National Laws on The Protection of Expressions of Folklore Against Illicit Exploitations and Other Prejudicial Actions for National Laws safeguarding TCEs from unauthorised exploitation and harm. These provisions suggest penalties for certain infringements, such as not recognising TCE sources, unauthorised usage, incorrect attribution of origin, and alterations that may harm cultural integrity.[18] The TRIPS Agreement, through Article 61, empowers countries to pursue criminal charges for copyright infringement, particularly in cases of intentional and commercial-scale violations. This holds significant weight when addressing the sale of counterfeit indigenous art and handicrafts, which frequently undermine the rights of TCE holders.[18] A 2004 report by the WIPO identifies several actions that could warrant sanctions concerning TCEs. These include unauthorised copying, adaptation, and commercialisation without fair economic benefits to TCE holders, disrespectful use, unauthorised access to sacred or secret materials, appropriation of traditional languages, unauthorised recording of live performances, misleading association with a TCE's reputation, failure to acknowledge the source, and erroneous granting of IPRs over TCEs and their derivatives.[18]

Protection Under the Malaysian Copyright Act 1987 (CA 1987)

In Malaysia, copyright protection is automatically granted upon the creation of a work, covering TCEs like tribal arts, folklore, and music, given their originality. Yet, preserving TCEs transmitted across generations presents hurdles. In the fight against misappropriation, legal tools can be implemented to deter and punish such actions in

the form of criminal offences.[18] Copyright legislation serves as an effective legal tool for safeguarding TCEs, seeking to prevent unauthorised reproduction of copyrighted works, thereby also protecting TCEs meeting requisite criteria or classified as copyrightable works.[18] The concept of granting copyright protection to TCEs enjoys significant backing from various specialists in the IP field. In Malaysia, some forms of TCEs are already covered under copyright law. Recognising TCEs as subjects of copyright would justify expanding criminal laws to include the unauthorised use of TCEs.[18]

Rohaida Nordin and Siti Safina Abu Bakar argue that Malaysian *batik* designs satisfy the criteria for artistic creations under Section 3 of the CA 1987. This encompasses both hand-painted and block-printed *batik* patterns, both recognised as “graphic works” under the Act. Copyright law, in contrast to patents, safeguards the manifestation of ideas rather than the fundamental concept itself. As stipulated in Section 7(3)(b), the work must be fixed in a tangible form. This allows for the use of general *batik* design concepts as long as the specific visual representation remains uncopied as outlined under Section 7(2)(a). In essence, copyright protection for *batik* designs hinges on their originality and tangible expression.[9] The production of stamped *batik*, utilising blocks engraved with patterns, constitutes a form of graphic work. Consequently, there exists no distinction between printed and painted *batik* regarding the fulfilment of graphic work’s elements.[19] Industrial designs and copyright law often intersect due to the common genesis of designs as drawings. As drawings are considered artistic works regardless of their quality, it logically follows that design drawings, encompassing functional or industrial designs, also qualify as artistic works under the CA 1987. Consequently, a drawing representing a functional or industrial design is *prima facie* eligible for copyright protection. Simultaneously, industrial designs can also receive protection under the IDA 1996 upon registration.[20]

Copyright law in this jurisdiction grants protection to various categories of creative expression as outlined in Section 7(1). These categories include literary works, musical compositions, artistic creations, films, sound recordings, and broadcasts. Notably, Section 7(2) emphasises that the merit or intended use of the work is irrelevant to copyright protection. However, Section 7(3) establishes two key requirements for copyright eligibility in literary, musical, and artistic works. First, the work must demonstrate a minimal degree of originality, signifying a sufficient investment of creative effort. Secondly, the work must be documented in a physical format, which can include writing, recording, or any other tangible medium.[21] Copyright protection for literary creations hinges on their tangible expression. Once a work is authored and captured in a fixed form, like being written down, copyright safeguards it. Conversely, ideas or abstract thoughts for literary works do not qualify for copyright protection.[22] Section 13(1) grants exclusive rights to copyright owners, and unauthorised copying constitutes a legal offence. This encompasses both direct and indirect copyright infringement, as defined in Sections 36(1) and 36(2) respectively. Direct infringement occurs when someone who does not own the copyright replicates the design or allows others to exploit the owner’s rights without permission. Indirect infringement can occur when someone imports plagiarised *batik* designs for commercial purposes.[11]

