Dilemmas in the Intellectual Property Protection of Intangible Cultural Heritage and Their Resolution

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Abstract: As an essential component of human civilization, intangible cultural heritage carries profound historical significance and holds significant economic, political, and cultural value. However, with the continuous advancement of globalization, it faces risks such as misuse, misappropriation, and plagiarism, and numerous practical challenges in its protection. This study analyzes from a legal perspective the feasibility of intellectual property law in safeguarding intangible cultural heritage. Through case analysis, comparative studies, and literature review, combined with international conventions and domestic legal practices, this paper systematically identifies four core contradictions in the protection of intangible cultural heritage: first, the conflict between cultural "public rights" and property "private rights"; second, the contradiction between "collective rights" and individual "registration rights"; third, the paradox between the need for cultural transmission and the limited duration of intellectual property protection; and fourth, the balancing dilemma between preserving traditional knowledge and fostering innovative intellectual achievements. Finally, corresponding solutions are proposed for each issue, including clarifying the scope of public availability, establishing a tiered protection mechanism that distinguishes core from derivative elements, developing a model based on prior informed consent and benefit-sharing, introducing the concept of "community rights," and integrating technological methods for preservation. The article proposes corresponding responses, including clarifying the scope of elements that are publicly known and freely usable, establishing a tiered protection mechanism that distinguishes core elements from derivatives, developing a model based on prior informed consent and benefit-sharing, introducing the concept of community rights, and making use of scientific and technological tools. The study seeks to highlight the important role of intellectual property law in ICH protection and to contribute to a more comprehensive framework for safeguarding ICH.

Keywords: Intangible Cultural Heritage Protection; Intellectual Property Law; Innovation in Protection Pathways

1. Introduction

With the growing momentum of cultural globalization, Chinese culture-including intangible cultural heritage (hereinafter "ICH")-has reached audiences around the world, driven by the global popularity of hit IP franchises such as Black Myth: Wukong and Ne Zha. Under UNESCO's Convention for the Safeguarding of the Intangible Cultural Heritage, ICH refers to "the practices, representations, expressions, knowledge, skills-as well as the instruments, objects, artefacts and cultural spaces associated therewith-that communities, groups and, in some cases, individuals recognize as part of their cultural heritage." It encompasses five domains: oral traditions and expressions, including language as a vehicle of ICH; performing arts; social practices, rituals and festive events; knowledge and practices concerning nature and the universe; and traditional craftsmanship. ICH preserves the living cultural genes of human civilization and is often described as a "living fossil" of human culture. China's legal framework for ICH protection largely follows the Convention's definition, while replacing "communities, groups and, in some cases, individuals" with "the people of all ethnic groups," thereby emphasizing the ethnic character of ICH.

As globalization has progressed, China's cultural influence has become increasingly visible, but cases of unauthorized use of Chinese ICH have also emerged. Safeguarding ICH is an important

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public concern. Intellectual property, as a body of rights designed to protect intellectual creations, offers potential advantages in this regard. Early initiatives, such as the inclusion of works of folklore within the scope of protection under the Berne Convention, illustrate how intellectual property law can be used to safeguard ICH.

The use of intellectual property law to protect ICH has also attracted considerable attention in China, where policymakers have increasingly emphasized this approach. A report on the implementation of China's Law on Intangible Cultural Heritage called for stronger intellectual property protection mechanisms relevant to ICH and for systems to support the transformation and utilization of ICH resources and the sharing of benefits. In addition, the China National Intellectual Property Administration monitors developments in ICH protection and continues to improve relevant laws and regulations. For example, amendments to the Patent Examination Guidelines added several provisions governing the examination of invention patent applications in traditional Chinese medicine. As of March 2024, 355 relevant products had been recognized as geographical indication products. Of these, 94 were associated with nationally representative ICH items, covering 86 items involving traditional techniques and 8 involving traditional fine arts.

Nevertheless, significant problems remain. ICH differs substantially from conventional intellectual property subject matter in the nature of the interests involved, its public character, and its institutional objectives. The view that ICH can simply be classified as intellectual property therefore encounters theoretical and practical obstacles [1], leaving many forms of ICH difficult to protect in practice.

