



Chapter 3

Intellectual Property Rights and
Dissemination of ICH Information

Intellectual Property Rights in Relation to Digital Archives of ICH

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1. Background and Objectives

Under the current intellectual property system, only a limited time-period of legal protection is given to the subject matters which meet certain criteria. However, since most intangible cultural heritage does not meet this criteria or the time-period for legal protection has been long overdue, it falls into the category of the public domain. As a result, the cases of misappropriating intangible cultural heritage without receiving consent from communities are continuously occurring. At the same time, distortion of the original meaning of intangible cultural heritage and monopolization of the benefits gained by its commercial use are increasing. With respect to this issue, various international discussions have taken place as of today, mainly spearheaded by the United Nations Education, Science and Cultural Organization (UNESCO) and the World Intellectual Property Organization (WIPO), in order to coordinate the differ-

ing interests among relevant actors of this issue.¹⁾ In particular, WIPO initiated fact-finding missions from 1998 to 1999 to verify the needs and expectations of intangible cultural heritage holders regarding intellectual property; and from 2001 until present, WIPO has been hosting the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.²⁾

The discussions between international organizations have actively been introduced to each state, together with the international movement to safeguard intangible cultural heritage and the code of conduct which can be used to analyze and coordinate relationships among relevant organizations and communities.³⁾ Nevertheless, the Republic of Korea, who takes great pride in its long history dating back 5,000 years, has not been paying adequate attention to intellectual property issues appearing in its efforts to safeguard and preserve intangible cultural heritage under the Cultural Heritage Administration of Korea.⁴⁾

The Convention for the Safeguarding of Intangible Cultural Heritage (ICH Convention), which was adopted in 2003, urges each State Party to draw up,

1_ Nearly half a century has passed since the international discussion to protect intangible cultural heritage under the Intellectual Property system. Various discussions have taken place, such as the 1967 Diplomatic Conference for the Revision of the Berne Convention, the 1976 Tunis Model Law on Copyright for Developing Countries, and the 1982 WIPO-UNESCO Provisions for national laws on the Protection of Expressions of Folklore. In particular, WIPO began its discussion on this issue from the mid-1990s.

2_ For more information, please refer to Ki Seok Oh, *A Study on International Trend of Protection of TCEs/EoF* (Korea Copyright Commission, 2007), p. 12.

3_ From 2000, Germany conducted a systematic study on the issue of intangible cultural heritage and IP, mainly under the Max Planck Institute. The results of this study are accumulated in the book titled *Indigenous Heritage and Intellectual Property: Genetic Resources, Traditional Knowledge and Folklore* (Silke von Lewiniski, 2007). In the case of Australia, where traditional community and modern society coexist, extensive studies have been conducted to identify precautionary actions that should be taken before accessing, using, and utilizing a traditional communities' culture. (Emily Hudson, 'Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections,' The University of Melbourne, IPRIA, 2006). Similar studies have been initiated by countries such as India (Shubha Chaudhuri, 'Intellectual Property Management in an Ethnomusicology Archive,' WIPO, 2009) and USA (Martin Skrydstrup, "Towards Intellectual Property Guidelines and Best Practices for Recording and Digitizing Intangible Cultural Heritage—A Survey of Codes, Conduct and Challenges in North America," WIPO, 2009).

4_ Although there is an ongoing discussion to protect the intellectual property of genetic resources and traditional knowledge, mainly spearheaded by the Korean Intellectual Property Office, it does not include the copyright protection of intangible cultural heritage. Furthermore, the initiative led by the Ministry of Culture, Sports, and Tourism, and Korea Copyright Commission to protect IP of intangible cultural heritage only introduces what has been discussed in WIPO's Intergovernmental Committee's sessions regarding general legislative measures to protect intangible cultural heritage. In short, the ongoing discussion neither includes issues on the relationship amongst intangible cultural heritage stakeholders nor the code of conduct necessary for documenting intangible cultural heritage.

in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory and ensure that these inventories be regularly updated.⁵⁾ In accordance with this article, the Cultural Heritage Administration of Korea has been launching a preparatory project to draw up a national inventory and a digital archive of intangible cultural heritage. At the same time, the Cultural Heritage Administration is providing necessary assistance to states in Asia and the Pacific region through the Intangible Cultural Heritage Centre for Asia and the Pacific (ICHCAP) to support them with their efforts to establish effective intangible cultural heritage identification and documentation systems.⁶⁾

