

Exploration of Legal Protection of Intellectual Property Rights in Intangible Cultural Heritage

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Abstract. The traditional cultures passed down through generations among various ethnic groups around the world constitute intangible cultural heritage. This heritage is closely tied to the cultural spaces and expressions of people's lives, bearing a myriad of traditional cultures. However, under the influence of rapid globalization and comprehensive digitalization, the ecological environment of intangible cultural heritage in China has undergone significant changes, challenging the inherent protection models of intangible cultural heritage. Due to the current inadequacy of related laws in China, there are many flaws in the legal protection of intangible cultural heritage. Therefore, by exploring the significance, characteristics, and issues related to the legal protection of intangible cultural heritage in China, corresponding measures and solutions are proposed to address the problems encountered in practice.

Keywords: Intangible cultural heritage; legal protection.

1. Introduction

1.1. The Meaning of Intangible Cultural Heritage

Intangible cultural heritage constitutes a crucial component of human civilization, representing the crystallization of human wisdom and creativity and showcasing the diversity and richness of human cultures. It encompasses a broad range of traditional cultural expressions, skills, and knowledge, whether material-based or not, and with fixed forms of expression or without. Examples include regional folk activities, performing arts, and traditional knowledge and skills in China.

Over the decades, China has gradually recognized the importance of protecting intangible cultural heritage. The national and local governments have emphasized the conservation and inheritance of intangible cultural heritage, acknowledging the positive role of traditional lifestyles in reflecting national history and perpetuating cultural continuity. The consensus in today's society is that the protection of intangible cultural heritage is essential. The achievements in the protection and management of China's intangible cultural heritage are attributed to the state's key role in social mobilization, resource integration, and active participation, successfully mitigating the utilitarian and secular impacts of the cultural industry.

The continuous development and improvement of intangible cultural heritage, ensuring its transmission from generation to generation, require a close relationship with the lives of the masses and a certain level of vitality and creativity in its inheritance. Efforts should be made to protect its uniqueness and diversity, while also focusing on innovation and development during its transmission, enabling it to continue playing a vital cultural role in modern society.

1.2. Characteristics Related to Intangible Cultural Heritage

Intangible cultural heritage, formed through inheritance and innovation, is a non-material asset with specific cultural, social, and historical contexts. This heritage is significant for a nation or ethnicity, representing cultural diversity and being essential for cultural transmission and protection. Thus, intangible cultural heritage encompasses several attributes.

1.2.1. Intangibility

Intangible cultural heritage refers to human oral traditions, performing arts, social practices, rituals, and craftsmanship, distinct from tangible cultural heritage in that its outcomes are knowledge products, aligning with the objects of intellectual property rights. Its intangibility and reliance on oral

transmission and practical operation afford it greater mobility and flexibility. However, due to rapid civilizational development and human migration, such intangible cultural forms are often forgotten.

1.2.2. Inheritance

As a cultural wealth passed down through generations, intangible cultural heritage features history, transmission, and continuity. It is a vibrant method of cultural transmission, perpetuated through oral tradition and apprenticeship.

1.2.3. Diversity

Intangible cultural heritage displays a wide range of cultural forms and expressions, reflecting the unique cultural characteristics of different regions, ethnicities, and social groups. It constitutes an important part of human cultural diversity and a critical direction for cultural development.

1.2.4. Group nature

Intangible cultural heritage typically originates from tribal or ethnic communities rather than individuals, with its creations shared by the community. Through verbal instruction and example, it spreads and proliferates within groups. Although the transmission of certain intangible cultural heritages may depend on specific communities or individuals, they reflect the everyday lifestyles of the broader society, carrying the history, culture, beliefs, values, and spiritual legacy of ethnic groups.

1.3. The Significance of Research on the Legal Protection of Intellectual Property Rights in Intangible Cultural Heritage

Intangible cultural heritage, encompassing various folklore, performing arts, traditional crafts, and cultural spaces, inherits rich cultural connotations and profound historical and humanistic essence. It represents the unique cultural treasures of different ethnic groups and an essential component of human civilization. Therefore, comprehensive legal protection of intangible cultural heritage is not only inherently necessary for maintaining cultural diversity and promoting cultural prosperity but also crucial for enhancing national cultural confidence, promoting the glory of national culture, and protecting the outcomes of human creative activities. It serves as a fundamental means to encourage innovation and technological progress.

