Annex 1|*Questionnaire*

1. Introduction

Intangible cultural heritage (ICH), which is the source of human creativity and cultural diversity, has been diminishing since the onset of globalisation and urbanisation. In this regard, international society, working in tandem with UNESCO, has garnered public attention on ICH safeguarding, and the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted in 2003.

According to Article 13, d.iii of the 2003 Convention, States Parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party's territory. This is to say, the Convention encourages managing an institute related to information building and sharing—one that collects, produces, and disseminates ICH information.

The process of ICH information buildingand sharing could be the cornerstone to safeguarding ICH. However, as with most kinds of information activities in other fields, the process of ICH information buildingand sharing includes many intellectual property (IP) issues.

Many problems could arise while collecting and creating ICH information, while processing and producing ICH information, and while disseminating and utilising ICH information. Additional, diverse problems could also develop from the communities, institutes, or individuals involved in the process.

In particular, with the development of technology and the appearance of new media, ICH intellectual property issues can manifest themselves in many ways, and these problems have expanded into much more complicated arenas.

The International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP)has been concerned with IP issues related to ICH information building and sharing. To cope with these concerns, ICHCAP has endeavoured to develop a guideline for protecting IP in the process of ICH information building and sharing.

ICHCAP has proposed a project for a field survey to examine IP issues, focusing on activities of ICH information–related institutes in the Asia-Pacific region and on cases about how to deal with problems that arise in the process of ICH information building and sharing.

The survey is expected to contribute by allowing an exchange of experiences and know-how in the Asia-Pacific region to foster an environment to understand and resolve problems related to IP aspects of ICH. Furthermore, the survey results could be the foundation for developing a guideline for protecting IP rights during ICH information building and sharing.

2. Glossary

For the current survey, the terms below will have the given meanings.

1) Bearer
   A member of a community who recognises, reproduces, transmits, transforms, creates, and forms a certain culture in and for a community. A bearer can, in addition, play one or more of the following roles: practitioner, creator, and custodian.[1]
2) Community
   People who share a self-ascribed sense of connectedness. This may be manifested, for example, in a feeling of identity or in common behaviour, as well as in activities and territories. Individuals can belong to more than one community.[2]
3) Custodian
   A practitioner who has been entrusted by the community with the responsibility of safeguarding their intangible cultural heritage.[3]
4) Documentation
   The recording of ICH in tangible forms.[4]
5) Identification
   Technical description of a specific element constitutive of the ICH, often done in the context of a systematic inventory.[5]
6) Information Building and Sharing
   A series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information.
7) Informants
   Local experts from whom information about particular cultural practices is obtained, in the context of cultural field research.[6]

---

[1] UNESCO Glossary Intangible Cultural Heritage. Prepared by International Meeting of Experts on Intangible Cultural Heritage. The Hague, August 2002, p.4

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.* p.5

[5] *Ibid.* p.5

[6] Peter Seitel, *Proposed Terminology for Intangible Cultural Heritage: Towards Anthropological and Folkloristic Common Sense in a Global Era.* UNESCO International Round Table 'Intangible Cultural Heritage', 2001 p.9

8) Intangible Cultural Heritage (ICH)

Practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artefacts, and cultural spaces associated therewith—that communities, groups, and in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and it provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.[7]

9) Intellectual Property (IP)

Legal rights that result from intellectual activity in the industrial, scientific, literary, or artistic fields.[8] Common types of intellectual property rights include copyrights, trademarks, patents, industrial design rights, and trade secrets.

10) Inventory Making

Drawing up one or more inventories of the intangible cultural heritage present in territories to ensure identification with a view to safeguarding.[9]

11) Moral Rights

Owner's right to claim authorship of the work and to object to any distortion, mutilation, or other modification or derogatory action in relation to the said work that would be prejudicial to the owner's honour or reputation.[10]

12) Practitioner

A member of a community who actively reproduces, transmits, transforms, creates, and forms culture in and for the community by performing and otherwise maintaining social practices based on specialised knowledge and skills.[11]

13) Stakeholder

Various levels of agency in ICH information building and sharing activities, including public and private institutions, and more specifically artists and creators of the cultural communities concerned.[12]

14) Subjects of ICH

Bearers, practitioners, and communities.