This paper analyzes the major legal issues occurring during the process of documentation and archiving of intangible cultural heritage, primarily that of intellectual property. For a more systematic analysis of the study, the paper divides the issue into three different categories: the subject matter of protection (object of rights), beneficiaries (subject of rights) and methods of protection (substance of rights). On the basis of this analytical framework, the paper reviews the documentation and archiving of intangible cultural heritage in Korea (documentation of Korea's important intangible cultural properties) as of present, and concludes its study by identifying the major tasks necessary to be solved in the future.

II. Subject of Discussion and Analytical Framework

1. Documentation and Archiving of Intangible Cultural Heritage

The general pattern of how elements of intangible cultural heritage are collected, documented, and utilized needs to be analyzed in order to identify

5_ The Convention for the Safeguarding of the Intangible Cultural Heritage, Article 12 (Inventories):

1. To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.
2. When each State Party periodically submits its report to the Committee, in accordance with Article 29, it shall provide relevant information on such inventories.

6_ Weonmo Park, Establishment of the UNESCO Intangible Cultural Heritage Centre for Asia and the Pacific and Cooperation Network. *UNESCO Convention of the Safeguarding of Intangible Cultural Heritage and Regional Task, Proceedings of National Expert Meeting on the Protection of Asia-Pacific Intangible Cultural Heritage*, Andong, Republic of Korea, 10 September, 2010. Daejeon: ICHACP.

major intellectual property issues of intangible cultural heritage, paying close attention to the process of intangible cultural heritage documentation.⁷⁾

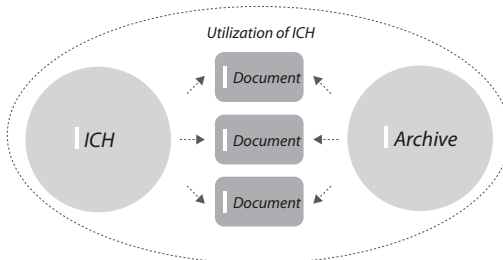


Figure 1 Outline of intangible cultural heritage Documentation/Archiving

The interested parties in the process of collection, documentation, and utilization of intangible cultural heritage can be simplified as displayed in Figure 1.

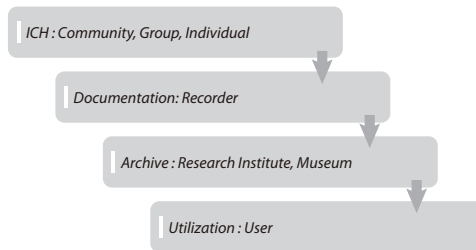


Figure 2 Correlations between Intangible Cultural Heritage Documentation and Archiving

2. Analytical Framework

As intellectual property bears certain entitlements and/or other rights, it can be studied by being divided into three different parts: object of rights (subject matter of protection), subject of rights (beneficiaries), and substance of rights (methods of protection). In short, the legal issues on documentation and archiving of intangible cultural heritage can be analyzed separately by the

7_ Han Hee Ham, "The Importance of Intangible Cultural Heritage Archive and Direction for Its Development: Preservation and Utilization of Traditional Knowledge," International Academic Symposium on the Current Status of Intangible Cultural Heritage Archive and Direction for Its Development, National Research Institute of Cultural Heritage, 2007.

perspective of: what to protect; who benefits from protection; and how to provide protection.

For example, the Japanese comic book, *Slam Dunk*, used photos of basketball games without receiving proper permission from relevant stakeholders. If we expand this discussion to include a 'basketball game' itself as the subject of rights, it shares similar legal questions as in the cases of intellectual property rights of intangible cultural heritage. In the aspect of the object of rights, the question arises as to whether a basketball game itself becomes the

subject matter of protection or a player's basketball skills can be protected as a part of performance. When deciding on subject of rights, the issue of who—player, player association, club, NBA, referee, audience, etc.—is in the proper position to exercise particular rights arises. The question regarding the type of rights (moral rights or economic rights) vested to the appropriate person also emerges in the aspect of the substance of rights.