However, given the extensive nature of intangible cultural heritage, its legal protection must consider current deficiencies in this field in China, such as the effectiveness of protection measures, the lack of compensation and assessment mechanisms, and the ambiguity of subject rights. This necessitates a focus on clarifying the legal system basis for intangible cultural heritage transmission and the principles related to its legal protection. It also calls for the strengthening of traditional intellectual property systems to address gaps in legal protection for intangible cultural heritage in the realm of intellectual property rights. The legislative aim of intellectual property rights is to protect the rights of intellectual creators, promote the widespread dissemination of knowledge, and enhance the allocation of intellectual resources, embodying dual values of justice and efficiency. Legal protection of intellectual property rights in intangible cultural heritage should adhere to this philosophy, further refining the rights system around the goals of intangible cultural heritage protection, balancing interests, reducing conflicts, and promoting the role of intangible cultural heritage in fostering cultural confidence and contributing to economic growth in the new era

2. Problems in the Legal Protection of Intellectual Property Rights for Intangible Cultural Heritage

2.1. Lack of Effectiveness in Legal Protection Measures

Despite the enactment of a series of relevant laws and regulations in China, such as the "Law of the People's Republic of China on Intangible Cultural Heritage" and the "Copyright Law of the People's Republic of China," there are still some issues in their actual implementation.

2.1.1. Incomplete Legal Protection Measures

China's legal system for the protection of intangible cultural heritage is not yet perfect, especially in terms of intellectual property protection, where further improvements are needed. For example, the current legal and regulatory measures mainly focus on copyright, trademarks, patents, and geographical indications, but are not comprehensive or specialized enough.

2.1.2. Difficulty in Implementing Protection Measures for Intangible Cultural Heritage

Firstly, there is no clear rights holder, as intangible cultural heritage is often a collective cultural asset, making it difficult to uphold its intellectual property rights. Secondly, the difficulty of proof, since intangible cultural heritage is usually oral or traditional, lacking written records, which also complicates proving its intellectual property rights. The principle of priority for the rights of owners poses challenges to the protection of intangible cultural heritage, as the current legal provisions allow the original users who have not registered the intellectual property rights of intangible cultural heritage to obtain rights preferentially over inheritors or other entitled individuals.

2.2. Unclear Evaluation Mechanisms and Damage Compensation Systems for Intangible Cultural Heritage

The evaluation mechanisms and damage compensation systems are crucial measures for the protection and inheritance of intangible cultural heritage. However, China still faces some challenges in these areas.

2.2.1. The evaluation mechanism for intangible cultural heritage is not yet perfected

The evaluation mechanism for intangible cultural heritage is not yet perfected, requiring professional personnel and scientific methods. However, the reality is that some local or organizational evaluations lack professionalism and standardization, leading to inaccuracies and unfairness. Although the "Intangible Cultural Heritage Law" and opinions on fully leveraging the role of intellectual property trials for cultural development and economic coordination highlight the respect principle and source disclosure principle for intangible cultural heritage, these legislative provisions and opinions provide only principled regulations without establishing a value assessment system for intangible cultural heritage, leaving a legislative gap.

2.2.2. The damage compensation system for intangible cultural heritage is not clearly defined

The damage compensation system for intangible cultural heritage is not clearly defined, leading to difficulties in protecting the rights and interests of intangible cultural heritage, as there is no clear system or legal provisions for compensation standards and remedy procedures.

2.3. Unclear Ownership of Intangible Cultural Heritage, with Inadequate Rights Assurance

Identifying the rightful owners poses significant challenges in the protection of intangible cultural heritage, which involves what can broadly be termed as "cultural heritage rights." Although the "Copyright Law" specifies rights for creators, intangible cultural heritage is the crystallization of the labor of countless people over millennia, encompassing the spiritual wealth and cultural genes of a nation. Thus, everyone has the right to participate in its inheritance and protection. Clarifying who the rightful owners are and who has the most creative symbols to lead the related groups in better protecting intangible cultural heritage and realizing its true value is complex and challenging, with no clear legal regulations in China to standardize this area.