---

[7] Art.2 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003

[8] World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Law, Policy and Use*, WIPO Publication No. 489(E). p.3

[9] Art.12.1. UNESCO Convention for the Safeguarding. *opcit*

[10] Art.6*Bis* Berne Convention for the Protection of literary and Artistic Works, Paris Text 1971

[11] UNESCO Glossary Intangible Cultural Heritage. *opcit* p.5

[12] Noriko Aikawa, *State of Intangible Heritage Development in the Lead Up to the 2003 Convention.* UNESCO Shanghai meeting in the lead up to the adoption of ICH Convention. Training of the trainers. Asia and Pacific. Module 1. p.21

3. Specific Questionnaire

A. Institute Overview

1) Profile of the institute
   a) What is the name of institute?
   b) Where is the institute located? (City/Country)
   c) Please introduce the history of institute.
   d) What are objectives and functions of the institute?
   e) Inwhat country/region have your institute's activities been carried out?
   f) What kind of ICH is your institute specialised in?
      Ex) performing arts, dance, music, rituals, ceremonies, etc.

2) Characteristics of the institute
   a) Your institute can be classified as
      □ Government department
      □ Public institution
      □ Public enterprise
      □ Private enterprise
      □ NGO
      □ Other (Please explain the classification)
   b) Is your institute affiliated with other organisations? If yes, please describe the parent or affiliated organisations—name, classification, objectives and functions, specialisation, etc. (over 200 words in English)
   c) What are the institution's sources of budget?
      Ex) a national budget, fund-raising activities, etc.

B. Information Building and Sharing Activities of Institute

3) Information building and sharing activities of the institute
   a) Please indicate the kinds of activities your institute has done or is doing.
      □ Identification
      □ Documentation
      □ Inventory making
      □ Database/Archive building
      □ Publication and distribution
      □ Utilising digital contents
      □ Other (Please explain other activities your institute has done)

b) Among your answers in [B-3-a], which activity does your institute mainly focus on? (multiple answers allowed)
(1) Please explain the activity (over 250 words in English)
(2) If any, please also provide guidelines, internal regulations, or other principles regarding the activity.

c) Regarding your answers in [B-3-b], please describe specific projects related to the activity by giving a set of answers below. If you have more than one project, please provide a set of answers for each one (One to three examples are recommended, but you can also give more than three examples)
 (1) Name of project
 (2) Duty department
 (3) Background of project (over 150 words in English)
 (4) Context of project (over 250 words in English)
 (5) Procedures of project
 (6) Outcomes/Effects

d) If you indicated in [B-3-a] that your institute did activitiesrelated to database/archive building, please provide an additional explanation about the activities.
 (1) How did/does your institute obtain ICH-related data or archives?
   □ Field work and documentation
   □ Purchase
   □ Donation
   □ Other (Please explain how your institute obtains(ed) ICH-related data or archives)

   If you checked more than one answer, what is the primary way your institute obtains(ed) ICH-related data or archives? Please arrange your answer according to the order of priority.
 (2) Please provide an index of data or archives of your institute by giving a set of answers below.
   (a) Name of data
   (b) Online/Offline data
   (c) Type of data
      Ex) text, photograph, recording, video, etc.
   (d) Source of data
      (Where did the data originate?)
   (e) Context of data
   (f) Person/Organisation who has rights on the data
   (g) Principle/Guideline of data management, if any.