III. Major Issues

1. Object of Rights

To begin, let us look at the object of rights, namely the subject matter of protection. Looking at the documentation process of intangible cultural heritage as mentioned earlier, intangible cultural heritage itself, documentations, and archives (collection of documentation) of intangible cultural heritage can be considered as the subject matter of legal protection.

Intangible Cultural Heritage as an Object of Protection

What is intangible cultural heritage which is being discussed as the subject

matter of protection? The 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 a part of their cultural heritage.’⁸⁾ Intangible cultural heritage can thus be categorized as the following: (a) oral traditions and expressions, including language as a vehicle of intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; and (e) traditional craftsmanship.⁹⁾

Nevertheless, UNESCO’s definition of intangible cultural heritage is closely interlinked with communities, thus, shares a resemblance to living organisms which constantly transform themselves. To be more specific, the general features of intangible cultural heritage are that it is ‘transmitted from generation to generation, and is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, in addition it provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity’.¹⁰⁾ The intangible cultural heritage, understood in this context, may qualify to be the object for preservation, but difficult to be recognized as the object of rights.¹¹⁾

WIPO’s discussion in relation to this issue is proceeding in a slightly different manner. Above all, WIPO doesn’t look at intangible cultural heritage in a comprehensive way, but distinguishes it into three different areas: Genetic resources (GR), traditional knowledge (TK), and traditional cultural expressions (TCEs).¹²⁾ Since WIPO is more familiar with the intellectual property system which includes copyright and patent laws, a different classification of intangible cultural heritage might have been necessary. As for WIPO’s classifications of intangible cultural heritage, ‘traditional cultural expressions/expressions of

8_ Article 2.1 (Definitions), ICH Convention.

9_ Article 2.2 (Definitions), ICH Convention.

10_ Article 2.1 (Definitions), ICH Convention.

11_ For more information on intangible cultural heritage, traditional knowledge, intellectual property, and *sui generis* forms, see Christopher Arup, “How Are the Different Views of Traditional Knowledge Linked by International Law and Global Governance?,” in *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region*, ed. Christoph Antons (The Hague: Kluwer Law International, 2009), pp. 73-74.

12_ Christoph Antons, “The International Debate about Traditional Knowledge and Approaches in the Asia-Pacific Region,” in *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region* (The Hague: Kluwer Law International, 2009), p. 51.

folklore' are any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested.¹³⁾

Such a definition of intangible cultural heritage has taken into consideration legal protection within the copyright system. On the other hand, TK refers to the content or substance of knowledge resulting from intellectual activity in a traditional context.¹⁴⁾⁻¹⁵⁾ This definition is adequate to protect as patent law or trade secret.¹⁶⁾

The relationships among ICH, TK, and TCEs can be understood differently under varying perspectives. The most accepted understanding of these three concepts is to regard them as having unique areas, while recognizing there are some overlapping parts. On the other hand, the holistic

13_ WIPO, Revised Draft Provisions for the Protection of Traditional Cultural Expressions/Expressions of Folklore (2010). Article 1 (Subject Matter of Protection):

(a) 'Traditional cultural expressions' or 'expressions of folklore' are any forms, whether tangible or intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof:

- (i) verbal expressions, such as: stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;
- (ii) musical expressions, such as songs and instrumental music;
- (iii) expressions by action, such as dances, plays, ceremonies, rituals and other performances, whether or not reduced to a material form;
- (iv) and tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms;

which are:

- (aa) the products of creative intellectual activity, including individual and communal creativity;
- (bb) characteristic of a community's cultural and social identity and cultural heritage;
- (cc) and maintained, used or developed by such community, or by individuals having the right or responsibility to do so in accordance with the customary law and practices of that community.

14_ For the purpose of these principles only, the term 'traditional knowledge' refers to the content or substance of knowledge resulting from intellectual activity in a traditional context, and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems, and knowledge embodying traditional lifestyles of indigenous and local communities, or contained in codified knowledge systems passed between generations. It is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge, and any traditional knowledge associated with genetic resources.

15_ Christoph Antons, op. cit.

