

Article

On Protection of Intangible Cultural Heritage in China from the Intellectual Property Rights Perspective

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Abstract: With the development of globalization, intangible cultural heritage (ICH) has come under increasing threat, making the safeguarding of ICH a crucial task for the governments and peoples of the world. This paper examines China's current state of intellectual property (IPR) protection for ICH and proposes that ICH be placed under China's legislative protection as intellectual property. Due to the immense diversity and complexity of ICH and the difficulty in reconciling various interests involved, the existing IPR protection mode faces many obstacles in practice. We present two case studies and three sets of recommendations on improving the protection of ICH in China. The first set relies on improving copyright protection for ICH, the second set relies on improving trademark and geographical protection for ICH, and the third set relies on improving patent protection for ICH.

Keywords: economic globalization; intangible cultural heritage (ICH); IPR protection; patent rights; copyrights; Trademark rights; geographical indication rights

1. Introduction

1.1. Background

Cultural heritage is defined as “an irreplaceable repository of knowledge, and a valuable resource for economic growth, employment and social cohesion” [1]. This repository consists of tangible and intangible elements. The need for protecting tangible cultural heritage is well established [2–6]. Only in recent years, intangible cultural heritage has attracted attention globally.

Since the late 20th century, due to the damage and threat caused by global industrialization and urbanization, the rich and diverse intangible cultural heritage (ICH) created by human beings in the long history is facing an increasingly serious crisis. ICH is the common wealth of all mankind, with a direct bearing on the cultural and spiritual heritage of a nation. Compared with tangible heritage, ICH is like sand that you hold in your palm; if you are not careful enough, it will slip through your fingers. Therefore, safeguarding and inheritance of ICH has become a major issue that the governments and peoples of the world must face. As one of the world's richest countries in ICH, China attaches great importance to the safeguarding of ICH.

According to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention for the Safeguarding of 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, in some cases, individuals recognize as part of their cultural heritage.” As of June 2017, China had 39 properties on the UNESCO

List of Intangible Cultural Heritage, the highest number in the world, with 31 properties on the Representative List of the Intangible Cultural Heritage of Humanity, seven on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, and one on the Register of Best Safeguarding Practices. According to the Convention for the Safeguarding of Intangible Cultural Heritage adopted by the UNESCO, the intangible cultural heritage falls into the following five categories: (1) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (2) performing arts; (3) social practices, rituals and festive events; (4) knowledge and practices concerning nature and the universe; and (5) traditional craftsmanship. Figure 1 shows the percentage of China's 39 Intangible Cultural Heritage items in the five categories:

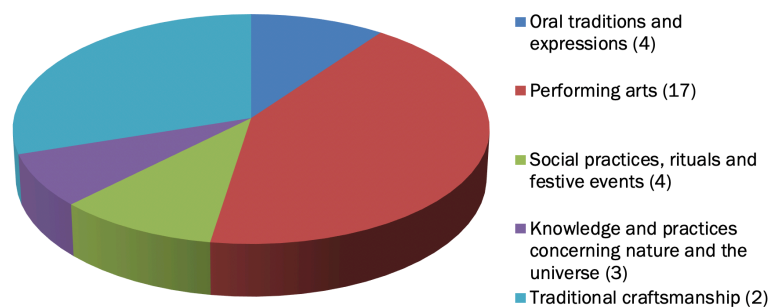


Figure 1. China's share of the five categories of intangible cultural heritage.

As one of the world's oldest civilizations, China has created colorful and diverse ICH in its long history. It is the product of the activities of people of all ethnicities and the concentrated embodiment of the wisdom and civilization of the Chinese nation. To safeguard ICH is to preserve and inherit the "cultural veins" of the Chinese nation—the roots of the nation. With accelerating globalization and constant socioeconomic development in China, ICH of all ethnic groups is facing varying degrees of threat from the mainstream culture. Some non-renewable precious ethnic cultures are even disappearing, and a large number of traditional folk skills, such as folk fire, music and dance acrobatics, local lantern customs, and traditional arts and crafts, have gradually faded out of sight.

In the early 1990s, there were more than 80 kinds of folk art in the Unity Yao Village, but today only 10 remain. Zhihui Temple Beijing Music has a history of more than 570 years since being introduced to society from the imperial court. However, due to war and the lack of a group of people demanding Buddhist temple music, merely 45 of the original 300-plus pieces of music have remained. Among the 26th-generation inheritors, only the aging Benxing and Fuguang are left to keep the remaining pieces of music alive, and the 27th-generation inheritors cannot reach the same level of technique as the original band did, and their number has dropped considerably as well. Consequently, the inheritance of Zhihui Temple Beijing Music is in a dire situation.

In the case of Gu embroidery, which dates back to the Ming Dynasty, inheritors boldly combined it with literati painting and integrated their unique insights into complex needling skills, exerting a profound influence on later generations. As potential inheritors must be well-versed in painting and calligraphy and it takes three years to master this craft and ten years of training to produce a decent work, Gu embroidery is facing a serious shortage of talent.

For a nation, attaching importance to its national spirit and cultivating its own people and youth with its outstanding culture is an important way to strengthen national unity, survival and development. The hard-striving spirit, patriotism, sense of responsibility, sacrifice, innovation, public morality and values embodied in traditional culture have always been the spiritual motive force for the Chinese nation to forge ahead. At present, the crisis that Chinese ICH faces can be attributed to people's insufficient understanding of national culture and weak sense of protection. Since the beginning of "reform and opening-up", especially since the start of the 21st century, China has paid more attention to ICH. Nevertheless, amid constant socioeconomic development, ICH inheritance is

facing new problems, paradoxes and situations brought about by the significant changes in the social environment, resources and structure.

How can ICH be safeguarded and inherited? Every country in the world is scrambling to find a solution. In Europe in general and in Britain, France and Germany in particular, ICH is safeguarded primarily through governmental guidance and financial support, while, in the U.S., the federal government encourages states, businesses, institutions and the general public to safeguard ICH through legislation and government leverage. In China, the safeguarding of ICH has been put on the new historic agenda of the nation, and the state has launched a program to safeguard folk cultural heritage. Many artists put forward proposals for the safeguarding of ICH with government financial support, improved legislation and other methods.

1.2. Related Work

For decades, there has been a heated debate on ICH, and the international community has yet to reach a consensus on the best model for ICH protection. The protection of ICH is a further manifestation of the international community's commitment to human rights. The UNESCO Universal Declaration on Cultural Diversity states: "The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples." [7] Handong Wu [8] held that rights are, in essence, interests, and that interests are not only the foundation of rights, but also the target to which rights are pointed and are the purposes for which a certain law or institution is introduced. ICH protection is always considered in relation to the conventional IP system, as in the global economy, conventional Intellectual Property Rights (IPRs) are the primary and formal mechanisms for the protection of rights over knowledge [9]. ICH is essentially an intangible form of knowledge and protecting ICH as intellectual property best suits the intrinsic requirements of ICH. In practice, most states and international organizations place ICH under protection as intellectual property; however, when it comes to actual operating methods, there is a path choice between the use of the existing IPR regime or the creation of a new *sui generis* regime.

