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## Chapter 2

Issues and Tasks of Intellectual Property Rights  
in the Safeguarding of ICH

# Protecting Intellectual Property Rights of ICH: Issues and Tasks

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## I. Characteristics of Intangible Cultural Heritage and its Need for Safeguarding

Article 2, clause 1 of the Convention for the Safeguarding of the Intangible Cultural Heritage (ICH Convention) defines intangible cultural heritage as “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage”. The examples of the intangible cultural heritage under the definition of the Convention are: oral traditions and expression, including language as a vehicle of the intangible cultural heritage; performing arts; social practices; rituals and festive events; knowledge and practices concerning nature and the universe and traditional craftsmanship (ICH Convention Article 2, Clause 2). Such a definition shares a similarity with the definition of Traditional Cultural Expressions (TCEs)/Folklore (EoF) which is currently being discussed in the World Intellectual Property Organization (WIPO). Although WIPO does not directly define traditional knowledge (TK), it provides examples of TK to be: food, agriculture, the environment, conservation of biological diversity, health, traditional medicines, human

rights, and indigenous issues. As for the examples of TCEs, art, designs, music, signs and symbols, performances, architecture forms, handicrafts and narratives are included.<sup>1)</sup>

To classify the characteristics of intangible cultural heritage, first, it consists of cultural assets in intangible form; second, it is developed collectively and gradually throughout different generations; third, it is passed down from one generation to another by using unfixed methods; fourth, it is creative works resulted from collective activities rather than that of individual; fifth, it is continuously being used and transformed within the society that it originated from.<sup>2)</sup> Intangible cultural heritage differs from natural heritage, which refers to the natural places in need of protection for being the habitats of endangered plants and animals, also having great physical and biological values as well as scientific and aesthetic worth. In the meantime, intangible cultural heritage is also different from 'tangible cultural heritage', which is widely known as cultural heritage which is in the tangible form.<sup>3)</sup>

Intangible cultural heritage and intellectual property share a similarity in that they are both creative products which do not have fixed forms. Nevertheless, intangible cultural heritage differs from intellectual property, for it has gradually been developed throughout generations and continues to be used and evolves within the society where it originated from. Thus, the problem of how to protect such collective and gradual creative works called intangible cultural heritage becomes an issue. Without an adequate legal protection system, intangible cultural heritage can be owned by those with money and knowledge to abuse the existing system, rather than the actual intangible cultural heritage custodians. Under such circumstances, the actual custodians of intangible cultural heritage who have been developing and maintaining intangible cultural heritage throughout generations, may be excluded from the benefits generated from using intangible cultural heritage. Furthermore, the custodians will not be able to freely use their intangible cultural heritage, which is the foundation of their lives.

To be more specific, despite the contribution and efforts made by the local population and indigenous people in identifying, developing, and preserving

1\_ [www.wipo.org](http://www.wipo.org) (Accessed, 14 Oct. 2010)

2\_ Srividhya Ragavan. *Protection of Traditional Knowledge*, 2 Minn. Intell. Prop. Rev. 1, 4 (2001).

3\_ Erin K. Slattery. *Preserving the United States' Intangible Cultural Heritage: An Evaluation of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage as a Means to Overcome the Problems Posed by Intellectual Property Law*, 16 Depaul-LCA J. Art & Ent. L. 201, 205-206 (2006).

intangible cultural heritage, private companies armed with advanced technology, money, and marketing skills can possess socio-economic values generated by intangible cultural heritage. Furthermore, private companies can restrict local populations or indigenous people's usage of their own intangible cultural heritage. In addition, when non-custodians of intangible cultural heritage utilise a certain tribe's cultural heritage, such as names, symbols and emblems, faith and religious values invested in the cultural heritage, the spiritual freedom and privacy of the tribe may be violated and standards may fade. Even when tribes allow their intangible cultural heritage to be used by others, the originality of the element of intangible cultural heritage will be damaged since the usage of intangible cultural heritage by original tribes may differ from that of the non-custodians.

## **II. Intangible Cultural Safeguarding through Intellectual Property**

There are two ways to protect intangible cultural heritage. One is to make intangible cultural heritage inventories in order to preserve intangible cultural heritage and to conduct research. Another is to protect intangible cultural heritage under an intellectual property system. Traditionally, intangible cultural heritage has been protected by using the former method and the 2003 Convention for ICH also uses the same means. Nevertheless, indigenous people and communities have a strong sharing ethos of their knowledge and resources by themselves. Accordingly, this sense of ownership has led us to the discussion on intellectual property protection as of today.