16_ WIPO's discussions on legal protection of intangible cultural heritage do not include most of the intangible cultural heritage defined under the ICH Convention. This is because WIPO is more accustomed to the current intellectual property system and that the issue is deeply related to the interests of the developed countries acts as a limitation.

perspective of traditional knowledge includes TCEs as part of TK.¹⁷⁾

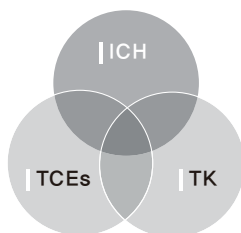


Figure 1 Relationship among ICH, TCEs and TK

Documentations and Archives of Intangible Cultural Heritage

During the documentation process of intangible cultural heritage, documentations and archives (collection of documents) are a particularly important subject matter of protection. For instance, oral records, books, recordings, and video materials could be protected under the copyright law. Archives also fall into the category of ‘databases’ under the copyright law and the Online Digital Content Industry Promotion Act, thus are subject to legal protection.

2. Subject of Rights

After verifying the subject matter of protection, the major question regarding who is entitled to the benefits, namely the subject of right appears.

Holders of Intangible Cultural Heritage

Above all, communities, groups, and individuals who transmit intangible cultural heritage could be considered as the beneficiaries of protection when looking at intangible cultural heritage alone. The ICH Convention also recognizes communities, groups, and individuals as part of cultural heritage in its definition of intangible cultural heritage.¹⁸⁾ Furthermore, Article 15 of the Convention notes that ‘Within the framework of its safeguarding activities of intangible cultural heritage, each State Party shall endeavor to ensure the widest possible participation of communities, groups, and where appropriate,

17_ Christoph Antons, op. cit., p.39. “. . . holistic concepts of knowledge and knowledge transmission and they encompass everything from artistic, literary and oral cultural expressions to signs and symbols to traditional medicines, plants, agricultural knowledge and knowledge about biodiversity and the environment.”

18_ “. . . that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”

individuals that create, maintain and transmit such heritage, and to involve them actively in its management'.¹⁹⁾ However, while the subject of attribution needs to be specifically defined under the legal system, the definition of communities under the Convention has a limitation for being too vague.

In WIPO, the issue regarding the subject of right or beneficiaries is being discussed. As for the beneficiaries of TCEs, indigenous people, communities, individual groups, families, tribes, and nations are mentioned as the recipients.²⁰⁾ With respect to TK, there is an ongoing discussion to acknowledge communities as beneficiaries of TK.²¹⁾

Recorders and Archivists of Intangible Cultural Heritage

In the case of documentations and archives of intangible cultural heritage, the subject of right can be expanded. The scope of subject may not only encompass communities, groups, and individuals, but also be extended to include the relevant organizations and individuals involved in the process of documentation of intangible cultural heritage. The organizations and individuals who participated in the archiving of intangible cultural heritage are included in the subject of right.

3. Substance of Rights

Safeguarding of Intangible Cultural Heritage

The ICH Convention, recognizing that 'the process of globalization and social

19_ Article 15 (Participation of Communities, Groups and Individuals).

20_ Measures for the protection of national traditional cultural expressions/expressions of folklore should be for the benefit of the indigenous people and communities, individual groups, families, tribes, nations and traditional or other cultural communities, the nation/or the countries, to which a traditional cultural expression/expression of folklore is specific

a) in whom the custody, care and safeguarding of the TCEs/EoF are [entrusted] existing in accordance with their customary law [and] or practices;
b) and who maintain, control, use or develop the Traditional Cultural Expressions/Expressions of Folklore as being [characteristic] authentic and genuine of their cultural and social identity and cultural heritage.

21_ Protection of traditional knowledge should benefit the communities who generate, preserve and transmit the knowledge in a traditional and intergenerational context, who are associated with it and who identify with it in accordance with Article 4. Protection should accordingly benefit the indigenous and traditional communities themselves that hold Traditional Knowledge in this manner, as well as recognized individuals within these communities and peoples. Entitlement to the benefits of protection should, as far as possible and appropriate, take account of the customary protocols, understandings, laws and practices of these communities and peoples.

transformation, alongside the conditions they create for renewed dialogue among communities also gives rise, as does the phenomenon of intolerance to grave threats of deterioration, disappearance and destruction of intangible cultural heritage, in particular owing to a lack of resources for safeguarding such heritage', urges each State Party to safeguard intangible cultural heritage. The term 'safeguarding' in this context means measures aimed at ensuring the viability of intangible cultural heritage, including identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.²²⁾ By looking at the objectives and substances of the Convention, one can assume that although the Convention urges States Parties to safeguard intangible cultural heritage, it does not vest communities with any special rights.