The fashion industry provides examples. "Miao tin embroidery" is a traditional craft included in the first batch of China's national ICH list in 2006. However, without authorization from the relevant parties, Hermès used patterns and techniques highly similar to Miao tin embroidery in its 2015 "Sous le Charme d'Orphée" scarf collection and its 2020 home collection. Its official website described them only as "mysterious Oriental craftsmanship" and "ancient handmade techniques," without mentioning China or the Miao people. Similarly, in the summer of 2022, Dior launched a black, mid-length skirt priced at RMB 29,000. Its cut-including the front and back skirt panels and the pleats on both sides-closely resembled the design of China's traditional mamianqun (horse-face skirt). Dior did not acknowledge its Chinese cultural origins, instead emphasizing the design's originality and claiming that it combined Korean and French cultures. Although such incidents triggered heated debate on Chinese social media, legal remedies based on a finding of copying have been difficult to obtain, partly because traditional clothing is difficult to protect under modern patent law and the attribution of cultural origins by brands is often treated as an ethical rather than a legal issue. In the film industry, Disney used ICH elements without permission in its live-action film Mulan. It combined the "Legend of Mulan," an ICH tradition shared by Huangpi in Hubei, Shangqiu in Henan, and Yan'an in Shaanxi, with local cultural symbols associated with the Mulan River and Mulan Weir in Putian, Fujian, as well as a northern setting. This blurred the tradition's distinctive regional connections and resulted in misleading cultural representation. Despite box-office revenue of RMB 145 million, no economic compensation was provided to the places of origin of the ICH elements used without authorization. In the cultural sphere, China's Dragon Boat Festival was pre-empted in 2005 by South Korea's successful inscription of the "Gangneung Danoje Festival." Attention has also been directed toward other Chinese traditions, including the Spring Festival-which China successfully inscribed in December 2024-and the techniques of making dumplings.

Apart from plagiarism and appropriation, "free-riding" also persists. For example, the name of Wei Jiequn, an inheritor of the Liubao tea-making technique in Guangxi, was registered as a trademark by another party. Her attempt to protect her rights ultimately failed because the other party had used the trademark for more than five years. In another example, online vendors falsely claimed to be representative inheritors of the Miao silverware-forging technique in Leishan, using that identity to mislead consumers while earning substantial profits from selling machine-produced silver ornaments.

These practices are driven not only by intense competition over cultural soft power but also by substantial economic incentives. According to China's ICH website, the market transaction value generated by the ICH industry in China is estimated at RMB 300 billion. Yoga, an element

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of India's ICH, has also repeatedly been the subject of patent applications in the United States, the United Kingdom, Germany, Japan, and other countries. Data recorded by a website for intellectual property lawyers indicate that, before 2008, relevant US authorities had granted 150 patents related to yoga and registered 2,315 yoga-related trademarks. There were even attempts to patent the syllable "om," chanted by people practicing yoga in India. Such attempts were also motivated by the recognition that yoga generates as much as USD 30 billion in economic value each year. Because these economic interests compete with one another, China should learn from these experiences and safeguard its ICH rather than repeat the difficulties encountered by India.

This article examines the policy approach of combining ICH protection with intellectual property law. Through case research, statutory analysis, and comparative analysis, it explores further ways to protect China's ICH. What legal and theoretical grounds support the protection of ICH through intellectual property law? How can more effective and practical methods address the problems revealed by current protection practices? These are the principal questions addressed below.

2. Theoretical Foundations for the Protection of Intangible Cultural Heritage through Intellectual Property Law

2.1 The Public-Domain Reservation Mechanism in Intellectual Property Law

A balanced approach to intellectual property protection should respond to domestic needs, serve the public interest, and ensure fair and reasonable protection. It should protect intellectual property while guarding against excessive expansion of rights held by individuals and enterprises, thereby reconciling public interests with incentives for innovation. This approach provides a useful policy basis for the design of intellectual property protection mechanisms and reflects the underlying values of intellectual property law [2].

Guided by these values, the reservation of a public domain under intellectual property law serves as a core mechanism for maintaining a balance between knowledge-sharing and innovation. These include, but are not limited to: explicitly excluding the protection of public knowledge such as natural phenomena and scientific discoveries under patent law; adhering to the principle of prohibiting registration of generic names in trademark law; and allowing statutory licenses that permit free use of protected works in fields such as academic research and education under copyright law. Such measures all aim to promote the dissemination of high-quality public knowledge, encourage creative activities, prevent excessive privatization that erodes public intellectual resources, and ensure the reasonable use of cultural products by society, thereby maximizing social benefits.

Ultimately, the preservation of the public domain in intellectual property is the integration of the most powerful and widespread theoretical framework-utilitarianism (commonly known as the theory of utility, incentive theory, or benefit theory） which posits that intellectual property law incentivizes creation through economic means to maximize social welfare-with current copyright systems. Some scholars have even proposed adding a "public audience-usage right" beyond the existing copyright system's "author-copyright" and "distributor-neighboring rights," further safeguarding the general public's ability to use knowledge in the public domain [3]. For ICH this balance matters more than usual, because many cultural expressions are maintained collectively and belong to the shared cultural resources of a community. A public-domain reservation can therefore help prevent the over-expansion of private rights while leaving room to protect genuinely original adaptations [4].