1.2.1. Use of the Existing IPR Protection Regime

The United States, Australia and some other countries advocate the use of the existing IPR regime to protect ICH on the grounds that ICH and IPR are of the same nature. They believe that protection of traditional knowledge can be achieved by simply expanding the IPR regime and incorporating each type of traditional knowledge into the relevant system. Bodle et al. [10] studied the ICH protection issue from the economic perspective and proposed to treat ICH as assets, which can be put under the protection of the indigenous culture intellectual property. Madhavan [11] examined how to protect Tibetan medicine, which is a form of ICH, by taking an emerging property right approach. Ubertaini [12] proposed to develop a new system to protect transnational ICH. In this system, EU quality schemes regulation would be integrated in the EU private international law rules to ensure the better protection of transnational ICH. Rodionova [13] reported a study on using intellectual legal protection for folk art in Finno-Ugric Peoples. Nwabueze et al. [14] investigated the role of intellectual property in the protection of ICH in museums.

According to Molly Torsen Stech [15], traditional cultural expressions (TCEs) are highly sensitive and there are no unified claims for interests, making it extremely difficult to build a system that suits all traditional cultural expressions; moreover, the extent to which the *sui generis* laws are accomplishing their goals is debatable, and the domestic nature of these *sui generis* laws prevents them from providing a robust or powerful protection; furthermore, there may be a problem of purpose that needs to be addressed. For example, if Panama's Law is meant to protect indigenous art and knowledge, its focus on economic compensation for the commercialization of their cultural goods could undermine that goal. Arguably, none of the domestic *sui generis* laws have been in effect long enough to cull any reliable analysis of how well the laws work. Their existence, however, is at least

an indication that TCEs' lack of protection requires international attention [16]. He suggested the use of the customary laws of indigenous people, authentication or certification marks and geographical indications for the protection of TCEs. Curtis M. Horton [17] called for comprehensive protection through the IPR law, the property law, the contract law and the policy on the protection of traditional knowledge. Aimin Qi [18] held that the content of ICH is extremely extensive and that its protection depends on a comprehensive approach based on the entire IPR system and on active innovation under the IPR model. He also suggested that anti-unfair competition law still plays an important role in underpinning the commercial exploitation of ICH and that preventing unfair competition can help realize undisclosed ICH. Anling Fei [19] maintained that the law should recognize and protect ICH properties sorted out by individuals in the form of texts, figures, models, etc. and that ownership and property rights systems in the civil law, as well as the IPR regime, can be applied to the protection of ICH-related instruments, objects, handicrafts and cultural sites. Zonghui Li [20] claimed that a large percentage of the manifestations of ICH still receive adequate protection under the existing IPR law, and that, aside from the IPR law, administrative statutes and local regulations that are focused on administration but have protection considerations may be introduced to promote the continuous growth and development of ICH.

1.2.2. Creation of a Sui Generis Regime for the Protection of the IPR of ICH

Since the existing IPR regime cannot afford systematic and scientific protection for ICH, some states and many international organizations have explored the possibility of establishing a sui generis regime for the protection of ICH. Sui generis regimes incorporated into national legislation by certain states include: registration and database, prior informed consent, benefit-sharing, disclosure of the country of origin, authorization contracts, and respect for customary laws. Internationally, developing countries such as India, Turkey and Namibia have proposed abandoning the practice of protecting traditional knowledge under the existing IPR system and seeking special forms of protection instead. J. Janewa OseiTutu [21] argued that, although intellectual property plays a role in protecting traditional knowledge, for the most part, some subject matters, such as yoga, receive ineffective protection under the international law, and that the use (or misuse) of traditional cultural works has led to a call to protect traditional cultural expressions through legislation to create a sui generis traditional knowledge right. Yuying Guan [22] believed that, for ICH properties whose subject and object can be ascertained, establishing comprehensive legal protection is an idealized model which cannot materialize in the short term. Due to the enormous variety of ICH, it is difficult to introduce unified legislation. Shunde Li [23] argued that, in addition to using the existing IPR system, it may be necessary to introduce a sui generis law for ICH which directly integrates the legislation on traditional cultural expressions in traditional knowledge, and that for the protection of genetic resources and traditional knowledge in the narrow sense of the term, a separate law or statute may be introduced. According to Kangping Xu and Le Cheng [24], China should enact a sui generis law to protect folk literature and art, rather than relying solely on the copyright law. Tao Li [25] pointed out that the Intangible Cultural Heritage Law of the People's Republic of China excludes cultural relics, IPR, medicines, arts and crafts through guiding rules, and that to promote local legislation for ICH, it is crucial to grasp the legislative spirit and intents of the Intangible Cultural Heritage Law of the Convention for the Safeguarding of Intangible Cultural Heritage and the Intangible Cultural Heritage Law of the People's Republic of China.

1.3. Research Objectives

The globalization on economic growth is causing the phenomenon of cultural convergence. In the face of cultural hegemony, more and more people have come to recognize the need to protect cultural diversity, their own economic interests and social interests. As ICH is increasingly being valued by people and the market-oriented behavior of non-legacy products is increasing, how to protect the intellectual property rights (IPR) of ICH has become a prominent issue.

Due to the immense diversity and complexity of ICH and the difficulty in reconciling various interests involved, China's existing IPR protection mode faces many obstacles in practice. To place ICH under legislative protection, China's current laws, regulations, institutions and systems must be improved. This is essential to ensuring effective protection for ICH across the board.

1.4. Research Methods

In this research, we employed the following research methods:

1. **Comparative Analysis:** We carried out both horizontal and vertical comparative analyses of the specific provisions of Chinese and foreign intellectual property laws, and drew upon relevant international theories and court rulings for our research.
2. **Text Analysis:** By analyzing the specific provisions of Chinese and foreign intellectual property laws, we strived to identify the best methods for the protection of ICH.
3. **Case Analysis:** To make this research more reliable, we analyzed ICH-related cases, through which we gained an in-depth understanding of the specific laws applied. We also searched for related court rulings and documents in the databases to draw material in support of our research.
4. **Historical Analysis:** In the context of the evolution of IPR legislation such as the copyright law, we analyzed the rationality of expanding the scope of its protection object, and discussed the possibility of incorporating ICH into the category of IPR protection object.

To sum up, we analyzed the issue of IPR protection for ICH from multiple angles using the above research methods. In the process, we combined these methods with our knowledge of law and other disciplines to examine the judicial precedents on ICH-related issues under the guidance of the basic theory on intellectual property. While researching for this paper, we participated in research projects on the building techniques of typical South Fujian houses and paper-cutting techniques in Pucheng. These projects afforded us opportunities to find out more about the protection of ICH and test our research findings with various empirical research methods, such as field trips, interviews and sit-down talks.

1.5. Contributions of This Research

This paper, focused on ICH-related legal issues, provides a summary of the points where ICH protection fit with the provisions of China's copyright, anti-unfair competition and patent laws, as well as the deficiencies of these laws in the protection of ICH. It also offers a comprehensive review of the IPR protection for ICH.

This paper sums up and examines the inequitable distribution of benefits in the development of ICH and proposes legislation to establish an equitable benefit-distribution order. Any legislation introduced must give full consideration to the rationality of public domains to avoid the "tragedy of the commons."