However, three factors must be considered for protecting intangible cultural heritage through intellectual property. First, intangible cultural heritage represents the historical information collected from time immemorial in an incremental fashion. It is not new and is said to be in the public domain as the common heritage of humanity. Second, before being commercialised and developed by western science and industry, intangible cultural heritage is just state-of-the-art. Without adding innovative or inventive steps, it cannot create any monetary benefits. Third, to preserve intangible cultural heritage, source countries and their local communities must maintain a certain amount of control over the use of their intangible cultural heritage. In case they

are continued to be excluded from the use of their own intangible cultural heritage, relevant actors will eventually abandon their traditional customs, which provide the fundamental foundation for preserving and maintaining intangible cultural heritage.

In addition, to protect intangible cultural heritage as intellectual property, intangible cultural heritage must satisfy statutory requirements. However, considering the abovementioned characteristics of intangible cultural heritage, such requirements are difficult to meet. By examining different types of intellectual property rights, the following section of this paper will discuss intangible cultural heritage protection as intellectual property while also addressing the limitations.

## 1. Copyright Law

### A. Copyright in General

The simplest way to protect intangible cultural heritage as intellectual property is through copyright. Under the copyright law, any works containing “creativity” can be protected. In this sense, intangible cultural heritage can be recognised as works comprised of creativity. On the other hand, intangible cultural heritage has aspects that are difficult to be protected by copyright law; above all, the verification of author, the creator of the intangible cultural heritage is complicated to identify. Furthermore, proving the existence of “creativity” within intangible cultural heritage is also challenging since intangible cultural heritage is gradually developed throughout time. The limited duration of protection under the copyright law makes protection of intangible cultural heritage through copyright unsuitable. The collective characteristic of intangible cultural heritage is based on the objective of the communities who hold intangible cultural heritage, the creators of intangible cultural heritage to indefinitely retain their heritage for non-profit purposes while this conflicts with the copyright law which aims to provide protection for only a limited period of time. Furthermore, the characteristics of copyright law, which consists of a restriction on right or certain principles of fair use, may not be compatible with the concept of intangible cultural heritage. When it is used for the purpose of education, news reports, critics, and research, copyright law permits people other than the creator to use copyrighted materials. Nevertheless, apart from the issue of social utility of intangible cultural heritage, it may not be acceptable for communities who

hold intangible cultural heritage to permit outsiders to use their cultural heritage. This can be especially pertinent to the groups who wish to exclusively maintain and transmit their intangible cultural heritage in its original form within their community. Therefore, outsiders using the group's intangible cultural heritage could be perceived as a threat to achieving such an objective.

## B. Moral Rights

Moral rights are composed of the right to divulge information, right of paternity, and right of integrity.<sup>4)</sup> Among these rights, right of integrity is closely related to the protection of intangible cultural heritage. This is a right granted to a creator to maintain the consistency of the contents, format, title of his/her creative works, and to seek remedies from any distortion or degradation of the work. Thus, for holders of intangible cultural heritage such as local communities and indigenous people, moral rights can be an effective tool to prevent their intangible cultural heritage from being transformed and distorted by outsiders.

Nevertheless, moral rights have a limitation in protecting intangible cultural heritage, for it is also part of copyright which contains problems generally found in copyright law. For instance, the most notable conflicts between the concept of copyright and intangible cultural heritage is that while copyright is based on the ownership of an individual, intangible cultural heritage is based on collectivism.

## 2. Patent Law

Among different elements of intangible cultural heritage, the knowledge and practices concerning nature and universe can be protected by patent law. Patent law is a system which grants an exclusive right for a limited period of time to the inventor who created new, useful, and non-obvious products or methods and who is at the same time, the first applicant of the patent registration of the product.<sup>5)</sup> Nevertheless, there are four obstacles to protect intangible cultural heritage under patent law. First, patent law recognises an invention as the product of an individual, while intangible cultural heritage

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4\_ Copyright law, Article 13.

5\_ Copyright law, Article 2, Clause 29.

is usually created and owned collectively. Second, in order to obtain a patent, 'inventive step and non-obviousness' of a product must be proved. Third, the patent application should include the technical description of the invention for better understanding for the examiners who grant patentability. Fourth, the registration and maintenance of a patent<sup>6)</sup> is costly.