These ideas share a similar starting point with ICH protection. Many traditional medicinal formulas and calendrical systems embodied in ICH are likewise products of collective wisdom and forms of public knowledge, and should not be monopolized by individuals. Public-domain safeguards under intellectual property law have protected various forms of ICH from those seeking to profit from them. For example, in the "Fuguo" case in Fujian, a business sought to register the name of a traditional ICH food, "Fuguo," as a trademark in order to monopolize its use. The trademark authority refused registration on the ground that the term was a generic name, preventing the privatization of ICH-related terminology and preserving its public character. Another example is the invalidation of the "Yingge" trademark, which was supported by legal aid to help ICH inheritors

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counter trademark squatting. Liaoning Province's 2024 Measures for the Protection and Administration of Provincial Representative ICH Items also emphasize the reasonable use of ICH and the application of technology. These examples show that the point of intellectual property law is to encourage people to create new things while making sure that everyone can access the knowledge that already exists. This approach also uses ideas from utilitarian theory to protect ICH. When we look at these two things together, we can see that the basic ideas behind protecting ideas and inventions can also be used to protect ICH.

2.2 The Rationale for the Duration of Intellectual Property Rights

The purpose of establishing protection terms for intellectual property is to balance the interests of rights holders with those of society while preventing the abuse of rights. Nevertheless, there are also different circumstances in which such terms may be exceeded:

First, rights such as trademark rights and geographical indication rights may be renewed indefinitely. The reason such property rights can be renewed without limit is that they do not prevent identical goods or services from entering the market, nor do they create market monopolies. Similarly, the essence of intangible cultural heritage protection is not to monopolize its use. True protection lies in promoting its living transmission while conveying its cultural genes. It may even be said that the more people use it and the broader its scope of use, the greater the value of intangible cultural heritage; what we seek to prevent is merely "free-riding" and misappropriation. Naturally, it also does not restrict the circulation of other similar products or services in the market, let alone create monopolies. Thus, the institutional logic behind renewal can, in theory, support the protection of intangible cultural heritage through intellectual property.

Second, in copyright law, the author's right of authorship, right of alteration, and right of integrity are not subject to time limits. These rights are perpetual and may be exercised as long as the author is alive, because they belong to the category of "personal rights," thereby fully embodying the idea of "putting people first and legislating for the people." "Moral rights of authors," also known as "authors' moral rights," derive from the Enlightenment concept of "natural rights," with the theoretical basis that "a work is an extension of the author's spirit." The rights enjoyed by communities of origin over folk literature and art are likewise divided into "moral rights" and "economic rights," including the right to indicate source, the right to prohibit distortion and misuse, the right of publication, the right of alteration, and the right of transmission. Apart from folk literature and art, many forms of intangible cultural heritage in fact conform to the idea of the "extension of the author's spirit." The most typical examples are certain religious forms of intangible cultural heritage, such as "Capital music from the Zhihua Temple," which embodies the creators' spiritual ideals of "steadiness, harmony, and inclusiveness." We can therefore align the purpose of intangible cultural heritage protection with the institutional logic of "moral rights." Therefore, the individual authorship model behind conventional moral rights cannot be directly applied to ICH [5]. At the same time, it should leave room for the public to use and further develop shared cultural resources [6].

The two share a common starting point rooted in the collective will of the people and a spiritual core of protection.

2.3 Fairness and Good Faith in Intellectual Property Law

China protects intellectual property through several laws and regulations. The Patent Law and the Copyright Law are two of the main laws in this system. Together, they provide an important legal basis for intellectual property protection. Under domestic law, intellectual property infringement is a form of civil infringement and shares the same basic legal character as ordinary civil infringement, even though the forms of intellectual property and the conduct constituting infringement differ from those associated with ordinary civil rights. The general principles of civil law also apply to intellectual property law. Therefore, the basic principles of civil law are also applicable in intellectual property law. Considering the principle of fairness, when formulating intellectual property law, we stipulated the open licensing model, such as open-source software (GPL agreement), knowledge sharing (Creative Commons), etc., allowing creators to voluntarily give up some rights to promote the free circulation of knowledge, also providing special treatment for developing countries, and

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advocating non-discriminatory treatment at the international level to ensure that foreign rights holders and domestic rights holders enjoy the same protection. For example, the WIPO "Marakas Treaty" signed in June 2013 and coming into effect in September 2016 relaxed the restrictions on the printing and international transfer of books specially adapted for the blind or visually impaired, fully demonstrating fair concern for vulnerable groups.