2.4. Imperfections in the Legal Protection Mechanism for the Intellectual Property of Intangible Cultural Heritage

The "Intangible Cultural Heritage Law" and various local regulations on intangible cultural heritage specify the administrative departments responsible for its management, with administrative protection being the most important legal means. However, China's administrative legal provisions for the protection of intangible cultural heritage lack specificity, with no mention of specific

managing departments and rights enforcement. The main issues in the legal protection mechanism for intellectual property rights of intangible cultural heritage in China include incomplete legal protection, insufficient enforcement and regulatory oversight, lack of operational protection mechanisms, difficulties in copyright trading, and the inability to fully exploit the commercial value of intangible cultural heritage, thereby increasing the challenges in its protection.

3. Exploring International Best Practices in the Legal Protection of Intellectual Property Rights for Intangible Cultural Heritage

China's awareness of the protection of intangible cultural heritage started relatively late. Japan, on the other hand, began legally protecting intangible cultural heritage as early as the early Meiji era, enacting the "Cultural Properties Protection Law" in 1950. South Korea implemented the "Cultural Properties Protection Law" in the 1960s, initiating comprehensive protection for intangible cultural heritage. Furthermore, several developed countries in Europe and America have achieved deeper accomplishments in the legal protection of intangible cultural heritage earlier on. Hence, in terms of traditional cultural protection, Chinese legislation should not only consider the needs of its local culture, economy, and social development but also take into account international systemic development trends.

3.1. Intellectual Property Protection Practices for Intangible Cultural Heritage in Developed Countries like Europe and America

In Europe and America, intellectual property protection for intangible cultural heritage is typically carried out through intellectual property laws. For instance, the European Union issued the "Resolution of the European Parliament and of the Council on the Legal Framework for the Protection of Traditional Knowledge and Cultural Expressions" in 2006. It mandates a series of measures for protecting traditional knowledge and cultural expressions in European countries, such as funding for cultural and educational projects, intellectual property protection, technical and economic assistance, etc. Additionally, the EU Geographical Indications law primarily protects goods originating from a specific geographical area with particular quality, reputation, or other characteristics. For example, Champagne from France and Cheese from Italy, with their long histories, have their intellectual property rights protected by law, prohibiting producers in other regions from using these geographical indications to market their products.

In the United States, laws such as the copyright law protect intangible cultural heritage, including the "Indian Arts and Crafts Act," which outlines protections for Native American traditional arts and crafts. Moreover, the "Traditional Cultural Expression Protection Act" in the U.S. mainly safeguards traditional cultural expressions created by indigenous peoples, such as songs, dances, stories, etc. This law specifies that only individuals authorized by the indigenous communities may use these cultural expressions, adhering strictly to cultural traditions and guidelines.

Overall, the intellectual property protection mechanisms for intangible cultural heritage in the Europe and America regions are relatively well-developed. These laws specify the rights and restrictions of intellectual property, ensuring the inheritance and development of cultural heritage and providing protection for the cultural creative industry. By legally protecting the intellectual property rights of intangible cultural heritage, these developed countries have laid a legal foundation for its inheritance and development, ensuring its legitimate commercial interests and cultural transmission.

3.2. Intellectual Property Protection Practices for Intangible Cultural Heritage in Japan

Since the early Meiji era of the 19th century, Japan has started protecting intangible cultural heritage at the legal level. The enactment of the "Cultural Properties Protection Law" in 1950 marked Japan's comprehensive approach to protecting intangible cultural heritage. Japan's rich experience in the registration of intangible cultural assets and the recognition of inheritors is particularly noteworthy.

3.2.1. Intangible Property Registration System

The enactment of the "Cultural Properties Protection Law" in 1950 established Japan's comprehensive method for protecting intangible cultural heritage. Over time, Japan's protection of cultural heritage has been refined, with amendments to the "Cultural Properties Protection Law" in 1996 introducing a heritage registration system similar to those in Europe and America. The new law stipulates that the selection of registered heritage should be conducted through professional institutions and legally bound. This allows for better recognition and protection of heritage with historical and cultural value, thereby enhancing the inheritance and promotion of human cultural heritage.

