Keynote Paper

Implication of Intellectual Property Rights in the Safeguarding of Intangible Cultural Heritage

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Seong-Yong Park, Ph.D
Executive Director
Intangible Cultural Heritage Centre for
Asia and the Pacific

I. Initiation of Debates

Before exploring the relationship between intangible cultural heritage and intellectual property rights, it is notable that the issue of intellectual property rights has not been actively discussed in the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, which is the most recent international instrument[1)] dedicated to ICH. However, the substance of the definition and the categories of intangible cultural heritage in the Convention have been continuously discussed in the domain of intellectual property rights. In other words, in international conferences organised by the United Nations Educational, Scientific and Cultural Organization (UNESCO) or the World Intellectual Property Organization (WIPO), the issue of intellectual property rights of Traditional Knowledge (TK) and Traditional

1_ In the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, the only comment regarding Intellectual Property exists in Article 3 paragraph (b) as follow: "affecting the rights and obligations of States Parties deriving from any international instrument relating to Intellectual Property Rights or to the use of biological and ecological resources to which they are parties." In other words, the Convention tends to evade the issue of Intellectual Property Rights. The background of the inclination of the Convention will be discussed in the next chapter.

Cultural Expressions/Expressions of Folklore (TCEs/EoF) has been discussed with great importance in terms of promoting sustainable development for communities and the enhancement of accessibility of information on intangible cultural heritage.

Therefore, at this point it would be valuable to study the current trend of debate on the enhancement of intellectual property rights of intangible cultural heritage in terms of promoting possible measures to safeguard intangible cultural heritage for the future. In particular, regarding the forthcoming International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific region under the Auspices of UNESCO (ICHCAP), these endeavours will help us to develop strategic tasks for its impending major activities.

First, before discussing the relationship between intangible cultural heritage and intellectual property rights, this paper examines the general definition of intellectual property rights. In general, Intellectual Property Rights is a term referring to the 'rights' entitled to an individual and/or community for the protection of creations of the mind which is also known as intellectual ownership. WIPO, a specialised agency of the UN in charge of intellectual property rights defines it by stating "Intellectual property includes rights relating to: literary, artistic, and scientific works, performances of performing artists, phonograms and broadcasts, inventions, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields."[2)]

Ultimately, protecting intellectual property rights aims to safeguard creators and other producers of intellectual goods and services by granting them legitimate rights to control how it is utilised while allowing the public to access these goods and services in a legitimate manner.[3)] Of course, there can be differences in the range of intellectual property protection and the existence of protective measures among countries, and these differences have the potential to cause conflicts between countries.[4)] Nowadays, in the time of rapid transformation and dissemination of information, developing countries are attempting to strengthen protective measures for intellectual property rights as

2_ WIPO, WIPO Intellectual Property Handbook: Policy, Law and Use, 3.p.

3_ Ibid, p.3.

4_ Oh, Yoon-Suk, 「The Trend of the International Debate on Safeguarding Genetic Resources and Traditional Knowledge」,『Legal Studies』 Vol. 14, No. 1, Chungnam National University, 2003, p.494.

it is highly possible to easily infringe a product of others' painstaking efforts.

In this sense, it is clear that ICHCAP, which specialises in the information and networking fields of safeguarding intangible cultural heritage, has an important assignment to resolve how the issue of intellectual property can be applied in the domain of ICH. I hope this meeting will be a good opportunity to address the various domestic and international issues and tasks on intellectual property rights in the ICH field and develop possible ways which will lead to future solutions and strategies of ICHCAP's activities.

II. International Efforts from UNESCO and WIPO

Issues behind safeguarding intangible cultural heritage and intellectual property rights have been discussed internationally over a great length of time. However, there are not many outcomes accompanied by a consensus which has been agreed upon between States Parties or experts concerned.

Before the adoption of the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, which includes the Representative List of Intangible Cultural Heritage of Humanity and the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, there were many discussions between UNESCO and WIPO regarding folklore.

In 1971, UNESCO published a document titled 'Possibility of Establishing an International Instrument for the Protection of Folklore'. However, it was seen unrealistic to provide international protection to folklore by using the copyright law.[5)] In 1982, in cooperation with WIPO, UNESCO prepared 'The Model Provision for National Laws on the Protection of Expressions of Folklore' and encouraged nations to make specifications for such protection in addition to trying to develop an international regulation based on this Model Provision.[6)] However, this trial to make an international regulation failed once again as the timing of it was premature. Thereafter, it seems UNESCO deferred its intellectual property discussion with WIPO and concentrated

5_ Aikawa Noriko, "A Historical Overview of the Preparation of the UNESCO International Convention for the Safeguarding of the Intangible Cultural Heritage", Korea National Commission for UNESCO, *Museum International*, Vol. 221 and 222, Special Edition in Korean, 2004, p.83.