The protection of intangible cultural heritage currently also needs to address the imbalance in fairness issues. It faces the dilemma of fair dissemination of intellectual achievements. This dilemma includes two aspects: one is the injustice of plagiarism of the intellectual achievements of the cultural party being appropriated, and the other is the intergenerational injustice for intangible cultural heritage that future generations are about to lose the opportunity to inherit. The pursuit of the right of different entities to enjoy the same intellectual achievements is a common value goal of intellectual property law and intangible cultural heritage protection. The principles regulating the fair dissemination of intellectual achievements reflected in many of these provisions are the theoretical support for the cross-temporal protection of intangible cultural heritage rights of the subjects.

Secondly, the embodiment of the principle of integrity in intellectual property rights is also one of the foundations for the protection of intangible cultural heritage. Moreover, due to the intangible nature of intellectual property rights, rights holders find it difficult to provide complete and effective protection through private means alone; they must rely on the coercive power of the law. The enforcement of intellectual property rights is more dependent on market integrity and requires higher social integrity standards. Regarding intangible cultural heritage, by definition, it refers to non-material cultural heritage, mainly consisting of rituals, methods, and forms of expression. Protecting intangible cultural heritage also requires a high level of social integrity and the intervention of public power for compulsory protection. At the same time, community-based protection mechanisms do not always ensure equal treatment. These mechanisms may create new inequalities if they lack clear rules on representation and benefit-sharing [7] This principle is also the basis of the "prior informed consent principle" to be discussed later and can fully safeguard the rights of all communities of intangible cultural heritage.

2.4 Evolving Requirements of the International Intellectual Property Protection System

Alongside established forms of IP protection, contemporary international intellectual property law has started to develop mechanisms that deal with genetic resources and traditional knowledge [8]. In May 2024, the World Intellectual Property Organization (WIPO) in Geneva, Switzerland, approved a groundbreaking new treaty on intellectual property, genetic resources, and related traditional knowledge. The treaty stipulates that if an invention in a patent application is based on genetic resources, each contracting party should require the applicant to disclose the country of origin or source of the genetic resources. If the invention in the patent application is based on genetic resources-related traditional knowledge, each contracting party should require the applicant to disclose the indigenous people or local communities that provided this traditional knowledge. This clause may seem unrelated to intangible cultural heritage, but it actually holds a hidden meaning. Because like intangible cultural heritage, "genetic resources" itself cannot be directly protected as intellectual property, but the success derived from its utilization can. The adoption of this new treaty has brought inspiration and hope for the protection of the intellectual property rights of intangible cultural heritage. As a crystallization of the excellent traditional knowledge culture of the Chinese nation and an embodiment of the soft power of national culture competition, traditional knowledge is a typical representative (according to the classification made by WIPO, the term "traditional knowledge" has broad and narrow meanings. The one adopted in this article is the broad meaning. "Traditional knowledge" covers traditional cultural expressions in forms such as music, stories, paintings, handicrafts, languages, symbols, and performances). Intangible cultural heritage also requires international protection of intellectual property rights.

International legal practice also shows that intellectual property law increasingly interacts with broader policy objectives, including biodiversity conservation, cultural diversity, and the protection of traditional knowledge [9]. The

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adoption of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge in May 2024 is one example of this development. As a living expression of cultural diversity and a form of traditional cultural expression, ICH raises related questions about attribution, control, and equitable benefit-sharing.

3. Practical Challenges in Protecting Intangible Cultural Heritage through Intellectual Property Law

3.1 The Conflict between Public Power in the Cultural Sphere and Private Property Rights

"Public power" refers to authority exercised by the State or public institutions to safeguard the public interest. Economic analyses of intellectual property recognize that information goods have public-good characteristics, since they can often be reproduced and disseminated at relatively low marginal cost, while exclusive rights may be used to create incentives for production. The safeguarding and transmission of ICH depend on broad public participation; the existence of products associated with an ICH item does not prevent the use or development of similar products. Meanwhile, since the value of intangible cultural heritage increases as the number of people who know about it grows, it is regarded as an information resource, further confirming that intangible cultural heritage belongs to the category of public goods, which is precisely the content that national public power aims to guarantee. In fact, the Chinese government has clearly defined that the government is the primary responsible party for the protection of intangible cultural heritage through the "Law of the People's Republic of China on Intangible Cultural Heritage", and has established the legal status of intangible cultural heritage through legislation, standardized the process of list formulation and the management of inheritors, and fully demonstrated the legal protection system led by the government.