3.2.2. "Living National Treasure" Recognition Mechanism

Japan's "Cultural Properties Protection Law" outlines the identification methods for important intangible cultural assets as "individual recognition," "group recognition," and "comprehensive recognition." The recognition of inheritors falls under "individual recognition" for "holders of particular skills." If recognized as an inheritor, related officials will inspect, record, and publicly showcase their performances to reflect the historical and cultural value of the intangible cultural heritage. Each recognized "Living National Treasure" inheritor receives an annual subsidy of 2 million yen for training and transmitting the intangible cultural heritage. These measures not only provide institutional guarantees for the protection of cultural heritage but also play an important role in exploring and promoting excellent traditional culture.

Japan's "Intangible Cultural Properties Protection Law" uses a relatively generalized legislative technique similar to China's approach in protecting intangible cultural assets. Instead of specifying which legal systems to regulate, it leaves the choice of protection methods to "the best value selection."

3.3. Lessons from International Experiences for the Protection of Intellectual Property Rights in China's Intangible Cultural Heritage

The international experience is significantly valuable for the protection of intellectual property rights in China's intangible cultural heritage. The beneficial explorations by Europe, America, Japan, and South Korea in the protection of intangible cultural heritage prove that there are multiple methods for protection, such as the enactment of laws, management, protection, utilization, and investigation. Additionally, the protection of intangible cultural heritage should involve a diverse range of participants, including governments, social organizations, cultural institutions, and inheritors, to collaboratively protect intangible cultural heritage. Thus, the protection of intangible cultural heritage cannot be solely resolved by a single law but should achieve an organic combination of systems, focusing both on institutional construction and practical operations. In this process, the strengths of all parties should be fully utilized to establish a comprehensive protection system, ensuring the inheritance and development of intangible cultural heritage.

3.3.1. From the experiences of Europe and America

Diverse Protection Methods: European and American countries have adopted various protection methods for intangible cultural heritage, such as direct connections with inheritors and multi-party cooperative protection mechanisms. China can learn from these methods to adopt a more comprehensive and detailed approach to protection. **Diverse Protection Participants:** European countries have shifted the focus of intangible cultural heritage protection from the state to social groups and non-governmental organizations, making protection more community-oriented and social. China can draw from these experiences to extend the range of protection participants from government bodies to a broader social community, enhancing the inclusiveness of protection.

Establishing a Complete Protection System: European countries have developed a comprehensive protection system for intangible cultural heritage, incorporating it into national development strategies and legal frameworks, thereby institutionally ensuring its protection. China can learn from

these experiences to establish a complete intangible cultural heritage protection system, strengthening protection in legal, policy, and mechanism aspects to achieve an organic integration of systems.

3.3.2. From the experiences of Japan and South Korea

It is clear that in the practice of intangible cultural heritage protection, diversity should be respected. Japan's protection model has advantages in central coordination and decision-making accuracy, while South Korea's nationwide participation effectively achieves the living protection of intangible cultural heritage, involving more people in its inheritance and development and ensuring the continuity and permanence of protection efforts. This diversity in protection methods provides optimal solutions for intangible cultural heritage protection, facilitating its smooth preservation and transmission.

4. Suggestions for Perfecting the Intellectual Property Legal Protection System for Intangible Cultural Heritage

4.1. Enhancing Legislation on Intangible Cultural Heritage and Strengthening the Coordination and Unity Among Relevant Laws and Regulations

The protection of the intellectual property rights of intangible cultural heritage (ICH) requires a sound and comprehensive legal and regulatory foundation. Only by establishing the rights and interests of ICH through legal means can its intellectual property be effectively protected. Hence, strengthening legislation on ICH protection and improving laws and regulations are key to safeguarding its intellectual property rights.

A legal system for the protection of ICH should be established. The creation of a legal framework for ICH protection, which serves as the foundation for protecting its intellectual property rights, should comprise a series of laws and regulations, including the "Law of the People's Republic of China on the Protection of Intangible Cultural Heritage," the "Copyright Law," the "Patent Law," and the "Trademark Law," among others. These laws and regulations should cover all aspects of ICH, including its definition, the scope of protection for its intellectual property rights, how these rights are acquired, and the measures for their protection. The "Law on the Protection of Intangible Cultural Heritage" of China is the most important law for ICH protection. However, in practice, this law faces specific issues and directional errors. Therefore, improving related laws through extensive social research and drawing on the successful experiences of other countries to clarify the theories and principles of ICH protection is feasible.