With regard to the first issue, it is impossible to verify the creator of intangible cultural heritage, one of the requirements of patentability, due to the fact that intangible cultural heritage is communally produced and owned. While a patent is an intangible asset of an individual which needs a clear verification of an owner to be recognised as patent, on the other hand, intangible cultural heritage cannot verify its original creator or an inventor during the time of its formation.

For the second issue, a patent applicant needs to prove that his/her invention has 'novelty, utility, non-obviousness and inventive step'. Nevertheless, intangible cultural heritage, with its cumulative characteristics, cannot prove its novelty, non-obviousness and inventive step to a person who has ordinary skill of the art.

In relation to the third issue, it is difficult for communities which hold intangible cultural heritage to complete patent applications by sufficiently describing their intangible cultural heritage. Although the communities are very well aware of the utility of their intangible cultural heritage, describing it in a scientific language is extremely difficult since intangible cultural heritage is usually recorded and transmitted through oral traditions. With the help of experts, communities may complete their intangible cultural heritage patent application. However, due to the high cost of preparing patent applications, private companies may be in a more favourable position rather than the communities who actually hold the intangible cultural heritage element to apply for an intangible cultural heritage patent.

The fourth issue is a problem which derives from the high cost of the patent application and its maintenance. The high cost for application and lawsuits in the case of infringement, makes it difficult for holder communities to be protected under the patent law.

Therefore, ostensibly, it is possible to protect intangible cultural heritage as a patent, while in practice there exist a great difficulty for communities to obtain patent rights.

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6\_ Graham Dutfield, *Trips-Related Aspects of Traditional Knowledge*, 22 Case W. Res. J. Int'l 233, 254 (2001).

### 3. Trade Secret Law

Trade Secret law provides another form of protection over intangible cultural heritage. Two major requirements need to be satisfied in order to protect intangible cultural heritage under the trade secret law. First, reasonable efforts should take place in order to maintain the secrecy of the contents of intangible cultural heritage. Second, economic benefits should be generated by using the fact that intangible cultural heritage contents are not well known to the public.

In terms of the cost-efficiency of the protection of intangible cultural heritage under the trade secret law, it could be efficient, prompt and simple; indefinite protection could be granted as long as the secrecy is maintained. However, in practice, the strict requirements for obtaining trade secret rights make intangible cultural heritage impossible to be protected under trade secret law. The conditions for obtaining a trade secret right, such as the owner putting reasonable effort in maintaining secrecy of their creative works and there being a widespread secrecy of the creative works within relevant industries, are difficult to be applied to intangible cultural heritage. Secrecy means only a few people have access to certain information, while intangible cultural heritage is shared by all the members of the local community. In case the requirement for secrecy is satisfied, the second requirement of trade secret can be met since intangible cultural heritage can generate economic benefits.

Above-all, trade secret is protected only when it is illegally used by other people. Thus, in case a trade-secret right is granted to a person who is not the owner of the knowledge, the question of whether the trade secret was obtained illegally or not arises. Wiretapping, bribery, fraud and theft are all considered to be illegal methods, while any behaviour hampering the owner's integrity to maintain secrecy is also recognised as illegal methods. This is to say that, only when intangible cultural heritage maintains its secrecy, can it be protected under the trade secret law, in case outsiders attempt to use intangible cultural heritage. Nevertheless, such an issue of secrecy is difficult to be solved in the case of intangible cultural heritage.

### 4. Others

Apart from protecting intangible cultural heritage by copyright, patent law, or trade secret law, one can also consider protecting intangible cultural heritage under trademark and design protection laws. Firstly, in order for intangible



cultural heritage to be protected by trademark law, intangible cultural heritage should be compatible with the concept of trademark. Under trademark law, a trademark is defined as a distinctive sign, word, or logo used by people who produce, process, identify and sell products.<sup>7)</sup> Therefore, verbal expressions, signs, and emblems of intangible cultural heritage may be the composing elements of trademark. On the other hand, it is difficult to recognise the groups who hold intangible cultural heritage as “people who produce, process, identify, or sell commercial products,” and even after intangible cultural heritage is commercialised, there are many cases that the name cannot be registered as trademark because they are usually generic and descriptive. Thus, it can be said that the protection of intangible cultural heritage pursuant to the trademark law is difficult.<sup>8)</sup> Furthermore, when outsiders from intangible cultural heritage holder communities attempt to register trademarks of verbal expressions and emblems of intangible cultural heritage, there is no measure to prevent such deeds.