6_ Ibid.

mainly on the international debate to adopt the 'Recommendation on the Safeguarding of Traditional Culture and Folklore' in 1989.

As a result, lively cooperation between UNESCO and WIPO on the issue of folklore and intellectual property did not happen in the 1990s. UNESCO developed a concept of intangible cultural heritage which lead to the adoption of methods for protecting world heritage and creating inventories; consequently, this resulted in the development of a new international instrument in the heritage field, the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

On the other hand, WIPO established the Intergovernmental Committee (IGC) in 2001 which discussed subject matters pertaining to Intellectual Property Rights, Genetic Resources, Traditional Knowledge and Folklore. In particular, WIPO recognises the system of Traditional Knowledge and the artistic expressions developed by communities as intellectual properties and is seeking a way to grant intellectual property rights.

Eventually, UNESCO adopted a concept of intangible cultural heritage and shifted its goal towards establishing an international instrument for the safeguarding of intangible cultural heritage, while WIPO is still discussing Traditional Knowledge and Traditional Cultural Expressions (TCEs)[7] as a public domain of Intellectual Property. Article 3(b) of the 2003 UNESCO Convention states that nothing in this Convention may be interpreted as 'affecting the rights and obligations of States Parties deriving from any international instrument relating to intellectual property rights or to the use of biological and ecological resources to which they are parties to', meaning that the UNESCO Convention will not intervene on issues regarding the intellectual property rights of intangible cultural heritage that are not settled.

Thus, UNESCO adopted the 'inventory-making of intangible cultural heritage' system as a new means to protect intangible cultural heritage instead of deciding to protect intangible cultural heritage through the intellectual property system. However, this does not mean that UNESCO perceived the protection of intangible cultural heritage under intellectual property system ineffective, but rather, it recognised that it was still premature to enforce a legal protection over intangible cultural heritage. Furthermore, taking

7_ In the 6th meeting of IGC, some communities had reservations toward the negative meaning of folklore, it was agreed that, apart from the title for IGC, folklore should be presented as TCEs (Traditional Cultural Expressions). (Oh, Ki-suk, 'International Trend on the debate of the Protection of TCEs', ICHCAP, *Report on the Meeting of Experts for the Activities of UNESCO Category II: Protection of intangible cultural heritage and Intellectual Property Rights*, 2009, p.16.

into consideration the disagreement among stakeholders on the issue of intellectual property of intangible cultural heritage, as well as the urgent need to protect intangible cultural heritage on the verge of being damaged and/or disappearing amidst globalisation and urbanisation, it should be noted that UNESCO had to rapidly adopt a new measure to safeguard intangible cultural heritage.

As of now, the UNESCO Convention is widely recognised by the Member States of UNESCO as an international norm. Among the 193 Member States of UNESCO, 131 countries ratified the UNESCO Convention by October 2010. Since the Convention was established in 2003 and took effect in 2006, in less than ten years, 67% of the UNESCO Member States joined the Convention and with lively debates the nomination processes for the Representative List and the Urgent Safeguarding List began.

On the other hand, WIPO has conducted 16 meetings of the IGC regarding Genetic Resources, Traditional Knowledge and Folklore over the last 9 years and recently issued a draft provision for the protection of TCEs/EoF. Furthermore, WIPO published and distributed a guidebook of 'Intellectual Property Rights and Traditional Cultural Expressions (Folklores)'. WIPO has also conducted a series of research projects in order to develop guidelines for intellectual property rights regarding documenting, recording and digitalising of intangible cultural heritage.

The series of endeavours by the international organisations stated above, although they use different terms such as intangible cultural heritage or TCEs, conduct activities to protect the matters which overlap or are similar in certain cases and eventually require prior consultation and close cooperation between them. Therefore, efforts carried out by WIPO to protect the intellectual property of TCEs are related to the safeguarding of intangible cultural heritage; and furthermore, it is an important domain to be utilised as useful experiences and sources for IP right in the safeguarding of intangible cultural heritage.