This paper proposes that ICH be subjected to administration by category within the IPR system, and that different priorities of protection and scope of rights be established according to actual circumstances. It also suggests that the interests of all actors be kept in a balance and a proper relationship be maintained between traditional communities and indigenous people and external third-party users of ICH so that protection under different models can be implemented to achieve maximum results.

2. Classification of Intangible Cultural Heritage

According to the Intangible Cultural Heritage Law of the People's Republic of China, ICH refers to all traditional cultural expressions regarded as part of cultural heritage carried forward by generations of different ethnicities, as well as physical objects and places related to such expressions. As shown in Figure 2, we divided different types of intangible cultural heritage into two categories: ethnic and folk ICH, and regional ICH. Ethnic ICH means the ICH of all ethnic groups. There are 56 ethnic groups in

China, each with its own unique cultural structure and values; in other words, all these ethnic groups have different cultural resources. Folk ICH refers to the representative ICH items in existence in society. It includes: (1) ancient languages and scripts, such as the Manchu and Ewenki languages, which are on the verge of extinction; (2) ethnic folk traditional literature and artistic expressions, such as myths, stories, ballads, ballads, proverbs and other oral literary expressions, as well as traditional operas, dramas, clapper talks, music, dance, painting, sculpture, engraving, acrobatics, magics, puppetry, shadow puppet shows, paper-cutting, calligraphy and so on; (3) traditional handcrafts, such as wax dyeing, embroidery, weaving, ceramics, utensils, costumes, jewelry, etc.; (4) ethnic architectural design styles, such as palaces, pagodas, town walls, villages, houses and bridges; and (5) traditional folklore, religious etiquettes, festival celebrations, recreational activities and so on. As for regional ICH, due to the unique regional cultural elements and structures, different geographical regions tend to have different ICH. For example, there are the ICH of the Dai in tropical valleys, the ICH of the Tibetans in highlands and snow mountains, the ICH of the Mongolians in vast grasslands, and the ICH of the Bai around Cangshan'erhai Lake. All of them embody the images of the ICH and regional ecology in perfect harmony. Regional ICH can be separated into the following categories: valley ICH, grassland ICH, mountain ICH, and ocean ICH.

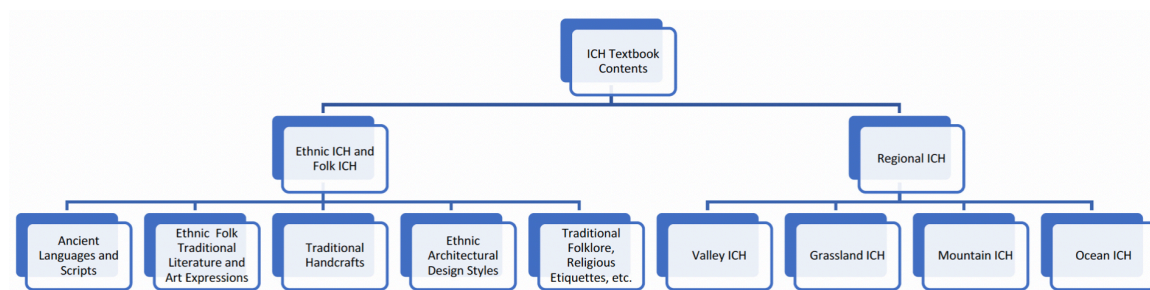


Figure 2. Types of intangible cultural heritage.

3. Current State of China's IPR Protection Relating to ICH

However, while ICH is gaining more attention and ICH marketization is increasing, China's laws on ICH protection are lacking; consequently, ICH infringements are rising and the IPR problems with ICH are becoming more serious. In Figure 3, we summarize major problems with ICH protection in China.

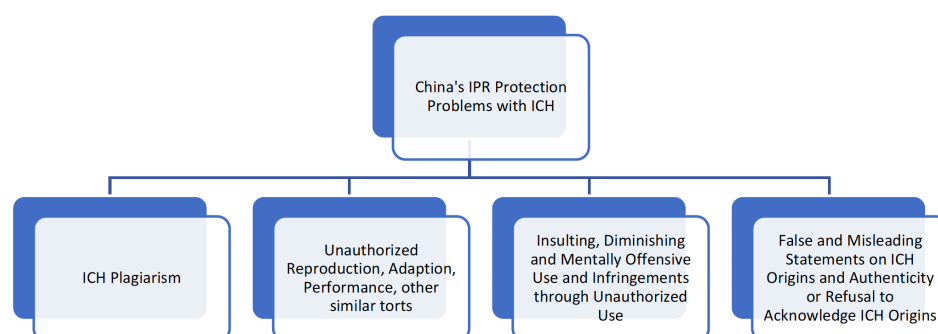


Figure 3. China's IPR protection problems with intangible cultural heritage.

3.1. ICH Plagiarism

ICH plagiarism refers to the act in which a third party, intentionally or unintentionally, uses the knowledge or technology which has been in circulation among the residents of a foreign country or community for a long time for the purpose of obtaining patents, trademarks or other IPR. This is a worldwide problem. In the following, we provide a few well-documented cases.

Japanese businessmen stole the production techniques for cloisonne from the Beijing Art Factory and filed for a patent at once, which resulted in a huge loss of China. In China, Chinese medicine is a field with the highest commercial value in ICH. Some foreign pharmaceutical companies and research institutes have used certain recipes of Chinese herbal medicine which have been used for thousands of years to develop new drugs without making any improvement to the recipes. By doing so, they have obtained patents and made enormous profits, without giving any compensation to China. Take medicinal plants as an example; 74% of pure medical prescriptions widely used in Western countries, such as quinine, morphine and turmeric, were discovered through ICH disclosures.

In 1993, the U.S. Patent and Trademark Office granted the University of Mississippi Medical Center a patent on the use of turmeric in wound healing (Patent No. 5401504). The patent involved the use of an agent that contains the active ingredient of turmeric powder to heal wounds. However, turmeric, a traditional medicinal herb in India, had been used for a long time in healing wounds, and, consequently, the patent was challenged. In 1997, the patent was revoked. India won a similar case with neem, where it succeeded in having the infringing patent revoked [26].

3.2. Unauthorized Reproduction, Adaption, Performance or Other Similar Torts

With the advancement of science and technology, the reproduction, adaption and spread of cultural goods and services have become more convenient. ICH is not exclusive and confidential knowledge within a community. On the contrary, ICH can be easily reproduced by others for profit, and, in some cases, they can even be made more beautiful and practical. Within a community, ICH is hardly in exclusive possession. For instance, *Mulan*, the American animated picture, was produced on the basis of a Chinese folktale and grossed USD 2 billion at box offices around the world. This is a typical example of unpaid use of ICH.

In 1986 and 1990, celebrated American singer-songwriter Paul Simon released two albums “Graceland” and “Rhythm of the Saints”, which contained traditional African and Latin American music, respectively. “Graceland” topped the charts for a staggering 31 weeks, selling more than 3.5 million copies worldwide, while “Rhythm of the Saints” sold over 1.3 million copies in the first four weeks after release, generating enormous profits for their exploiter [27].