The protection of intangible cultural heritage under the design protection law shares similar problems as the trademark law. Design refers to the shape, form, colour, containment of aesthetical value as well as novelty, creativity, and possibility to be utilised in industries (possibility of mass production).<sup>9)</sup> Among intangible cultural heritage, traditional expressions such as signs and symbols can be considered as types of designs which can receive protection under the design protection law. However, design needs to be expressed on a product and must be produced massively in order to receive protection. Considering the characteristics of the communities who hold intangible cultural heritage, it is difficult under the design protection law for them to massively produce their designs in a systematic manner; and the characteristic of intangible cultural heritage such as gradational development, cumulative creativity, and lack of innovation makes the protection of intangible cultural heritage difficult.

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7\_ Trademark Law Article 2, Clause 1.

8\_ Trademark Law Article 6, Clause 1.

9\_ Trademark Law Article 2, Clause 5.

### III. Case Studies on the Safeguarding of ICH in the U.S., Australia and India

#### 1. United States

Although the U.S. government recognises the importance of cultural heritage, its protection efforts have mainly been concentrated on tangible cultural heritage. Its efforts to implement legislations to protect cultural heritage became visible from the adoption of the 1909 Antiquities Act. The objective of this Act was to protect tangible cultural heritage by regulating excavations of heritage in archaeological areas, while limiting the disposal of historical materials. In 1935, the U.S. government adopted the Historic Site Protection Act to preserve historic places, buildings, and artefacts for the benefit of U.S. citizens. This law carries various policies in preserving tangible cultural heritage of the U.S. In 1966, the National Historic Preservation Act was legislated; thereby the registration system for tangible cultural heritage was established. Furthermore, in 1979 the Archaeological Resources Protection Act, which is similar to the 1909 Antiquities Protection, was adopted.<sup>10)</sup>

Likewise, the U.S. government has focused its attention on the protection of tangible cultural heritage and the legislation efforts of the U.S. congress are also skewed toward the preservation of tangible cultural heritage. Thus, it can be said that the law to protect the intangible cultural heritage does not yet exist in the U.S., and there are two reasons for this: first, because of the international environment which only focuses on tangible cultural heritage; and second, due to the inherent characteristic of Americans composed mainly of immigrants. To find an example of intangible cultural heritage in the U.S., one has to turn to the Native American culture (Native American tribes). The U.S. government conferred ownership and control of elements of heritage and cultural items of Native American tribes and Native Hawaiians to the respective tribes by enacting the Native American Graves Protection and Repatriation Act in 1990. Accordingly, the museums and federal agencies supported by the federal government are obliged to prepare a summary or inventory of the remains and funeral objects of Native American tribes. In addition, the U.S. government granted autonomy to the Native American tribes, thereby preventing the provincial law to apply to Native American

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10\_ Slattery, *supra* 3, at 216-217.

tribes without consent from the federal government. Therefore, Native American tribes can exercise their own autonomy in accordance to their tribal law, just as in the past. Nevertheless, such autonomous right does not exclude the federal government from exercising control over Native American tribes.<sup>11)</sup>

Examples of intangible cultural heritage of Native American tribes include traditional Native American languages, songs and rituals. Native American language is an important element which calls for our attention. Native American language plays a crucial role in the transmission of the Native American culture, literature, history, religion, political systems, and values; and it is an indispensable element for preserving their heritage. For instance, ecological knowledge, stories of regions, names of regions and its meaning, names of families, family trees, rituals, and logics in ecological relations are codified in the languages of indigenous people.