Moreover, the current "Law on the Protection of Intangible Cultural Heritage" and other laws and regulations have contradictions and inconsistencies. This law mainly contains principled and overall content aimed at clarifying the direction and method of legislative protection for ICH. Thus, integrating and improving codified laws and coordinating the alignment of laws and regulations are effective ways to resolve contradictions and disconnects.

4.2. Clarifying the Subject of Intangible Cultural Heritage and Determining the Attribution of Rights

One of the most apparent characteristics of ICH compared to intellectual property rights is its collective subject nature. This is because some ICH are created by social organizations or ethnic groups. It belongs to the public within a specific domain, just like air and sunlight, allowing residents, whether indigenous or foreign, to participate in and use social customs, rituals, and festivals. For instance, traditional Chinese Tai Chi and acrobatics are represented by collective groups. Therefore, protecting these ICH requires emphasizing the rights of collective groups and fully respecting their cultural traditions and intellectual property rights.

Secondly, the subject of ICH should also include individuals. In some ICH, individuals are crucial subjects. For example, the skills, knowledge, and experience of some traditional craftsmen are

accumulated through their efforts and learning over time. In such cases, protecting the intellectual property, economic interests, and personal rights of individuals is crucial.

Furthermore, the subject of ICH should also include other related subjects, such as the state and innovators, who have different focuses and interests in ICH. For example, the state considers ICH as part of the national cultural heritage and thus should be actively protected and inherited; innovators see ICH as an important source of innovation and creation, aiming to promote and improve it while inheriting it.

Lastly, if the subject of rights cannot be determined, the state can act as the subject for protection. In some cases, the subject of rights for ICH may be complex and require extensive investigation and research to determine. In such cases, the state can act directly as the subject for protection to ensure the protection and inheritance of ICH.

4.3. Strengthening and Clarifying the Supervision and Enforcement of Intellectual Property Protection for Intangible Cultural Heritage

As an important cultural heritage, the protection of ICH relies on the protection of intellectual property rights. This protection necessitates enforcement officers to increase penalties to ensure the full protection and utilization of the intellectual property rights of ICH.

Enforcement officers should increase penalties to combat infringement of ICH intellectual property rights. Currently, infringement still occurs in the dissemination and utilization of ICH. Some businesses, seeking profit, pirate the intellectual property of ICH, creating counterfeit and inferior cultural products, severely damaging the image and brand value of ICH. Enforcement departments should intensify efforts to combat such behaviors, take effective measures, and strictly punish infringements to protect the intellectual property rights of ICH.

Enforcement officers should also strengthen the supervision and management of ICH intellectual property rights. The protection of ICH intellectual property cannot be separated from supervision and management. Enforcement officers should enhance the supervision and management of ICH intellectual property rights, establish comprehensive management systems and regulations, and ensure the full protection and utilization of ICH intellectual property rights.

4.4. Establishing a Comprehensive Compensation Mechanism for Damage to Intangible Cultural Heritage and a Value Assessment Mechanism

Currently, there are some issues in the protection of ICH, especially in the mechanisms for compensation for damages and value assessment, which are not yet fully developed and clear. The protection of ICH involves various aspects, including how to assess its value and provide compensation. In terms of value assessment, there is a lack of unified, scientific, and accurate standards and methods, making it difficult to determine its precise cultural value. Meanwhile, when ICH is damaged, there is a lack of corresponding compensation mechanisms, which cannot effectively punish infringers and protect the rights and interests of cultural heritage.

Therefore, it is necessary to establish comprehensive mechanisms for damage compensation and value assessment for ICH. In terms of value assessment, scientific standards should be established. The author believes that it is advisable to refer to the provisions of the "Patent Law" and "Copyright Law" of China regarding compensation for infringement damages. To adapt to the characteristics of ICH protection in China, it is necessary to actively incorporate beneficial elements from China's intellectual property legal system and define the rights of ICH as a new type of civil right. Clarifying the subjects of ICH rights, establishing a set of specialized laws for ICH intellectual property, and compensating for the limitations and deficiencies of the current legal framework are essential to perfect and enhance the protection mechanism for the intellectual property of ICH in China.

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