According to a study by the United Nations Conference on Trade and Development (UNCTAD), traditional Jamaican music alone generates in excess of US\$1.2 billion globally, but the commercial exploitation of Jamaican culture and art largely takes place outside Jamaica. In countries such as Guatemala, Panama, Sri Lanka and Bhutan, plagiarism of national legends, myths, stories, poems, traditional dances, and traditional pictures by foreign individuals and entities is rampant [28].

3.3. Insulting, Diminishing and Mentally Offensive Use and Infringements through Unauthorized Use

Development of transportation and Internet transmission makes ICH more accessible to the outside world. During transmission, the holders of ICH items may be subject to various mental agony due to insulting, impairing and mentally offensive uses of their ICH items, which may not only damage the economic interests of the holders, but also undermine the mutual confidence between the communities and result in serious cultural barriers and hostility. For example, Shanghai Metro used Li Shoubai’s paper-cutting artwork “Shanghai Nursery Rhyme”, without his consent, for metro decoration and promotion.

3.4. False and Misleading Statements on ICH Origins and Authenticity or Refusal to Acknowledge ICH Origins

In the cases of ICH plagiarism, infringers tend to make false statements on the origins or authenticity or deny the origins in an attempt to maintain their own interests. However, traditional communities usually have limited exchanges with the outside world because of their closed environment. As a result, they are often unaware of the infringements of their ICH. Because of the false and misleading statements on the origins and authenticity and refusal to acknowledge the origins, it is difficult for traditional communities to protect their ICH. Moreover, the false and misleading on the

origins and authenticity or refusal to acknowledge the origins deprive the traditional communities of their cultural honor and dignity and cause mental agony to the traditional communities.

4. Establishment of China's IPR Protection System for ICH

ICH protection is always considered in relation to the conventional IP system, as in the global economy, conventional IPRs are the primary and formal mechanisms for the protection of rights over knowledge [29]. ICH exists in the form of traditional knowledge with incremental innovation and possesses the attributes for being classified as intellectual property. Thus, as shown in Figure 4, in China's legal framework design for ICH protection, ICH is protected as a type of intellectual property.

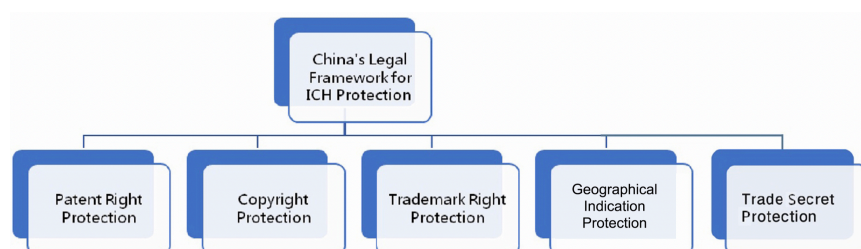


Figure 4. China's legal framework for ICH Protection.

4.1. China's Protection for ICH under the Patent Law

4.1.1. Advantages of Protecting ICH under the Patent Law

Patent rights refer to the exclusive rights granted to patent holders by the competent authorities according to the patent law for them to possess or use their patented inventions or creations within a statutory period. Patent right protection aims mainly to encourage inventions and creations and improve innovative capacity. The target for the patent protection system is ICH in the narrow sense of the term, including ICH items in Categories 4 and 5 in the Convention for the Safeguarding of Intangible Cultural Heritage. In China, ICH protection under the Patent Law of the People's Republic of China chiefly concerns traditional arts and crafts, medical knowledge, and other forms of traditional knowledge, as shown in Figure 5. Whether they are traditional methods or products, as long as they meet the criteria prescribed in the Patent Law, they are qualified for patents on inventions, utility models or designs, and the holder therefore may obtain the exclusive rights to the technique or skill for a certain period of time.

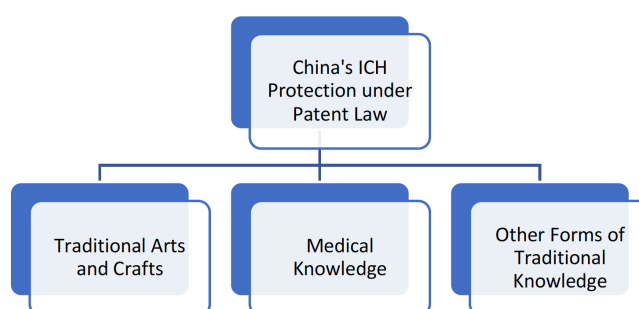


Figure 5. China's ICH protection under the patent law.

In terms of protective effects, there are active protection and early-warning protection. Active protection applies to ICH items which meet the criteria in China's current patent law. Such heritage items can be protected by applying for patents on inventions, utility models or designs. Specifically, as long as the ICH item meets the requirements for a patent, a patent can be applied for according to China's patent law. For example, the Tujia brocade craft, which was put on China's first list of ICH in 2006, has obtained 12 design patents from the State Intellectual Property Office. Suzhou embroidery,

a national-level ICH item, has secured a total of 1334 invention, utility model and design patents from the State Intellectual Property Office. The 2300-year-old Yangzhou lacquerware craft has received more than 30 patents. Traditional dark teas in Anhua County, Hunan Province, such as Anhua Qianliang tea, torch tea and Fuzhuan tea, have been granted 39 Chinese invention patents. Lao Feng Xiang Original Center has attained over 300 patents since its establishment a decade ago. Early-warning protection refers to the establishment of databases and the use of prior technology as a weapon of defense to prevent plagiarists from meeting the criteria of novelty and creativity when they are filing for patents. In this way, the illegal and improper use of ICH by other countries or individuals can be forestalled. Currently, China has built multiple databases on knowledge of traditional Chinese medicine and other subjects, effectively protecting the nation's traditional knowledge against plagiarism by other countries or individuals.

4.1.2. Deficiencies of Protecting ICH under the Patent Law

Although China has made considerable strides in active protection of patent rights, ICH items placed under IPR protection account for a tiny fraction of the total ICH, seriously inadequate for the needs of the ICH protection in China. In fact, the vast majority of ICH items in China cannot meet the three criteria of novelty, creativity and practicability to qualify for patents, as shown in Figure 6, because they originated a long time ago and their techniques have become open knowledge or they have lost their practicability with the advancement of the times. As such, they do not enjoy the effective protection of the Patent Law. However, if, based on protecting the spiritual connotation and value of ICH, new inventions, utility models or designs are carried out, or if the small patent system in other countries is adopted, it is likely to reduce costs, lower the threshold, and increase efficiency for patent applications, thereby making it easier to inherit ICH and enhance the contemporary value of ICH.

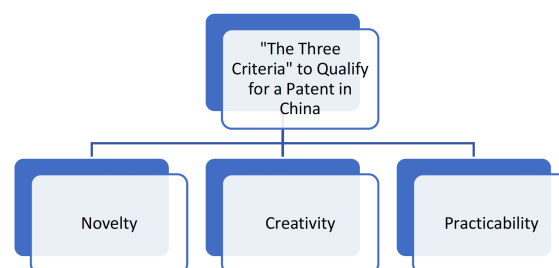


Figure 6. Three criteria to qualify as a patent in China.