Protection under Existing Legal Systems and IP Systems

Some intangible cultural heritage, coupled with its documentation and archives, can be protected under existing legal systems such as the intellectual property law. For instance, most documentations of intangible cultural heritage can be protected under the Copyright Act, while archives (the collection of documentations) can receive legal protection as a database or online digital contents. In addition, performers are granted with protection under neighboring rights or general personality rights. In certain circumstances, some parts of intangible cultural heritage can be protected through trademark and geographical indication.

However, there is a limitation in protecting intangible cultural heritage itself by using existing intellectual property systems. It is difficult to protect intangible cultural heritage itself through the copyright law since most elements of intangible cultural heritage are considered to be included in the public domain. For example, if there exists 'originality' within intangible cultural heritage, most of its copyright may have already expired. At the same time, existing intellectual property systems require definite information on the right holder of the property, whereas the identification of the original creator of intangible cultural heritage is difficult because intangible cultural heritage has been maintained for a long period of time in the form of traditional artistic heritage. Apart from this, in order for a property to receive legal protection

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22_ Article 2.3 (Definitions), ICH Convention.

under industrial property rights such as trademark and patent, it must be registered. However, most traditional communities are reluctant to acquire industrial property rights and they do not have the necessary resources to undergo such a process. Furthermore, obtaining a patent right of intangible cultural heritage is difficult, since it does not have novelty.

Protection under Sui Generis Legal Systems

WIPO's discussion over the protection of intangible cultural heritage was initiated by acknowledging the fact that existing intellectual property systems cannot adequately safeguard intangible cultural heritage. The communities participating in WIPO's discussion regarding this matter have been demanding: prohibition of the usage of their traditional literary and artistic works in distorted and degraded manners; prevention of reproduction, modification, publication, distribution of public performances of traditional culture without permission; protection of crafts, in particular their original style; forbidding of the false indication and misleading of original source; and prohibition of the usage of traditional symbols and emblems. Some of their demands have been reflected in the Revised Provisions for the Protection of TCEs/EoF.²³

WIPO's current debate brings forth 'rights' and 'obligations' for the protection of TCEs and TK, and imposes sanctions on those who violate these rights and obligations. In this sense, the level of WIPO's discussion varies from that of the ICH Convention, which focuses its discussion on the 'preservation' of intangible cultural heritage. For example, the Revised Provisions for the Protection of TCEs/EoF contains the provisions of rights and obligations for protecting TCEs from misappropriation: TCEs should not be used in any distortion or derogatory manner; any false, confusing or misleading indications in relation to goods or services should be prevented; there should be equitable remuneration or benefit sharing in consultation with the relevant community;

23_ Article 3: Acts of Misappropriation (Scope of Protection).

and unauthorized disclosure and exercise of intellectual property rights over secret TCEs should be prevented.²⁴⁾

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24_ ARTICLE 3: ACTS OF MISAPPROPRIATION (SCOPE OF PROTECTION)

Traditional Cultural Expressions/Expressions of Folklore of particular value or significance

(a) In respect to Traditional Cultural Expressions/Expressions of Folklore of particular cultural or spiritual value or significance to a community which have been registered or notified as referred to in Article 7, there shall be adequate and effective legal and practical measures to ensure that the relevant community can prevent the following acts taking place without its free, prior and informed consent:

(i) in respect of such Traditional Cultural Expressions/Expressions of Folklore other than words, signs, names and symbols:

- the reproduction, publication, adaptation, broadcasting, public performance, communication to the public, distribution, rental, making available to the public and fixation (including by still photography) of the Traditional Cultural Expressions/Expressions of Folklore or derivatives thereof;

- any use of the Traditional Cultural Expressions/Expressions of Folklore or adaptation thereof which does not acknowledge in an appropriate way the community as the source of the Traditional Cultural Expressions/Expressions of Folklore;

- any distortion, mutilation or other modification of, or other derogatory action in relation to, the Traditional Cultural Expressions/Expressions of Folklore; and

- the acquisition or exercise of IP rights over the Traditional Cultural Expressions/Expressions of Folklore or adaptations thereof.