III. The 2003 Convention: New Approaches for Intangible Cultural Heritage Safeguarding

1. A Shift in the Heritage Policy Paradigm

In this century, as the cultural policy of individual nations tend to concentrate on the utilisation of cultural resources and the fostering of cultural capital, the significance of preservation and utilisation of unique cultural heritage of each nation is increasing.

However, it is an undeniable fact that the traditional concept of cultural heritage, which enjoys its recent popularity as of today, has long been dominated by the unilateral social norms stemming from anthropology. The conventional approach to cultural heritage made a clear distinction between tangible and intangible heritage. In other words, culture tends to be categorised as 'high culture' or 'low culture', and cultures of developed countries such as European countries are recognised as legacies of civilisation, implying that cultures of developing countries, predominately seen in other regions such as the Asia-Pacific and Africa are regarded as legacies of primitive societies.

Moreover, 'monumentalism', which values formality and scale, constructed a hierarchy among relatively developed intangible cultural heritage in the developing countries of the Asia-Pacific region. As this dichotomous approach influenced international norms before the 2003 UNESCO Convention, international regulations on cultural heritage established during this period had a tendency to focus on tangible heritage. However, the concept of cultural heritage by international norms has gradually expanded and become more inclusive to embrace non-material cultural heritage, natural heritage, and even cultural resources which represent cultural diversity.

For over the last few decades, the concept of cultural heritage has expanded and its protective measures have been enforced. As a result of UNESCO's 2003 Convention (enter into force in 2006), the imbalance of policies between tangible and intangible heritage started to lead towards a resolution, and the paradigm of cultural heritage policy aiming at promoting cultural diversity and dialogues among cultures started to shift from tangible cultural heritage to intangible cultural heritage.

2. Crucial Features and Categories of ICH in the 2003 Convention

The General Conference of UNESCO adopted the Convention for the Safeguarding of the Intangible Cultural Heritage of Humanity (the Convention) in 2003 at its 32nd session. The Convention became effective in 2006 when Romania joined the Convention as the 30th State Party (20 April 2006).

The Convention defines intangible cultural heritage as customs, expressions, presentations, knowledge and skills in addition to all other related communication tools, objects, crafts, cultural spaces, and describes its categories as 'oral traditions and expressions', 'performing arts', 'social practices, rituals and festive events', 'knowledge and practices concerning nature and the universe', and 'traditional craftsmanship'[8] which are nearly everything related to the development of human culture. Further, the Convention defines the 'safeguarding' activities of intangible cultural heritage as a measurement for ensuring the viability of heritage; for example, identification, documentation, research, preservation, protection, enhancement, transmission, revitalisation and so on.[9]

The Convention reflects various debates on intangible cultural heritage and there are some important features worth being highlighted. First, the Convention recognises that intangible heritage is continuously produced and transmitted by communities, groups and individuals concerned and emphasises the importance of the main actors for their transmission. Second, communities should not be unnecessarily disturbed under the pretext of protection because intangible cultural heritage is involved in bringing about benefits to the life of communities in terms of sustainable development. Third, the categories of intangible cultural heritage are beyond tradition, history and local culture, and include not only artistic abilities and skills, but also related crafts, venues and customs. Fourth, the Convention draws attention to human rights by declaring that it only recognises intangible cultural heritage which is 'compatible to existing international documents regarding human rights'.

As seen above, the Convention is an inclusive and comprehensive international norm which integrates international debates and recommendations that have long taken place and establishes a basis for the resolution of the imbalance between tangible and intangible heritage. In addition, it has other important

8_ The UNESCO Convention 2003, Article 2.

9_ Ibid., Article 2, Paragraph 3.

features as well; for example, in comparison to the Convention of 1972 where the criteria for nomination to the World Heritage List was importantly based on the outstanding universal value, the 2003 Convention excludes such an evaluation standard and allows communities and performers to play an important role in determining the value of the heritage element. What's more, it is noticeable that the Convention focuses on viability not authenticity, and is more concerned with 'the dissemination of Best Practices' than 'listing works' in terms of safeguarding activities based on the spirit of the Convention.

IV. Intangible Cultural Heritage of Humanity and its Diverse Value

Regarding the basic rationale of the protective activities of cultural heritage, one of the crucial points is an issue of the value of cultural heritage. The interpretation and evaluation of specific elements of cultural heritage can differ depending on time, venue, situation and perspective. However, no matter what kind of approaches are taken, people have continuously conducted activities for researching the meaning of cultural productions and adding value to them.