4.2. China's Copyright Protection for ICH

4.2.1. Advantages of Protecting ICH under the Copyright Law

Copyrights are statutory personal rights and property rights granted to copyright owners for the works that they have created. In China, the targets for copyright protection include works such as music, characters, calligraphy, dance, quyi performances, etc., as shown in Figure 7. They include ICH items listed in Categories 1 and 2 in the Convention for the Safeguarding of Intangible Cultural Heritage. The cases of Guo Xian's paper-cutting artworks and Zhao Menglin's Beijing opera facial masks are typical cases for successful protection.

Copyrights are main legal means for ICH protection, especially for folk literature, folk music, traditional operas, and other forms of folk art. Copyright protection is beneficial not only to ICH protection and inheritance, but to the development and utilization of derivative works of ICH.

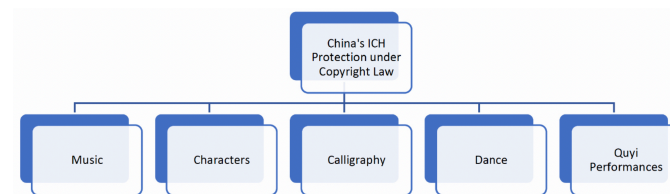


Figure 7. China's ICH protection under the copyright law.

4.2.2. Deficiencies of Protecting ICH under the Copyright Law

The focal point of the controversy surrounding ICH protection under the copyright law is the determination and fair use of the subject of rights. On the one hand, due to the lack of provisions of China's Copyright Law concerning ICH, the intensity of direct protection remains weak, and there are still many deficiencies in ICH protection under the copyright Law. The deficiencies can be classified into three areas:

- **Object:** The object of protection is too narrow. Under China's Copyright Law, works must be original and complete to be protected, and this disqualifies many ICH items for protection.
- **Subject:** As ICH is the product of traditional communities and indigenous people through preservation and development over a long period of time, it is difficult to identify the "author" [30].
- **Term of Protection:** Under China's Copyright Law, copyrights are protected for the lifetime of the author plus 50 years after his/her death, expiring on 31 December of the 50th year after the author's death. This means that both the publishing rights and property rights have a term. ICH items are often intergenerational creations with no calculable term for protection.

For example, in *Bai Xiu'e v. State Post Office* (China supreme court final ruling No. 252), the judge was unable to make an accurate distinction between the concepts of folk literature and art and their derivative works in ICH. On the other hand, with a slight modification, folk literature and art in ICH can be placed under the protection of the Copyright Law, and the low threshold for the protection of derivative works has also led to constant disputes. For example, traditional craftsmanship derivatives with folk art resources as the selling point have appeared in the market, and paper-cut works by Ku Shulan, an "outstanding Chinese folk-art master" honored by UNESCO, have been widely used for commercial purposes without her knowledge.

4.3. China's Protection Systems for ICH Trademark Rights and Geographical Indication Rights

4.3.1. Advantages of Protecting ICH under the Trademark Law

Protection of ICH trademarks and geographical indications serves two purposes: first, using trademarks and geographical indications to protect the marks, symbols and names borne by ICH items; and, second, using trademarks or geographical indications to mark arts and crafts, which belong to the realm of literature and art or traditional handworks originating from a particular region, such that they can be distinguished from similar products or services. Under the Trademark Law of the People's Republic of China, a trademark is composed of specific symbols, colors, letters, graphics or 3D signs. The purpose of trademark protection is to identify different products or services and thus preventing consumers from becoming confused about service providers and the quality and reputation of the product or service provided. As long as the product of a natural person or organization can be effectively distinguished from those of other natural persons or organizations, it is eligible for a trademark. Under the relevant provisions of China's current trademark law, ICH items will not be denied a trademark simply because they originated a long time ago; moreover, a registered trademark can be renewed multiple times to extend the protection period. Using China's current trademark law to protect ICH has a great advantage, and all ICH items can be placed under the protection of the Trademark Law by applying for a trademark. A good case in point is the Tongliang Dragon Dance in

Chongqing. Time-honored trademarks using this mode of protection include Guizhou Maotai liquor, Zhang Xiaoquan scissors, Yunnan white drugs, Ansai waist drums, and Suzhou embroidery.

Tongrentang, founded in 1665, is the world's largest producer of traditional Chinese medicine. In 1989, the "Tongrentang" trademark was accredited as the first "renowned trademark of China", and, by 2012, the company had registered 110 trademarks in China. The "Tongrentang" trademark receives protection in all signatory states of the "Madrid Agreement" and the "Paris Convention". To date, it has been registered in more than 50 countries and territories around the world; it was also the first mainland Chinese trademark to be registered in Taiwan (<http://www.tongrentang.com/about/aboutus.php>).

4.3.2. Advantages of Protecting ICH as Geographical Indications

In 1999, China introduced a geographical indication protection system, and, in November of the same year, Xinjiang's "Korla Fragrant Pear" became China's first registered geographical indication. The following years saw a steady increase in the number of geographical indications registered and accredited by the Trademark Office of the State Administration for Industry and Commerce, as shown in Figure 8.

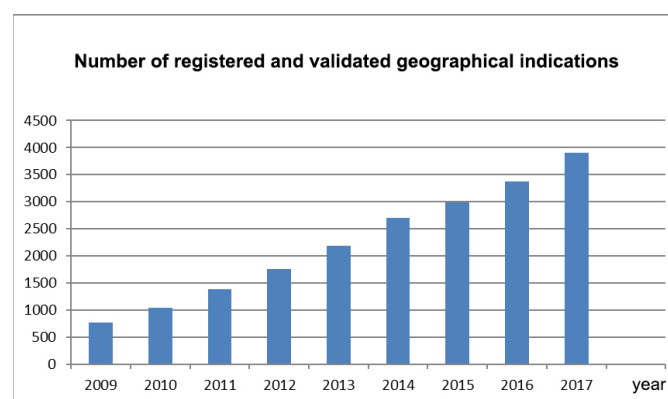


Figure 8. Annual number of geographical indications registered and accredited by the trademark office.

Once a product is granted geographic-indication protection, it would generate enormous revenue. According to a survey of 81 planted agricultural products with geographical indications conducted by the Trademark Office in early 2010, the prices of these products soared 87.69% on average and up to 500% in 2009 compared with the period before their geographical indications were registered, with farmers' annual income surging 75.39% on average and up to 500%, and planted agricultural products with geographical indications contributed 38.78% of farmers' annual income on average. "Anji White Tea" farmers were even able to afford Mercedes-Benz and BMW cars. Similarly, after the "Majiagou Celery" trademark was registered and promoted in the market, local farmers' income increased dozens-fold, giving a boost to local economic development [31]. "Pucheng Osmanthus Tea" received ICH recognition from the Fujian Provincial Government in 2009 and was granted geographic-indication protection by the former State Administration of Quality Supervision, Inspection and Quarantine in 2010. Each year, over 20,000 merchants flock to Pucheng to procure seedlings when osmanthus flowers are in bloom. In 2017 and 2018, 22 million osmanthus plants and 3 million kilograms of osmanthus flowers were sold, and osmanthus flower extracts have even been made into cake, wine and skincare products.