Protection Under the Malaysian Industrial Designs Act 1996 (IDA 1996)

Notwithstanding how the *batik* production technique is produced, it qualifies for protection under the IDA 1996 because the *batik* pattern is a two-dimensional appearance.[9], [11] Nordin and Bakar assert that, however, Section 12(2) of the law lacks clarity in defining “new” designs, leading to ambiguity in design imitation cases. Defendants often claim a lack of originality due to this ambiguity, forcing judges to rely on subjective assessments to determine novelty. This raises questions about whether a *batik* pattern with common motifs can be considered new and if minor artist alterations are sufficient for industrial design protection. The prevailing view is that a new *batik* design must significantly differ from existing patterns to qualify for protection. [9]

Safeguarding the visual identity of products is achieved through industrial design protection, which covers features like shape, layout, patterns, and decorative elements. To qualify for protection, an industrial design must meet three key criteria. Firstly, it must fit the definition of an industrial design, focusing on the visual aspects

of an object. Secondly, it must be novel, meaning it cannot be a pre-existing design in Malaysia or elsewhere. Finally, the design must be ethical and not violate public decency or morality.[23]

The intersection of industrial designs and copyright law is evident as designs often originate as drawings, considered artistic works regardless of quality. Consequently, drawings related to functional or industrial designs are also recognised as artistic works under the CA 1987, making them *prima facie* eligible for copyright protection. Simultaneously, industrial designs can also be protected under the IDA 1996, provided they are registered under the Act.[20]

As outlined in Section 3(1) of the legislation, an “industrial design” refers to the visual characteristics such as shape, configuration, pattern, or ornamentation applied to an article through industrial processes, which are visually appealing and assessed by the eye in the final product. However, this definition excludes certain elements; firstly, methods or principles of construction, and secondly, features of shape or configuration that are either solely dictated by the article’s function or dependent on the appearance of another article, intended by the designer to be an integral part thereof.[24]

ISLAMIC PERSPECTIVE

In Chapter 22, titled “Traditional Craftsmanship: The Origin, Culture, and Challenges of the *Batik* Industry in Malaysia”, Noor Haslina Mohamad Akhir *et al.* discuss the Islamic principle emphasising the oneness of Allah, which influences the exclusion of human or animal forms in art. Such representations, including drawings, paintings, or carvings of living beings, are viewed as lacking due reverence for Allah, who alone possesses the power to create. Consequently, popular Malaysian *batik* designs often feature natural elements like leaves and flowers or geometric patterns, such as spirals, rather than depicting humans or animals, except for certain motifs like butterflies.[26] In summary, the insights from Noor Haslina Mohamad Akhir *et al.* provide a foundational understanding of the cultural and religious dimensions of Malaysian *batik*, reinforcing the study’s arguments for the importance of IP protection and the need to preserve traditional craftsmanship in the face of modern challenges. This perspective enriches the discourse on how to navigate the intersection of cultural heritage and technological advancement in the *batik* industry.

Conclusion

The integration of modern digital printing technology into the Malaysian *batik* industry presents both notable advantages and challenges when compared to traditional techniques such as block and *canting*. Digital printing enhances efficiency, consistency, customisation, and cost-effectiveness, while also facilitating market expansion and innovation. However, it risks diluting the cultural significance and artisanal value inherent in traditional methods, potentially undermining the livelihoods of artisans reliant on these practices. To address these issues, Malaysian legal frameworks, including the CA 1987, IDA 1996, and the NHA 2005, offer mechanisms for protecting both traditional and digitally produced *batik*. The CA 1987 and IDA 1996 provide avenues for safeguarding designs and artistic works, while the NHA 2005 can safeguard traditional techniques as cultural heritage. Furthermore, the TRIPS Agreement supports the protection of traditional knowledge and cultural expressions on an international level. A balanced approach is essential in leveraging the economic benefits and innovative potential of digital printing, while also preserving the cultural integrity and artisanal value of traditional *batik* through legal recognition, cultural education, and government incentives. This dual strategy ensures the promotion and protection of Malaysia’s rich batik heritage amidst modern advancements.

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