Based on the features of cultural heritage, it is common to concentrate on the public interest or value in the theory and practice of the cultural heritage field. Accordingly, this paper intends to examine its public value rather than its personal stake or profit regarding intangible cultural heritage. The value of heritage provides people with an objective for paying attention to heritage and participating in related activities. Besides, public interest legitimates the legal, systematic, strategic and financial support for safeguarding heritage.[10)]

Above all, according to the Cultural Heritage Protection law in the Republic of Korea, the legal protection of cultural heritage aims to transmit and utilise traditional culture, thereby enhancing cultural enjoyment among people and contributing to the cultural development of humanity. The law defines 'cultural heritage' as something formed naturally or artificially at a national, ethnical, or international level which also contains great historical, artistic, academic

10_ Jelka Pirkobic, Institute for the Protection of Cultural Heritage of Slovenia.

and geographical value.[11] For intangible cultural heritage in particular, the law confirms that, as an expression of intangible cultural heritage, it should have significant historical, artistic and academic value.[12] It is unnecessary to explain intangible cultural heritage in detail in terms of its historical, artistic and academic value as required by law since it may be easy to grasp.

On the other hand, it would be necessary to provide a prior explanation in detail for various values of intangible cultural heritage which is a key point of this presentation. Therefore, this paper attempts to analyse various values of intangible cultural heritage which draw international attention in the existing field of safeguarding intangible cultural heritage by partly referencing a theoretical classification[13] for the values of cultural heritage which are the intrinsic value, derivative value and institutional value.

> ***Intrinsic value*** *of intangible cultural heritage is referring to the value provided by nature or the feature of the heritage element that is normally evaluated by experts or individuals. This includes historical, symbolic, aesthetical and integrated values. Intangible cultural heritage maintains its validity in the soil of historical tradition and symbolically presents the unique culture which the community has transmitted for generations. Especially, intangible artistic skills, which the human race recognises for its aesthetic achievement, are the fruits of such efforts. Furthermore, integrated value can be found in the fact that tangible cultural heritage and natural heritage has been interdependently developed.*
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> ***Derivative value*** *refers to the value which is related to the profits or benefits derived from the existence of heritage; for example, economic, socio-cultural, educational, academic, environmental and entertainment value. Today, the potential economic value of intangible cultural heritage is highly valued as an important resource in the field of tourism and cultural industry. In a socio-cultural aspect, intangible cultural heritage strengthens the feeling of solidarity or unity, and has been developed in close relationship to the spiritual world or religious ideals. The Recommendation for Traditional Culture and Folklore of 1989 emphasises that traditional culture is a strong measure to unify different ethnic groups and social classes to protect their*

11_ The Cultural Properties Protection Law in South Korea, Article 2, Paragraph 1.

12_ The Cultural Properties Protection Law in South Korea, Article 2, Paragraph 1-2.

13_ In her paper, 'Definition of public interest as one of Faro requirements', Jelka Pirkovic categorised the values of intangible cultural heritage as intrinsic, instrumental and institutional values.

identities and universal legacy for the human race.[14] *Besides, intangible cultural heritage is an important academic resource for the research of the historical development of communities and plays a significant role in educating future generations about historicity and cultural traditions of each society.*

Institutional value *refers to the value of intangible cultural heritage in the field of useful systems and policies for the resolution of issues for the development of each society, for instance, democratic value, value for cultural diversity and creativity, value for development, and identity or dissemination of knowledge.*[15] *The UNESCO Convention of 2003 states that intangible cultural heritage is the essence of cultural diversity and methods to guarantee the sustainable development, thus it promotes the cultural diversity and creativity of humanity.*[16] *It also confirms the democratic value of intangible cultural heritage by declaring that intangible cultural heritage should provide communities and groups with an identity and sustainability that coincides with mutual respect among communities, groups and individuals, as well as respect for human rights. Notably, there is a wide spread perspective by individuals in the field that believe intangible cultural heritage contributes to the sustainable development of society.*

As seen above, according to the theory regarding values in cultural studies, the value of intangible cultural heritage can be divided into three categories of intrinsic, derivative and institutional values, which corroborate various aspects of potential value for intangible cultural heritage. It is important to note that in order to protect the above-mentioned values of intangible cultural heritage, the important role and active involvement of bearers and communities concerned with intangible cultural heritage should be guaranteed, while each Member State continues to develop the system and policies related to intangible cultural heritage. In this respect, the necessity to promote intellectual property rights in the field of intangible cultural heritage needs to be re-emphasised.