The geographical indication system originated in France. The French played an instrumental role in transforming geographical indications into a new type of intellectual property, which has enabled traditional knowledge to gain considerable recognition around the world. Geographical indications refer to the identification of products from a certain region, and such products have some natural or human attributes of that region. Generally speaking, in terms of their intrinsic characteristics, trademarks are used to identify the source of products and protect their reputation. Trademark rights

include geographical indications, and the criteria for becoming a target of protection are identifiability and geographical origin.

The effective application of the geographical indication system is an efficient method of protection. The definition of the concept of geographical indications in China's current trademark law covers both natural and human factors. Because of its cultural connotation, ICH can be protected by geographical indications. Many ICH items, such as Suzhou embroidery and Weifang kites, are related to a specific region. Figure 9 shows major advantages using geographical indications for ICH protection. First, given their collective nature, ICH items must be registered in the name of the collective, and the rights should belong to all members of the collective. Second, there is no restriction on the period of protection, and the rights can be enjoyed for an indefinite period; as long as the product maintains its special attributes, it will be protected. Third, geographical indication rights are non-transferable; once a geographical indication has been registered, the right holder may transfer it or permit a third party to use it. In China's judicial practice, there are examples of using geographical indications to protect ICH items.

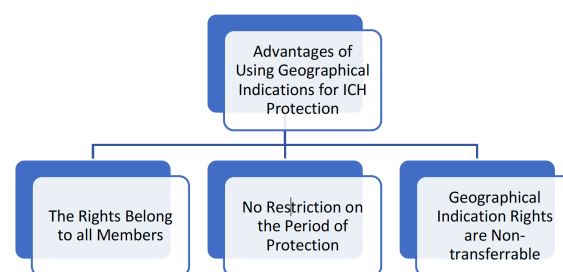


Figure 9. Advantages of protecting ICH through geographical indications.

4.3.3. Deficiencies of Protecting ICH as Trademarks and Geographical Indications

China's current Trademark Law has not achieved significant results in the protection of ICH, and in this mode of protection, there are many problems that cannot be properly addressed. First, there are no restrictions on trademark applications. Once an individual or entity registers an ICH property as a service or product trademark, the exclusive right of the trademark excludes others from using it. Second, it is unfair for people other than the proprietor of the trademark. If an ICH property is a collective right and all people in its place of origin are entitled to its benefits, clash over benefit sharing may result. Third, the intrinsic cultural value and the experience, knowhow and skills embodied receive ineffective protection. Protecting ICH under the trademark law only serves to prevent third parties from infringing upon the registered trademark associated with the ICH property.

For example, "Tongliang Fire Dragon" was registered as a service trademark in 2004 and was put on China's first list of national intangible cultural heritage in 2006. The trademark is owned by the Gaolou Town Cultural and Sports Service Center in Tongliang County. After the trademark was successfully registered, residents in Tongliang County and even in Gaolou Town no longer had the right to use "Tongliang Fire Dragon" marks. In Canada, when someone attempts to register an aboriginal appellation, word, symbol or design as a trademark without consent, the aboriginal people can initiate a dissenting procedure to stop his or her action.

4.4. Protection of ICH as Trade Secret

4.4.1. Advantages of Protecting ICH as Trade Secret

China's Anti-Unfair Competition Law defines trade secret as technical or commercial information which lies outside the public domain, generates economic benefits for its lawful owner, contains practical value, and has been subject to measures by its lawful owner to keep it secret. In the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), trade secret is defined as undisclosed information which has commercial value because it is secret and which has been subject to reasonable

steps under the circumstances, by the person lawfully in control of the information, to keep it secret [32]. The wording may be different in the two documents, but the definitions are essentially the same. As long as a trade secret meets the above criteria, it should be protected as intellectual property.

There are two major advantages of protecting ICH as trade secrets. First, in cases where there are no clear provisions on the content of rights, the lawful owner can receive protection against infringements by third parties under the Anti-Unfair Competition Law. The Law stipulates that “in the course of market transactions, business operators shall abide by the principles of honesty, sincerity, voluntariness, equality and fairness and strictly comply with the code of business ethics” (in paragraph 1, article 2, Anti-Unfair Competition Law of China). Second, for those that are not in the public domain yet but maintained among a small group of people, they can be protected as trade secrets. For example, traditional crafts, such as the cloisonne firing method and carved lacquerware production process, and secret traditional Chinese medicine formulas, such as Yunnan Baiyao and Pien Tze Huang, can be protected as trade secrets.

4.4.2. Deficiencies of Protecting ICH as Trade Secrets

The owner of an ICH property must take appropriate measures ensure that the property is kept secret, rather than making it publicly known. Although the owner has intents and measures to keep it secret, under certain extraordinary circumstances, he or she may be required to disclose the secret knowledge. Once the secret is maliciously divulged or made public, it would mean the end of protection. In this case, even if under the protection of law, the owner receives appropriate compensation, he or she will not be able to restore his or her rights to the level before the secret becomes public. In the remote areas in central and western China, ICH often abounds, but local residents, who generally lack awareness of protection, often show off their experience and skills to tourists. Once a trade secret is deciphered by modern technology, protection will no longer be possible. The transmission of ICH within a small group of people does not necessarily mean the loss of its secrecy. Even if a traditional skill is widely known within a group, as long as it is not made known to the public, it should not be regarded as having lost its secrecy.

Germany’s Act against Unfair Competition has certain provisions which China can draw upon. For example, China may introduce collective rights assertion mechanisms to provide direct protection for fair competition, and may add a collective action procedure and collective rights assertion claims. For another example, an “eliminate effect” clause may be added, in addition to the “cease infringement” and “remove obstacles” clauses in Germany’s Act against Unfair Competition.

5. Results via Case Studies

In this section, we present or analyses of the rulings of Chinese courts over typical ICH-related disputes and a few recommendations for improving IPR protection for ICH. The cases involve the protection of the copyrights of folk artworks and call for the establishing efficient and effective benefit-sharing mechanism for ICH properties and enhancing the ICH administration agencies and their functions. We present two cases in this section in terms of case name, circumstances, the plaintiff’s argument, defendant’s argument, point of contention, and court ruling. Then, we provide our analysis at the end.

5.1. Case I

Case: Government of Sipai Hezhe Ethnic Village, Raohe County vs. Guo Song over copyright infringement.

Circumstances: On 12 November 1999, during the gala show for the Nanning International Folk Song Art Festival, the MC from China Central Television (CCTV) said that the “Wusuli Boat Song” was composed by Guo Song and was not a folk song of the Hezhe ethnic group. The gala show was later made into VCDs for distribution across the country. As a result, the Government of Sipai Hezhe Ethnic Village, Raohe County filed a lawsuit at Beijing No. 2 Intermediate People’s Court.

Plaintiff's Argument: The “Wusuli Boat Song”, a folk song of the Hezhe ethnic group, is a folk art work protected under China’s Copyright Law, and Hezhe people are entitled to authorship rights and economic benefits associated with the song.

Defendant's Argument: (1) There are three Hezhe ethnic villages in China, and the Plaintiff is just one of them and therefore cannot file a lawsuit on behalf of all Hezhe people. (2) The traditional folk tune of the Hezhe ethnic group, as typified by “Thinking of My Love”, is just a four-line tune with no lyrics, while the “Wusuli Boat Song” has both newly composed tunes and lyrics and was composed in collaboration with several composers using Western musical techniques. (3) Although the Plaintiff has made infringement allegations, he has not specified which rights have been infringed or how the infringement has taken place; therefore, the Defendant does agree to the Plaintiff’s claim.