This is why the comprehension of the indigenous language of Native American tribes is vital for understanding Native American culture and literature. Nevertheless, as the descendents from Native American tribes do not speak the indigenous language anymore, the ecological and historical knowledge remembered by the elders of the tribes is becoming difficult to keep preserved. To solve such a problem, the U.S. congress and federal government showed their belated interests to reconstruct the language by establishing the federal fund, but the challenges are not yet to be solved.<sup>12)</sup> Although the interests and efforts to protect Native American tribe culture is growing, such interests and efforts are limited only to tangible cultural heritage; while the scope of law applicable to Native American tribes is also confined to the elements of tangible cultural heritage. Thus, the law to protect a Native American tribe's right to control their intangible cultural heritage, such as music and symbols, does not yet exist. The only method to protect intangible cultural heritage in the U.S. is to apply the existing intellectual property system to intangible cultural heritage and provides protection within this context. The Native American Arts and Crafts Act grants the right to register distinctive trademarks to the federal Native American Arts and Crafts Commission on behalf of Native American tribes and Native American artists, to prohibit false suggestion of respective products made by Native Americans. Nevertheless,

11\_ James A. R. Nafziger. 1994, *The Underlying Constitutionalism of the Law Governing Archaeological and Other Cultural Heritage*, 30 Willamette L. Rev. 581, p.594-595.

12\_ Russel R. Barsh. 2000, *Ground Visions: Native American Conceptions of Landscapes and Ceremony*, 13 St. Thomas L. Rev. 127, p.133-134.

this law does not prohibit the illegal usage or misappropriation of the elements of Native American intangible cultural heritage such as traditional songs, music, symbols, dance or others, in performances, exhibitions, or artistic products. In short, the law does not regulate the selling of recorded music of Native American rituals.<sup>13)</sup>

Performers of Native American rituals cannot obtain rights over their rituals under the copyright law, owing to the collective and gradual characteristics of their creative performances. This is to say that, the difficulties of intangible cultural heritage protection under the intellectual property system mentioned earlier still pervade in the case of the United States.

## 2. Australia

In Australia, regardless of the growing demand on indigenous art such as visual arts, songs, dances and stories, the misappropriations of indigenous culture occur due to the lack of a protection system. In 1994, the federal court of Australia, in the case of *Milpurruru v. Indofurn Pty. Lmt*, ruled that a private carpet company's unauthorised use of various designs created by indigenous artist, caused great upset and cultural harm to the artists and the cultural groups to which the artists belonged by degrading the sacred images.<sup>14)</sup>

For protecting traditional cultural expressions (a type of intangible cultural heritage) which belong to indigenous people, the government attempts to use the existing copyright system, while indigenous people aspire to apply traditional customary law. While, the copyright law may grant exclusive rights to an individual, the traditional customary law recognises the communal ownership of creative works reflecting tribal traditions and cultures. The Australian government, respecting the opinions of indigenous people, amended the Australian copyright law in order to grant moral rights to the creators. With moral rights of creators being recognised, it became possible to maintain the integrity of the materials created by traditional cultural expressions, but the indigenous communities-the actual interest groups, were excluded from protection. Accordingly, the government attempted to find measures to provide moral rights to all the members of the indigenous

13\_ Id. at 141.

14\_ *Milpurruru v. 1994, Indofurn Pty. Ltd.* 54 F.C.R. p. 240.

community, but such efforts could not succeed. In addition, given there being no relevant law regarding this issue, the protection of TCEs owned by a community through the judicial branch was confronted by many obstacles.<sup>15)</sup>

The existing the copyright law has a limitation to protect TCEs, but the amendment of the copyright law is not simple either; one can think of protecting TCEs by using the Heritage Protection Act which was enacted in 1984. Nevertheless, since the Heritage Protection Act confines its subject of protection only to tangible materials which contain archaeological and scientific value while limiting the region of protection as well, it cannot adequately protect modern works created by using TCEs. Recently, limited protection became available for modern works which interpret TCEs. The amended law of 1987, though only applies to Victoria, included TCEs into its definition of cultural property of indigenous people, while not confining regions for protection nor limiting its subject of protection to tangible materials. Furthermore, it defined indigenous people's TCEs as the elements which compose the cultural life (e.g. music, ritual, dance, custom and spiritual beliefs) of indigenous people, as well as the traditions or oral history that embodies special meanings. However, this phrase was abolished in 2006 and recently the Heritage Protection Act was amended to provide protection only to tangible heritage and to the limited areas.