14_ Recommendation on the Safeguarding of Traditional Culture and Folklore, 15 November 1989.

15_ Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Faro, 27.10.2005

16_ UNESCO Convention for the Safeguarding of Intangible Cultural Heritage. (2003)

V. Intellectual Property Rights within the Framework of the 2003 Convention

The 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage is the most current international instrument in the field of intangible cultural heritage. According to the Convention, it states that intangible cultural heritage refers to customs, symbols, expressions, knowledge, or skills which can be seen as a part of the cultural heritage of a community, group or in some cases an individual as well as tools, commodities, craftwork or cultural spaces relating to those aforementioned. These elements of intangible cultural heritage, which are inherited from generation to generation, are continuously recreated through interaction and adaptation of the communities and groups with consideration to its surrounding circumstances throughout history. As a result, intangible cultural heritage promotes cultural diversity as well as the respect for humanity's creativity by reinforcing the identity of communities and ensuring its continuity.[17)]

Intangible cultural heritage is not stagnant, but rather continuously recreated by a community, group or an individual. Accordingly, this poses the question of 'who owns the intellectual property rights of intangible cultural heritage?' Intangible cultural heritage is passed down by a community apart from a few isolated cases. Therefore, what the Convention emphasises is that those surrounding intangible cultural heritage, including communities, groups, and individuals should acknowledge the value of their intangible cultural heritage and participate in its safeguarding activities.

Intangible cultural heritage is an asset to humanity which enriches the cultural diversity of mankind and ICH bearers as main actors for its transmission. If so, it can be said that communities, groups, and individuals who are closely connected to the intellectual property of intangible cultural heritage are the main actors in the transmission of intangible cultural heritage. The domains of intangible cultural heritage, as well as each regional circumstance should be considered when discussing the intellectual property of intangible cultural heritage, although it is difficult to apply the existing intellectual property system since communities are the main actors in the ICH field.

17_ Given its purpose, the Convention pays attention to intangible cultural heritage only when it is compatible to existing international documents regarding human rights. The UNESCO Convention of 2003, Article 2, Paragraph 1.

As mentioned above, the primary purpose of the 2003 UNESCO Convention lies in the efforts put forth to encourage communities' participation as well as placing stress on the role of each Member State in the safeguarding of intangible cultural heritage. In other words, it is to ensure ICH transmission by communities in a voluntary manner while seeking possible and effective safeguarding measures by Member States. However, there seems to be a subtle conflict between the two positions. In particular, Wendland argues that it is possible that concerns over the lack of protection of intellectual property for information of ICH may force related resources to be a public domain. He also points out that although it was necessary to make these measurements compulsory,[18] they may function against the profits of the related communities.[19]

The issue regarding 'the coexistence of the safeguarding of ICH and intellectual property rights of the community' can be considered a guarantee of intellectual property rights of the community. Besides, ensuring the accessibility[20] to ICH and its information is directly related to the enhancement of public awareness. Of course, although the Convention states the guarantee of the accessibility to ICH under the condition of customary practices, it is also necessary to discuss accessibility to its information.

The measurements of safeguarding[21] intangible cultural heritage should be considered in various approaches. There are various elements of intangible cultural heritage within many communities in the Asia-Pacific region. Despite a great awareness of intangible cultural heritage, the infrastructure to create, process, and disseminate information on intangible cultural heritage has not been prepared nor is functioning in this region. The Centre, which focuses on information and networking for the safeguarding of intangible cultural heritage in the Asia-Pacific region, should have an approach to this problem with a broader dimension of understanding intangible cultural heritage.

In the 'Agreement between UNESCO and the government of the Republic of Korea regarding the establishment of the International Information and

18_ Establishing documentation institutions for the intangible cultural heritage and facilitating access to them. UNESCO 2003 Convention, Article 13, Paragraph 4-3.

19_ Wend Wendland, "ICH and Intellectual Cultural Property: Challenges and Prospects", *The meaning and prospect of ICH*, UNESCO Commission of Korea, 2004, p.75.

20_ Ensuring access to the intangible cultural heritage while respecting customary practices governing access to specific aspects of such heritage. UNESCO 2003 Convention, Article 13, Paragraph 4-2.

21_ "Safeguarding" is referring to appraisal, record, research, conservation, protection, enhancement, promotion and in particular measurements for the guarantee of the vitality. UNESCO 2003 Convention, Article 3.

Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region', Article 7 clearly states that the Centre should "make use of the accumulated information and data on intangible cultural heritage for the purpose of dissemination, produce and publish informational and promotional materials, and promote the protection of intellectual property of intangible cultural heritage, practitioners and creators who are included in the documents and informational materials."

VI. Current Issues of Intellectual Property Rights in Safeguarding Intangible Cultural Heritage

As seen above, despite its long history, there has not been much progress in developing international agreements regarding the issue of intellectual property in the field of intangible cultural heritage. Nonetheless, there has been great effort from intergovernmental organisations where many debates took place between UNESCO and WIPO regarding folklore in relation to the activities for safeguarding intangible cultural heritage before the adoption of the UNESCO Convention for the safeguarding of intangible cultural heritage in 2003.

Currently, although the debate on intellectual property rights regarding TK and TCEs is being lead by WIPO, the protection of intellectual property rights is a very important issue as a measure for safeguarding intangible cultural heritage in an information-oriented society. At the same time, in Korea there have been lively debates on new approaches regarding the concepts of intellectual property including Genetic Resources called 'New Knowledge-Based Intellectual Property'.

In addition, as the Centre is expected to play an important role in developing 'information and networking' activities for safeguarding intangible cultural heritage, it recognises 'safeguarding intangible cultural heritage and intellectual property rights' as an important strategic task. With this history, the Centre intends to initiate an international debate on various issues of intellectual property rights in the field of the safeguarding intangible cultural heritage.

While preparing this expert meeting, this keynote paper addresses a few very significant issues on the topic of the meeting as follows:

a. How to achieve an inclusive approach for accommodating the diverse definitions and domains of intangible cultural heritage and relevant safeguarding measures in the process of developing a new order of intellectual property such as, the idea of developing a new understanding of intellectual property rights in Korea as well as existing practices in WIPO. It is necessary to examine the relationship and discrepancies of terminologies and scope of the target intellectual property being addresses by WIPO and UNESCO (2003 Convention) and to clarify the issues and tasks on the topic. Ultimately, it is our hope to find a collaborative way of developing solutions for future intellectual property rights in the intangible cultural heritage field.
b. How to overcome the existing barriers within the framework of the current intellectual property law in terms of the protection of diverse and comprehensive rights such as the right for traditional resources,[22] addressing cultural expressions, intangible cultural heritage and genetic resources. In the near future, it is expected that the revision of the current IP system or new adoption of the *sui generis* system be required in the field. In this regard, more proactive policies need to be set up in collaboration with experts and specialised institutions in the various fields including ICH.
c. There is a necessity to examine the possibility of protecting intellectual property rights as a means of safeguarding intangible cultural heritage. It might be perceived that ensuring intellectual property rights could be a passive measure to the safeguarding of ICH compared with the fact that the inventory-making and designation of bearers in the ICH field be active measures. However, due to the current intellectual property rights system based on private and individual ownership, not public and collective ownership, there are many issues to be addressed for safeguarding intangible cultural heritage as a public or communal heritage transmitted from generation to generation.
d. There are also practical problems relating to the identification, research and documentation of ICH. Since the nature of ICH is invisible in form

22_ Darrell A. Posey and Graham Dutfield, Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities, 1996.

and transforms constantly, it is essential to document the ICH elements to understand the transformation of the element over time. However, the reality is that multifarious problems have been raised pertaining to intellectual property rights concerning the process of identification, research and documentation for ICH. In addition, when they open up to the public and the results of the documentation are utilised, intellectual property right issues occur.

e. Some individuals and mediums of mass media create serious problems when they commercialise or utilise ICH in a way that violates the portrait rights and discloses ICH information in an irresponsible manner. Nowadays, it is getting easier to utilise recording equipment, or share information via online means. In many cases, individual and mass media online activities are found where a community's assets or someone's private or personal sphere have been violated. Unfortunately, due to the fact that a lack of understanding regarding this issue and the ambiguousness of guidelines and legal regulations, the damage and misuse of ICH elements couldn't be protected.

Hopefully this expert meeting is a good opportunity to address the various tasks and issues not provided in the keynote speech that I presented. Based on the results of this meeting, it is our plan that the Centre will move forth with in-depth research projects at both national and international levels, on intellectual property rights in the intangible cultural heritage field. In particular, ICHCAP will cooperate with UNESCO and WIPO in exploring any possibility of strengthening IP rights in relation to intangible cultural heritage by conducting various events such as international expert meetings in a proactive manner.