Points of Contention: (1) Does the Government of Sipai Hezhe Ethnic Village have the standing to bring suit? (2) Does Guo Song’s act constitute an infringement of rights? (3) Are China Central Television and Beichen Shopping Center liable for compensation?

Court Ruling: (1) When Guo Song or CCTV uses the “Wusuli Boat Song” again in any manner, they shall clearly indicate that the song is an adaptation of the folk tune of the Hezhe ethnic group. (2) Guo Song and CCTV shall publish, in “Legal Daily”, a statement that the “Wusuli Boat Song” is an adaptation of the folk tune of the Hezhe ethnic group. (3) Beichen Shopping Center shall immediately discontinue selling any publications containing the “Wusuli Boat Song” without clearly indicating that it is an adaptation. (4) Guo Song and CCTV shall each pay RMB 1500 to the Government of Sipai Hezhe Ethnic Village to cover its litigation expenses. (5) Other requests of the Government of Sipai Hezhe Ethnic Village are rejected.

This case is of great significance in China’s IPR judicial trial history. During the proceedings, the court confirmed that the Government of Sipai Hezhe Ethnic Village had the standing to bring suit and recognized the Hezhe ethnic group’s copyrights or similar rights over the folk tune, and held that Guo Song had infringed the Hezhe ethnic group’s rights to adapt the folk tune. The significance of the case lies in its ruling, which contributed to not only the protection of traditional culture but also the rational use of traditional culture; it also helped advance China’s efforts to legislate the protection of folk art. The case also raised many questions worth discussing—how to define folk art works, who owns the copyrights over folk art works, how to define folk art creators and folk art adaptors, and what the copyrights over folk art works entail.

5.2. Case II

Case: Anshun Culture Bureau v. Zhang Yimou of New Pictures over copyright infringement.

Circumstances: During the production of the film “Riding Alone for Thousands of Miles”, eight performers from Anshun were invited to stage a show of “Anshun Floor Opera”. The show was recorded and edited into the film under the name “Yunnan Mask Opera”. On 21 January 2010, Anshun Culture Bureau filed a lawsuit at Beijing Xicheng District People’s Court against the film’s director Zhang Yimou and producer Beijing New Pictures Co., Ltd., Beijing, China (Yizhong Civil Ruling No. 13010, taken from China Court Verdicts Website).

Plaintiff's Argument: Zhang Yimou mistakenly represents the unique “Anshun Floor Opera” as “Yunnan Mask Opera”, harming the reputation of “Anshun Floor Opera” as an ICH property and a form of folk art and infringing its authorship rights. In this particular case, the infringement revolves around non-disclosure or incorrect disclosure of the origin of the ICH property.

Defendant's Argument: The film was produced and aired before “Anshun Floor Opera” was granted ICH status by the state and Anshun Culture Bureau has no right to claim authorship. Moreover, the film is a fictional drama and the producer has no obligation to align artistic fiction with reality.

Points of Contention: Does the use of “Anshun Floor Opera” by the film constitute a copyright infringement?

Court Ruling: (1) The first-instance court holds that the “Anshun Floor Opera” scene in the film was edited as creative fiction and does not violate the provisions of the Copyright Law; therefore,

the court rejects the Plaintiff's requests. (2) The second-instance court holds that "Anshun Floor Opera" belongs to folk opera but that there are no clear legal provisions on folk opera and therefore only the Copyright Law can be applied. As "Anshun Floor Opera" is neither an author nor a work, it has no authorship rights, and therefore the Plaintiff's requests are rejected.

This case is known as the "No. 1 Case of ICH Protection". In analyzing the circumstances, the first-instance court sought the opinion of several renowned law experts and scholars. The case also put new questions to the legal community. Although the Ministry of Culture issued the Provisional Measures for the Protection and Management of National Intangible Cultural Heritage as early as 2006, these regulations largely provide for the protection of ICH from the administrative perspective and neither clarify the owners of the rights in folk art as ICH property nor define the connotation and extension of the rights or stipulate specific measures for protection.

6. Discussion

Insufficient supply of legislation on ICH is reflected in judicial demands. The "Wusuli Boat Song" case, whose ruling came out before the ICH Law, and the "Anshun Floor Opera" case, whose ruling came out after the ICH Law was promulgated, became two typical cases of disputes over ICH. The court verdict for the latter contains the following words: "However, to date, the State Council has not released specific regulations on the protection of copyrights" (Yizhong Civil Ruling No. 13010, taken from China Court Verdicts Website). The situation remains unchanged today [25]. Of the 92 guiding cases in 17 groups published by the Supreme People's Court by the end of 2017, only three involved ICH IPR protection. They are Guidance Case No. 46 (Shandong Lujin Industrial Co., Ltd. v. Juancheng Lujin Arts & Crafts Co., Ltd. and Jining Lizhibang Textile Co., Ltd. over trademark infringement and unfair competition); Guidance Case No. 58 (Chengdu Tongde Hechuan Peach Slices Co., Ltd. v. Chongqing Tongde Peach Slices Co., Ltd. over trademark infringement and unfair competition); and Guidance Case No. 80 (Hong Fuyuan and Deng Chunxiang v. Guizhou Wufang Food Co., Ltd. and Guizhou Jincai Culture R & D Co., Ltd. over copyright infringement). Recent years have seen two ICH-related administrative litigation cases—Cai Hanwen vs. Hubei Province Cultural Administration and Wang Chen v. Hangzhou Culture, Radio, Television, Press and Publication Bureau. In both cases, the court ruled in favor of the government agencies.

In the current era of knowledge-based economy, the preservation and protection of ICH require us to respect not only ourselves but also others. The IPR regime, which balances the interests between rights owners and the general public, is essential to the protection and innovation of ICH. The tremendously diverse nature of ICH means that there are different priorities in and methods for ICH protection. In the following, four main IPR regimes, namely, copyright, patent, trademark and geographical indicator, and trade secret protection for ICH, are compared, in hopes of establishing the best methods for different categories of ICH.

The comparison is done based on the following four criteria:

- On whether an explicit application for the protection is needed. For copyrights and trade secrets, the protection of ICH is automatic. However, one would have to file a patent application or an application for trademarks and geographical indications to protect the related ICH.
- On the duration of protection. Trade secrets enjoy protection indefinitely. Trademarks and geographical indications can enjoy protection indefinitely as long as the application is renewed properly. Patents enjoy 20 years of protection for inventions and 10 years of protection for utility models and designs. The copyright for an individual's work enjoys protection until 50 years after the individual has died. The copyright protection for the work of an organization extends to 50 years after the work has been completed.
- On the disclosure policy. Copyrights as well as trademarks and geographical indications are obviously fully disclosed. Contents of the patent must be disclosed and executable. The protection of trade secrets requires sound confidentiality measures.

- On the scope of protection. For copyrights, the protection only applies to expressions, and it cannot prohibit non-plagiarized identicalness. For patents, the protection is limited by the scope of the patent applied for. Trade secrets protection prohibits obtainment of them by illegal means, but it does not apply to independent research and development. Protection for trademarks and geographical indications prevents the use of registered trademarks or geographical indications on identical or similar goods or services because doing so may cause confusion among consumers.