Therefore, the current Heritage Protection Act does not recognise any right of indigenous people over their intangible cultural heritage, but refers these rights to the Aboriginal Protection Board. In case indigenous communities believe their cultural materials or places are under threat, they may address this problem to the Aboriginal Protection Board. However, the Aboriginal Protection Board does not have any obligation to make a decision to the issue in regards to the subject of protection nor place. The minister is mandated to prepare a report with regard to the protection of indigenous cultural heritage in case an indigenous community calls for the protection of their region. However, the minister does not have any obligation to designate a place as a "region in need of protection." If there is a request calling for the protection of tangible cultural heritage, the minister can make a decision after consulting with relevant federal or provincial departments. In conclusion, the Heritage Protection Law confines the subject of protection only to tangible materials and the region. Furthermore, when the issue of protection is raised

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15\_ Jake Phillips, 2009, *Australia's Heritage Protection Act: An Alternative To Copyright In The Struggle To Protect Communal Interest In Authored Works Of Folklore*, 18 Pac. Rim L. & Pol'y J. 547, pp. 552-558.

by indigenous people, the relevant government regulators are the ones who make the final decision in regards to protection of cultural heritage. Therefore, the indigenous people do not have any control over their own tangible cultural heritage, while intangible cultural heritage is not in the government's interests. For this reason, although the indigenous community can voluntarily request for the intellectual property protection of their intangible cultural heritage in practice, they will not receive the kind of protection that they expect.<sup>16)</sup>

### 3. India

Having developed a unique culture based on Buddhism and Hinduism, India holds many traditional intangible cultural heritage elements such as music, dance, rituals, and folktales. In the case of India, a social debate took place to decide on how to protect traditional knowledge interpreted in a narrow sense, which includes knowledge on science and natural phenomenon. During this process, the discussion was centred on whether to protect traditional knowledge within the intellectual property system or from outside of the intellectual property realm. The result of the discussion was that the protection of traditional knowledge through intellectual property was impossible.

India's traditional knowledge, which was at the centre of the discussion, included that of medical utility, such as Ayurveda, Homeopathy, Naturopathy, Siddah, Unanani, and Yoga. Among these, the patent application of Turmeric and Basmati in the U.S. and Europe became a problem, which pushed the government of India to seek for active protection measures for its national medical knowledge. Nevertheless, the method which India adopted was that of a defensive measure rather than that of an active one. The decision was to establish a 'Traditional Knowledge Digital Library (TKDL)' to input India's traditional knowledge into a database.<sup>17)</sup>

Unlike the case of traditional knowledge in India, there have not been any methods sought for the protection of intangible cultural heritage in India. Yet, it is worth examining one of India's NGOs, the Indian National Trust for Art and Cultural Heritage's (INTACH) efforts to safeguard intangible cultural heritage in India. INTACH documented elements of intangible cultural

16\_ Id. at 568-569.

17\_ Chidi Oguamanam, 2008, *Patents and Traditional Medicine: Digital Capture, Creative Legal Interventions, and The Dialectics Of Knowledge Transformation*, 15 Ind. J. Global, Legal Stud. p. 489.

heritage, while holding seminars on endangered Indian languages, conferences and workshops to protect intangible cultural heritage.<sup>18)</sup> Therefore, India is expected to protect their intangible cultural heritage within the framework of the existing intellectual property law, but the government's plan to legislate a special act is still not reported at this stage. As it can be shown from the case of the Indian government, selecting a "database" as a way to protect its traditional knowledge rather than existing intellectual property law, intellectual property law cannot fully protect intangible cultural heritage within this framework.

#### IV. A Need for Alternative Protection

Considering its collectivism and gradational creativity, the pre-existing intellectual property system is not proper for intangible cultural heritage protection. Even though intangible cultural heritage protection is enforceable under intellectual property law, due to its limited duration, ICH which requires continuous retainment of its original form reaches the limit of its protection. Accordingly, the countries seem to be passive when it comes to ICH protection while being active towards tangible cultural heritage protection.

This paper argues that while keeping its original form is critical, considering the gradual progress of intangible cultural heritage, it is required to add creativity to its original form. By looking at the case of Australia, providing collective moral rights to communities who hold intangible cultural heritage is not recommendable, for it hampers the process of creativity. In the similar context, the non-custodians of intangible cultural heritage obtaining the intellectual rights of intangible cultural heritage, by taking advantage of the situation in which the verification of owners is difficult, should be avoided.

Therefore, a Traditional Knowledge Digital Library (TKDL) in India would be a good example to follow. The intangible cultural heritage digital library will enable intangible cultural heritage to be kept in its original form and a new creator to register their creativity. Simultaneously, the new creator may acquire intellectual property protection contingent on returning some of their profits to intangible cultural heritage holders.

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18\_ [www.intach.org](http://www.intach.org) (accessed on 13 Oct. 2010)