(ii) in respect of words, signs, names and symbols which are such Traditional Cultural Expressions/Expressions of Folklore, any use of the Traditional Cultural Expressions/Expressions of Folklore or derivatives thereof, or the acquisition or exercise of IP rights over the Traditional Cultural Expressions/Expressions of Folklore or derivatives thereof, which disparages, offends or falsely suggests a connection with the community concerned, or brings the community into contempt or disrepute;

Other Traditional Cultural Expressions/Expressions of Folklore.

(b) In respect of the use and exploitation of other Traditional Cultural Expressions/Expressions of Folklore not registered or notified as referred to in Article 7, there shall be adequate and effective legal and practical measures to ensure that:

(i) the relevant community is identified as the source of any work or other production adapted from the Traditional Cultural Expression/Expression of Folklore;

(ii) any distortion, mutilation or other modification of, or other derogatory action in relation to, a Traditional Cultural Expression/Expression of Folklore can be prevented and/or is subject to civil or criminal sanctions;

(iii) any false, confusing or misleading indications or allegations which, in relation to goods or services that refer to, draw upon or evoke the Traditional Cultural Expression/Expression of Folklore of a community, suggest any endorsement by or linkage with that community, can be prevented and/or is subject to civil or criminal sanctions; and

(iv) where the use or exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on terms determined by the Agency referred to in Article 4 in consultation with the relevant community; and Secret Traditional Cultural Expressions/Expressions of Folklore.

(c) There shall be adequate and effective legal and practical measures to ensure that communities have the means to prevent the unauthorized disclosure, subsequent use of and acquisition and exercise of IP rights over secret Traditional Cultural Expressions/Expressions of Folklore.

IV. Prospective Tasks Towards the Protection for IP of ICH

If intangible cultural heritage was just to be documented and preserved in places like libraries, museums, national archives, and used only for research purposes, there would not be any emergence of serious intellectual property problems. Nevertheless, in today's digitalized world where the digital archives of intangible cultural heritage have been established and people can utilize intangible cultural heritage through a network, complicated intellectual property problems appear. This is especially pertinent to the cases of commercial utilization of intangible cultural heritage. Thus, unlike the past, relevant intellectual property issues must be thoroughly contemplated before the launching of projects related to digital archives.

How do we go about this? Two approaches can be taken at the macro-level. First is the protection of intangible cultural heritage itself. It is important to analyze recent WIPO discussions on genetic resources, traditional knowledge, and traditional cultural expressions as well as the positions of important Member States. In particular, a careful study must be conducted on the legal systems of countries who already maintain certain levels of intangible cultural heritage protection under its national law (ASEAN,²⁵ Australia/New Zealand, and India) and their latest development of debate on the issue (Especially with relation to ICHCAP's activities). In this process, discussion at the national-level should be encouraged while specific intellectual property issues such as subject matter, beneficiaries, and substance need to be discussed. If necessary, the amendment of related legal systems should also be reviewed.

Second, it is important to identify intellectual property related issues arising during the process of intangible cultural heritage documentation and archiving and to provide a guideline to relevant actors. The guideline should include the precautionary measures that researchers, collectors, and museums must take into account during the process of intangible cultural heritage documentation.²⁶⁾

25_ The government of Indonesia holds the right over intangible cultural heritage under its 1982 Copyright Law. Christoph Antons, ed., op. cit., p. 53.

26_ ARTICLE 5: EXCEPTIONS AND LIMITATIONS

(a) Measures for the protection of TCEs/EoF should:

(iii) not apply to utilizations of TCEs/EoF in the following cases:

- the making of recordings and other reproductions of TCEs/EoF for purposes of their inclusion in an archive or inventory for noncommercial cultural heritage safeguarding purposes;

In order to make guidelines effective, an empirical analysis of the relationship among relevant actors and major intellectual property issues during the process of documentation should be conducted. From my point of view, government-supported documentation and archives should be actively utilized, thus methods to effectively manage these materials must be established.²⁷⁾

27_ The methods to utilize documentations or audiovisual materials, such as recordings and documents on important intangible cultural properties in Korea and Korea Broadcasting Service's audiovisual materials, should be promoted.