However, the intellectual property law is different. The WIPO intellectual property system (such as the "TRIPS Agreement") clearly states at the beginning that "intellectual property belongs to private rights". At the same time, some scholars believe that intellectual property law, as a component of civil law, inherently needs to follow the general principles and basic requirements of civil law, including the "principle of autonomy of will" and the "principle of equality", which fully reflect the private nature of individual will. Under the leadership of these principles, provisions such as the attribution of copyright rights for commissioned creative works or film and television works based on contractual agreements have emerged, and intellectual property also allows private inheritance, transfer, and licensing use. That is to say, it is the private nature and property nature of intellectual property law that determine its substantive content. Of course, there are also controversies. Some scholars believe that intellectual property law is not a component of civil law but a component of "private law" including civil law. However, no matter which explanation of the relationship between intellectual property law and civil law is given, it cannot escape the definition of its status as a "private law".

This gives rise to the first contradiction point: many forms of ICH belong to communities and pass from one generation to another. Their collective nature does not always fit the individual-rights model of intellectual property law [10]. This contradiction point is reflected in international treaties in the "Convention for the Safeguarding of the Intangible Cultural Heritage" (2003) of UNESCO, which emphasizes "administrative protection led by the state". The 11th to 15th articles of the convention clearly require contracting states to establish intangible cultural heritage lists and formulate protection policies, but do not grant the inheriting group "private rights relief" to combat cross-border infringements. This directly leads to the functional mismatch with the TRIPS Agreement, making the issue of infringement compensation lose the legal basis for initiation.

3.2 The Conflict between Collective Rights and Individual Registration-Based Rights

Rights and interests associated with ICH are often collective in character. Research on traditional cultural expressions shows that these expressions are closely connected to communities, groups, minorities, and Indigenous peoples. They often reflect a shared cultural identity rather than the work of one specific author. In some cases, an individual practitioner can be identified. For example, a family may pass down particular skills or production techniques from one generation to the next. However, these practices do not necessarily

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result from one person's efforts alone. They often rely on knowledge built up within the community over time, as well as on the shared process of passing down and developing cultural traditions [11]. Although public authorities may safeguard ICH through inventories, funding, and administrative measures, the interests associated with a particular tradition may be closely connected to the community that maintains and transmits it. The same tradition may be shared by several groups or localities, and its cultural significance may not correspond neatly to administrative boundaries. Therefore, any system of exclusive rights or compensation for ICH should first identify the communities concerned and understand their respective interests. This step is important because ICH often reflects the shared contributions of different groups rather than the work of a single person. Intellectual property law, by contrast, generally grants rights to specific individuals or legal entities. This difference highlights the gap between the collective nature of ICH and the individual ownership model of intellectual property law. Patent rights, for example, usually require the submission of an application to a national patent office-such as the China National Intellectual Property Administration or the United States Patent and Trademark Office (USPTO)-whether the application concerns an invention subject to early publication and deferred examination or a utility model or design subject to a more limited examination. The applicant will ordinarily own the resulting right. Other intellectual property rights are similarly vested in identifiable persons or entities, whether they concern works created in the course of employment, employee inventions, joint works, commissioned works, rights acquired by inheritance or transfer, or priority rights under instruments such as the Berne Convention and the Paris Convention.

This is the second contradiction in the current protection framework. Like the first, it creates a further problem concerning compensation for infringement: even where misuse of ICH is established and monetary relief is obtained, the proper recipient of that compensation may remain uncertain, making implementation difficult. The collective nature of ICH also raises concerns about how ownership and benefits should be shared. If the relevant rules are not properly designed, some people may use ICH for their own benefit without fair limits. At the same time, other members of the community may be left out of the benefits. Research on collective intellectual property systems also shows that benefit-sharing arrangements do not always ensure equal treatment. These systems may continue to favor certain groups if they do not provide clear rules for participation and representation [7]. Therefore, the protection of ICH should not only consider how benefits are shared, but also ensure that all relevant community members have a fair chance to take part in the process.

3.3 The Conflict between Cultural Transmission and Time-Limited Intellectual Property Protection

Intangible cultural heritage, as one of the manifestations of cultural inheritance, should be protected without any time limit, which is the basis for its characteristic of dynamic inheritance. However, most of the rights stipulated by intellectual property law have time limits.

Firstly, from the perspective of value, intangible cultural heritage has been continuously improved and perfected during the inheritance process, and its connotation has also become increasingly rich. Therefore, the overall value has shown a trend of increasing. On the contrary, intellectual property has faced the risk of technological iteration since its disclosure, and after going through the exclusive use stage, its value gradually decreases and enters the preparation stage for imitation. Its value does not show a similar trend of gradually increasing like that of intangible cultural heritage. Therefore, the unlimited patent protection has no practical significance.