The granting of IPR is the best motivator for creative activities. To ensure the protection and acceptance of ICH, it is crucial to promote ICH by innovative means. In promoting ICH, there are a few critical points to note. First, it is crucial to find out related legislation and carry out a search of prior IPR; for example, in the case of “Anshun Floor Opera”, it is important to establish who the rights owner is and who the inheritor is; and, in the case of Tongrentang medicines, it is necessary to ascertain whether a prior patent exists. Second, the protection of the IPR of an ICH property can be secured by registering the copyright, patent or trademark; for instance, India has become a strong player in the global pharmaceutical market by learning from Switzerland, a pharmaceutical powerhouse, and by taking advantage of its rich medical heritage. Third, it is crucial to continue the research of the sound usage and moral rights protection of ICH properties which have found their ways into the public domain. Under the UK copyright law, Peter Pan, the half-human, half-goat god of shepherds, receives permanent protection for charitable reasons.

6.1. Recommendations for Improving Copyright Protection for ICH in China

At present, claims for copyrights in ICH properties mainly lie in three areas: the right of authorship of the work, the paid use of the work, and compensation for moral damage. Special protection should be granted to ICH properties within the scope of copyright protection in accordance with their specific characteristics.

First, we recommend clearly defining the right holder. In general, this can only be considered in relation to the collective, ethnic and geographic nature of the inheritors and the common practices, and moral rights typically are collective. When it is impractical to establish ownership, the rights rest with the State. In judicial practice, there are related cases in this respect, such as the “Wusuli Boat Song” [33].

Second, we recommend adjusting the term of protection. In Europe and North America, some countries have extended copyright protection for the life of the author plus 70 years, or 70 years from lawful publication if the calculations of years are not based on the life of the author. In the U.S., for a work of corporate authorship, protection lasts 95 years from publication or 120 years from creation, whichever expires first [33].

Third, we recommend enhancing ICH utilization. In China, economic compensation should be provided for the use of ICH resources, and those who distort or tamper with ICH resources and hurt the national and public interests and feelings should be penalized; attribution should be given when ICH resources are used for non-commercial purposes; and compensation should be provided for moral damage suffered by the infringed party.

Based on our investigation and case studies, we made the following two sets of recommendations on the protection of intangible cultural heritage.

6.2. Recommendations for Improving Trademark and Geographical Indication Protection for ICH in China

According to Article 8 of China’s Trademark Law, marks (visual) which can be registered as trademarks include numbers, words, graphs, letters, graphs, three-dimensional symbols, color combinations, or any combination thereof. In ICH, only the distinguishing part can constitute a trademark as provided for in the Trademark Law.

First, we recommend applying for registration of trademark. We could achieve this by strengthening the awareness of non-brand protection, by preventing malicious preemptive registration, tightening the examination procedure, streamlining the registration procedure and speeding up the registration process.

Second, we recommend applying for geographical indication. ICH properties are generally collectively owned intellectual achievements which are concentrated in a certain region; to increase its economic value, an ICH property can be registered as a geographical indication for better protection.

6.3. Recommendations for Improving Patent Protection for ICH in China

It may be necessary to amend China's current Patent Law and introduce new legal provisions relevant to ICH in traditional technology to close the loopholes in the current law.

First, we recommend building ICH big data. This can be achieved by creating ICH databases and building digital libraries for traditional knowledge. Second, we recommend providing certification of informed consent of indigenous people or administrative agencies or benefit-sharing agreement. China can draw upon the practices of certain American countries or India. The Patent Law may be amended to require the provision of certification before a patent can be granted to an invention that involves ICH or biological resources. Third, we recommend further improving the patent granting standard and application procedures for traditional Chinese medicine inventions. This can be achieved by removing institutional obstacles to the definition of the key attributes of traditional medicines applying for patents, speeding up the process of patent applications for Chinese herbal medicines, and shortening the length of time between filing of application and granting of patent. Fourth, we recommend setting a special term of protection. Under the current Patent Law, protection for invention patents lasts 20 years. Special terms of protection and even infinite protection can be implemented for certain ICH properties.

7. Limitations of the Study

This paper explores the possibility and reality of protecting the transmission and development of ICH through IPR legal systems, including the copyright law, the trademark law, the patent law, the trade secret law, and the geographical indication system. The protection of ICH is a holistic system which requires multiple laws or legal departments to link up with one another. China abounds in ICH resources, and how to effectively protect these resources calls for further field studies and in-depth theoretical research.

8. Conclusion and Recommendations

As a nation with a long history, China's splendid civilization has thrived for thousands of years, giving birth to an enormous amount of valuable ICH. In 2011, China promulgated the Intangible Cultural Heritage Law of the People's Republic of China. However, due to the tremendous variety and complex contents of ICH, it has proved difficult to reconcile the interests of all parties involved; as a result, the law which has finally taken effect does not involve civil protection, and ICH protection is provided only from the perspective of the administrative law. Compared with other countries with rich ICH resources, which provide special protection for ICH resources as intellectual property, China has lagged behind with inadequate legal protection measures in this respect. To support our claims, we present two case studies and make three sets of recommendation on improving the protection of ICH in China. The first set relies on improving copyright protection for ICH, the second set relies on improving trademark and geographical protection for ICH, and the third set relies on improving patent protection for ICH.

China, a nation with an enormous range of ICH, has seen increasingly complex law applicability issues in recent years, and ICH protection research has grown significantly across the country. For example, the IPR Tribunal of Guizhou Provincial Higher Court has completed a series of research on the judicial issues relating to ICH protection, advancing the healthy development of ICH in the province. Zunyi City Intermediate Court has carried out research on the trademark protection mechanism for Maotai, China's top liquor brand, contributing to the advancement of IPR protection for Chinese liquors as typified by Maotai as an ICH property. These studies have allowed Guizhou Provincial Higher Court to clarify the applicability of copyright and trademark laws to disputes

over ICH properties; they have also enabled Guizhou businesses to take stronger steps in brand management and secure both judicial protection and non-governmental protection. Furthermore, they have helped elevate the status of cultural industries in the province's socio-economic development and strengthen public commitment to ICH protection.

Reforming the existing IPR regime may help resolve some issues related to ICH protection, but it cannot help achieve holistic protection of ICH and may result in system fragmentation and institutional loopholes. There remain many deficiencies in IPR protection for ICH in China. To ensure proper legal protection for ICH, China's existing laws, regulations, institutions and systems should be improved. This is essential to ensuring effective protection for ICH across the board. Specifically, we made two sets of recommendations on the protection of intangible cultural heritage in China. The first set of recommendations aims to improve trademark and geographical protection for ICH, and the second set of recommendations is for improving patent protection for ICH. These two sets of measures combined could cover the protection of majority of intangible cultural heritage in China.

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Abbreviations

The following abbreviations are used in this manuscript:

| | |
|--------|--|
| ICH | Intangible Cultural Heritage |
| TRIP | Trade-Related Aspects of Intellectual Property Rights |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| IPR | Intellectual Property Right |
| TCE | Traditional Cultural Expressions |

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