C. Intellectual Property Issues in Institute

4) Does your institute have experience with a project regarding IP aspects of ICH?
   □   Yes
   □   No
   If yes, please describe the project by answering the questions below. If you have more than one project, please provide a set of answers for each one.
   a) Name of project
   b) Duty department
   c) Background of project (over 150 words in English)
   d) Context of project (over 250 words in English)
   e) Procedures of project
   f) Outcomes/Effects

5) Is there a department, a unit, or an individual undertaking tasks related to intellectual property?
   □   Yes
   □   No
   If yes, please provide information below.
   a) Name of department (which covers the unit or the individual)
   b) Name of duty person (in the department, the unit)
   c) Tasks of department
      (a) Main task
         (What is the main task of the department? [over 100 words in English])
      (b) Tasks relating to intellectual property
         (Please describe the tasks that are related to intellectual property [over 100 words in English])
   d) Contact information
      (a) Contact number and e-mail of department
      (b) Contact number and e-mail of duty person

6) Does your institute have a principle for protecting IP aspects of ICH?
   □   Yes
   □   No
   If yes,
   a) Please describe the principle (over 150 words in English)
   b) If any, please attach documents related to answers in [C-6-a].

D. Intellectual Property Issues in the Process of Information Building and Sharing

ICH information building and sharing constitutes a series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information. Each stage is detailed below.

- The stage for preparation: conducting preliminary investigations, planning activities, selecting ICH objects to be investigated, undergoing prior consultation on an activity, etc.
- The stage for collecting and creating information: conducting field surveys (interviews, recording, filming, etc.), purchasing data, receiving donations, etc.
- The stage for maintaining information: building a database, keeping the data in its original form, classifying the data, constructing a security system for the data, etc.
- The stage for processing and producing information: editing, modifying, and upgrading information collected and maintained in the previous stages towards forms of documents, videos, web pages, etc.
- The stage for utilising and disseminating information: disclosing and disseminating information produced, distributing commercially, and utilising existing information for broadcasting, advertising, publicity, etc.

The management of ICH information raises equally different intellectual property issues from one category to another, be it in the phase of preparation, collection, production, or dissemination.

In **the stage for preparation**, intellectual property issues that could arise are below.

- Problems regarding identifying the nature of rights existing in ICH that will be targeted in information building and sharing activities
  - Identifying copyrighted works
  - Identifying unpublished or unknown authors' works
- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities

- Identifying a country's laws and regulations or customs that could affect information building and sharing activities
- Examining the range of protection under national statutes of IP rights of ICH practitioners and creators
- Others
  - Other intellectual property issues that could arise during the preparation stage

In **the stage for collecting and creating information, the stage for maintaining information, the stage for processing and producing information,** and **the stage for utilising and disseminating information**, intellectual property issues that could arise are below, grouped into categories of IP rights.

Ownership

- Identification of the owner of the copyright and related rights in the recordings, films, or manuscripts embodying ICH
- Determination of ownership of both the database itself and its contents
- Issue of bearers' ownership rights in adaptations such as lawful inspiration or the borrowing of work based on one or several pre-existing ICH work(s)
- Custodians', owners', and/or managers' rights of ownership of secondary materials embodying ICH (secondary materials include items such as films, sound recordings, photographs, and written documents.)
- Bearers' ownership of ICH-derived materials that are legally owned by the creator of the document, recording, and/or database embodying ICH
- Issue of joint ownership in work involving ICH material

Prior Informed Consent or Approval

- Issue of an approval or an agreement related to collecting ICH information
  - Identifying the authority who has been granted power to approve (permission or agreement from bearers, practitioners, communities, or other stakeholders)
  - Determining the terms and scope of the approval or agreement from bearers, practitioners, communities, or other stakeholders

- Prior informed consent to the reproduction, use, and display of ICH material
- Bearer's, practitioner's, or community's objections to utilising and disseminating information
- Determination of the format of agreements: consent forms to access and use ICH materials, licenses, undertakings, etc.

Maintenance of Collected Information

- Determination of data classification in an area of protection under IP related law
- Determination of the database to be built according to its uniqueness in IP related law

Adaptations

- The issue of unauthorised adaptations
- Issue of legal rights that could arise during secondary utilisation of information
    - Permission from stakeholders about secondary utilisation, such as broadcasting, advertising, publicity, etc.
    - Intellectual property of the secondarily used information

Secret, Sacred, or Confidential ICH

- Issue of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected
- Problems regarding disclosure of secret information

Access, Control, and Use

Communities' Involvement
- Determination of communities' participation in the recording, digitisation, and dissemination of ICH for safeguarding, promotional, and income-generating purposes
- Communities' involvement in the decision-making processes related to the management of ICH elements held by institutes
- Authority of ICH subjects and their capacity to manage information once produced
- Bearers' agreement on modification or transformation of ICH materials

- Determination of communities' legitimate rights holders
- Management of access and use of ICH information by communities
- General public's interests to benefit from and enjoy the information building and sharing activities of ICH

Relationships
- Issue of database users' interaction with bearers for use of ICH
- Issue of relationships between an institution that holds the material, and a bearer, be it the owner, custodian, or manager.