In addition, from the perspective of balancing individual interests and social interests, rights usually have internal and external restrictions. The internal restriction refers to the practice of stipulating corresponding obligations along with the rights based on the theory that rights should be exercised for social purposes. The external restriction is to limit the inviolability of rights through public law measures. Intellectual property is no exception. For example, compulsory licensing of patent rights, innocent infringement, temporary transit, etc.; copyright has fair use, statutory licensing (in other countries such as the United States, the United Kingdom, Germany, Japan, etc., there are also compulsory licensing situations); reverse

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engineering of trade secrets; and the exercise of prior rights of trademarks are all restrictions on rights, and time limits, as internal restriction measures, are also fully reflected in intellectual property.

This difference also raises a broader question about how the law should balance individual interests with the interests of society. Intellectual property law usually addresses this issue by setting limits on the scope and duration of rights. These limits help protect the interests of right holders while also leaving room for public access and use. Internal limitations rest on the idea that rights carry duties and should be exercised for social purposes; on this view, the rights conferred bring corresponding obligations with them. External limitations work differently: they restrict the inviolability of rights through public-law measures [3]. Intellectual property is no exception. Examples include compulsory licensing, innocent infringement and temporary transit in patent law; fair use and statutory licensing in copyright law (with compulsory licensing also available in countries such as the United States, the United Kingdom, Germany and Japan); reverse engineering in trade secret law; and the exercise of prior rights in trademark law. A fixed term of protection is another internal limitation reflected throughout intellectual property law.

This leads to the third contradiction: how can time-limited intellectual property rights contribute to safeguarding ICH that is transmitted across generations? Trademarks and geographical indications may be renewed or maintained for as long as the relevant legal requirements are met, but they protect particular signs, products or commercial origins rather than the full range of oral traditions, rituals, skills and community practices. They may therefore contribute to the protection of particular ICH-related products or reputations without providing comprehensive protection for ICH as a whole [5].

3.4 The Conflict between Stable Traditional Knowledge and Innovative Intellectual Achievements

The inheritance characteristics of intangible cultural heritage determine a natural tension between it and innovative intellectual achievements: traditional knowledge emphasizes collectivity, continuity, and cultural authenticity, while innovative achievements often focus on individual rights, technological breakthroughs, and commercial value. Intellectual property rights have strict conditions for acquisition, the most obvious of which is that a patent must meet the requirements of originality, novelty, and practicality when applying for it.

Intangible cultural heritage is defined as a "component of cultural heritage" in its definition. Over a long period of development, its core remains stable. The core refers to the irreplaceable part of the cultural genes of intangible cultural heritage, such as the "Yi, Gong, Li, Si, Yi" five-tone system of Quanzhou Nanxi. The so-called "inheritance and development" is based on the dispersed intellectual achievements from the core, interpreted in a way that is easier for modern people to understand, and it has undergone an evolution from vertical writing to horizontal writing, from a single "Gong Yi Pu" to a combination with modern simplified notation and five-line notation. That is, the "core" and "derivative" are involved. However, the law needs to distinguish between the traditional elements maintained by a community and the new contributions made by individual creators. The latter may qualify for intellectual property protection if they meet the relevant legal requirements. Such protection should not give individuals exclusive control over the traditional elements on which their works are based [11].

Here arises the fourth contradiction point, that is, derivative works can be included in the protection scope of intellectual property rights through innovative development in the era, while the more important "core" is left in an empty space. How to protect the stable "core" well without being damaged by intellectual property rights is a problem that needs to be solved.

4. Reconstructing Pathways for the Protection of Intangible Cultural Heritage

4.1 Resolving the Conflict between Public Power in the Cultural Sphere and Private Property Rights

4.1.1 Clarifying the scope of elements that are publicly known and freely usable

In October 2024, Linhai City in Taizhou, Zhejiang Province, launched the first initiative in China to determine the scope of publicly known and freely usable elements associated with ICH and intellectual property. A special research team was formed to examine ICH categories

such as traditional memory, traditional fine arts, and traditional medicine. It assessed, from multiple perspectives, the techniques, formulas, tools, works, and other subject matter involved in ICH transmission projects in order to distinguish public interests from private rights and improve ICH intellectual property protection procedures. The initiative completed the first batch of scope determinations for 22 provincial-level or higher ICH items.

Using administrative measures to identify the boundaries between public and private rights can strengthen intellectual property protection for different ICH transmission projects. For example, based on the results of such determinations, authorities could encourage ICH practitioners to register trademarks, assist them in seeking patent protection for innovative technologies or distinctive production techniques associated with ICH, and guide creators of folk literature and traditional fine art in registering copyright in accordance with the circumstances of their creations.

4.1.2 Establishing a tiered protection mechanism distinguishing core elements from derivatives

As discussed above, administrative measures can help define the boundaries between public and private rights, but judicial interpretation must not be overlooked.

The essence of ICH lies in “living transmission.” Core cultural elements, such as traditional techniques, ritual sequences, and the like, are sustained through collective practice. Derivative applications, such as cultural and creative products, may qualify for private rights protection where they involve sufficient original contributions. Drawing the line is nonetheless difficult, since traditional expressions can be dynamic and continuously adapted.

Although in most cases, judicial authorities tend to use terms like "folk literary and artistic works" or "folk literary and artistic expression forms" to refer to the folk literary and artistic materials, and use "derivative works" to refer to the explicitly involved works by the author, there are still situations in different judicial documents where the references are confused. For example, in the copyright dispute case of Li suing Yongpeng Agricultural Products Company, the first-instance court determined that the involved paper-cutting works were merely a folk traditional artistic expression form and were considered as folk literary and artistic works, thus refusing the request for copyright protection. However, the second-instance court held that "the involved works use the paper-cutting expression form from folk traditional art, which is both an inheritance of folk literature and art and a new work created by borrowing the expression form of folk literature and art" and thus granted it the qualification for copyright protection. Therefore, the underlying tradition and the newly created work should not be treated as the same legal subject matter [11].

I believe that in judicial practice, it is possible to strengthen the identification of the "core" and "derivative" concepts, and through legislation to distinguish these two concepts. Because derivative works can often directly receive property private rights protection, but once they are recognized as intangible cultural heritage, they lose the qualification for protection. By stratifying the "core concept" and "derivative works", separating numerous works into "public rights" and "private rights", it can further strengthen accurate protection.

4.2 Resolving the Conflict between Collective Rights and Individual Registration-Based Rights

4.2.1 Establishing a model based on prior informed consent and benefit-sharing

Based on the aforementioned fact that many of these intangible cultural heritages belong to the community and are collectively owned, they possess "collective rights", while intellectual property protection requires conflicts with clear objects. I believe that by drawing on the provisions of the Nagoya Protocol under the Convention on Biological Diversity, which proposed several mechanisms for the distribution of benefits from the utilization of biological genetic resources, we can regulate the contradictions. Article 5 of the Nagoya Protocol clearly states the principle of "benefit sharing", and the subsequent "prior informed consent" principle. In other words, the "benefit sharing principle" ensures the economic interests of the indigenous community and the resource community by sharing the benefits from commercialization. The aim is to help ensure the sustainability of conservation and utilization. Research on implementation of the Nagoya Protocol shows why due diligence, consent procedures, and agreed benefit arrangements matter in practice when biological resources are accessed and used [12]. Such agreements can also be applied to the protection of intangible

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cultural heritages. By setting clear profits to provide legal weapons for specific community groups to obtain legal compensation, it can prevent cultural resources from being arbitrarily plundered by external entities.

Furthermore, the "prior informed consent" principle can also ensure that the party using the intangible cultural heritage is fully respected. If it still uses it without the permission of the rights owner, this principle is invoked. The citation of this principle is not groundless. In the "spiritual rights" mentioned earlier, one of the contents mentioned is the source right, and as the neighboring right, the performer's right also includes the right to indicate the identity of the performer. By using this principle to provide legal basis for the rights holder to obtain infringement relief, it can solve the problem of functional misalignment between the "TRIPS Agreement" and the "Convention for the Protection of Intangible Cultural Heritage" as mentioned earlier.

The principle of "benefit sharing" and "prior informed consent" fully embody the principles of fairness and good faith, and are available means to resolve conflicts.

4.2.2 Introducing the concept of community rights into international conventions

At the international level, the United Nations Declaration on the Rights of Indigenous Peoples recognizes Indigenous peoples' rights to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions (Article 31). Scholarship on community rights and positive protection of traditional knowledge further examines how collective interests may be represented and how benefits can be directed to the communities concerned [13]. The rooibos geographical indication and industry-wide benefit-sharing agreement also illustrate both the potential and the institutional difficulties of collective intellectual property arrangements [7]. By introducing community rights, it is possible to provide community relief for intangible cultural heritage projects that cannot be directly targeted at specific agents or agency organizations. At the same time, by leveraging "community rights", the users can be restricted to a certain geographical or community area, minimizing behaviors such as "free-riding" and "riding on others' reputation". Moreover, embedding intangible cultural heritage at the grassroots level can also enable the public to enjoy rights. By enhancing their awareness of exercising their rights, this is also beneficial for the dissemination and protection of intangible cultural heritage.

4.3 Resolving the Conflict over Protection Duration

Since geographical indications and trademarks can obtain an unlimited lifespan through "renewal", in the above text, we analyzed the corresponding characteristics of renewal and the protection of intangible cultural heritage. We can also introduce such a system into the protection of intangible cultural heritage. For example, among the 408 varieties of authentic medicinal herbs included in the "Atlas of Authentic Medicinal Herbs", 227 products of 96 varieties of authentic medicinal herbs have obtained geographical indication product protection. For these intangible cultural heritages that have already obtained geographical indications, allowing them to receive protection without the need for renewal for an indefinite period and gradually expanding the protection scope to all parts of the National Intangible Cultural Heritage List is possible.

Furthermore, since the protection period of rights is based on the expected time for the realization of the exploitable value of the protected object, and the time and resource value realization expectations of the inheritors' re-creation of intangible cultural heritage at each different historical node are uncertain, it is difficult to legally define the starting point and endpoint of the collective rights protection period for folk art performers. This leads to the situation where "setting any protected time is unrealistic and impossible". Therefore, in the actual legal provisions, there are breaks in time restrictions. For example, the "Tunisian Model Copyright Law" stipulates that the protection of folk works is not subject to time restrictions. By drawing on the protection of folk works in copyright law and setting separate legal provisions to eliminate time restrictions, it is expected to achieve permanent protection of intangible cultural heritage-related intellectual property rights.

4.4 Resolving the Conflict between Stable Traditional Knowledge and Innovative Intellectual Achievements

India's Traditional Knowledge Digital Library (TKDL) provides an important example of

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defensive protection through documentation. It organizes traditional medicinal knowledge in a form that can assist patent examiners in identifying relevant prior art and responding to applications that might otherwise claim known traditional knowledge as new inventions. Research on the TKDL examines both its potential to prevent misappropriation and the political and classificatory choices involved in converting traditional knowledge into searchable digital records [14]. Similar documentation initiatives could be developed for other forms of ICH, provided that communities participate in decisions about what may be documented, what should remain confidential, and how access should be controlled.

To enable more materials to be uploaded in real time and continuously expand the traditional-knowledge databases, while reducing the time and cost of centralized ingestion, the databases should be made more open and their coverage broadened. Digitization can make ICH materials easier to access for preservation and research. At the same time, it may lead to unauthorized disclosure, the loss of cultural context, or later commercial use without permission [15]. Further guidance can be drawn from Article 6 of the EU Directive on Copyright in the Digital Single Market concerning cultural heritage. It permits cultural heritage institutions, within the statutory limits, to reproduce in any format or medium works or other subject matter permanently held in their collections for preservation purposes. A copyright exception of this kind would alleviate concerns that institutions or individuals might infringe copyright when uploading or reproducing materials. A more open approach could also make non-confidential ICH knowledge more accessible to the public for learning and research. In this way, the sharing and use of cultural knowledge could help keep ICH alive and support its continued transmission.

5. Conclusion

To sum up, although there are legal conflicts and problems when directly incorporating intangible cultural heritage into intellectual property law protection, in general, the overall value orientation of intellectual property law is consistent with intangible cultural heritage. Whether it is the retention of intellectual property law in the public domain, the time limit, or its legislative purpose, they can all correspond to the protection of intangible cultural heritage. This is the theoretical basis of intellectual property in the protection of intangible cultural heritage. Moreover, by analyzing the existing contradictions, we have proposed new solutions. By drawing on domestic and international as well as convention experiences, we have borrowed from the "prior informed consent", "benefit sharing", and "community rights" that have not been exercised, and have improved and developed the "core plus derivative hierarchical protection", "representative inheritor system", "traditional knowledge digital network", and "blockchain technology" that already exist and have contributed value to the current protection of intangible cultural heritage. To resolve the conflicts between "public rights" and "private rights", "collective rights" and "individual rights", "unlimited demands" and "limited rights", "stability" and "innovation", we use intellectual property law to safeguard the protection of intangible cultural heritage in the new era.

Of course, this article still has some shortcomings. For example, it has not undergone a complete field research. Many problems and contradictions can only be borrowed from literature. There is also a situation where the analysis depth is still insufficient. For foreign systems, we can only understand them through literature materials and cannot personally experience the imperfections and inappropriacies. If there is an opportunity, we hope to conduct on-site research to propose more specific, profound, and feasible solutions to the institutional problems that arise in the solution paths.

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