Terms of Use of ICH Material
- Code on management, access, and use of ICH information
- Compliance with restricted ICH use under customary laws and practices
- Establishment of IP-related protocols, policies, and practices

Infringement of Rights and Responsibilities

- Infringement of intellectual property rights existing in the ICH information
  - Copyrights in literary, musical, and artistic expressions
  - Related rights (performers', phonograms', producers', and broadcasting organisations' rights) in performances, rituals, recordings, etc.
  - Trademark in cultural names, signs, indications, marks, symbols, etc.
  - Indigenous know-how and knowledge protected under trade secrets, patent law, etc.
  - Design rights in cultural textiles, poetry, etc.
- Legal responsibilities of institutes leading the activities
  - Vis-à-viscommunities from which the ICH was collected
  - Vis-à-visusers to whom ICH is delivered
  - Vis-à-viswebsite viewers of digitised ICH collections

Licensing

- Licensing by institutions of ICH material in a recording, database, or collection
- Terms of licensing
- Content of ICH material to be licensed
- Identification of the exact licensee and licensor

Bearers' Moral Rights

- Disclosure of ICH ownership information on any related use
- Problems regarding the determination of the range of disclosure
- Case of derogatory work related to ICH
- Respect of bearers' right to integrity

Sharing of Benefits

- Issue of respect of bearers' economic rights
  - Right to translation
  - Right to reproduction
  - Right to communication to the public
  - Others
- Problems regarding the distribution of profit that comes from utilising and disseminating information
  - Economic compensation for bearers, practitioners, or communities
  - Economic compensation for other affiliated organisations or individuals, such as collectors, researchers, agencies, or collective management organisations

Unfair Use or Misuse of ICH

- Misappropriation of ICH material by an institute
- Misappropriation of ICH material by a third party

Portraits, Filming, or Reproduction of ICH Material

- Right to use for commercial purposes
- Respect of motion pictures right in ICHdigitisation
- Moral rights of bearers in portraits or films
- Respect of the sacredness, secret, or sanctity of portraits or films
- Right to reproduction in digitising a photograph
- Exception to copyright in cases of promotional or educational purposes

Use of ICH as Trademark, Geographical Indication, or Domain Name

- Bearers' approval in using ICH material as logos or product identifiers
- Misuse of cultural words as trade name, domain name, or geographical indication

7) Have any of the above issues arisen in any of the stages at your institute?

□   Yes

□   No

If yes, please describe the issue by answering the questions below. If you have more than one issue, please provide a set of answers for each one.

a) Please explain the activity your institute did.
   (a) Name of project
   (b) Sort of activity
       (What kind of information building and sharing activities did your institute do in the project?)
       Ex) identification, documentation, inventory making, database building, etc.
   (c) Objective of project

b) What kinds of issues have arisen?
   □   Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities
   □   Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities
   □   Problems regarding identifying the nature of rights existing in ICH
   □   Problems regarding ownership of ICH
   □   Problems regarding prior informed consent or approval
   □   Problems regarding maintenance of collected Information
   □   Problems regarding adaptations
   □   Problems regarding secret, sacred, or confidential ICH
   □   Problems regarding bearers' moral rights
   □   Problems regarding sharing of benefits
   □   Problems regarding unfair use or misuse of ICH material
   □   Problems regarding portraits, filming, and reproduction
   □   Problems regarding the use of ICH as a trademark, geographical indication, or domain
   □   Other (Please indicate the issue)

c) Please indicate all stages in which the issue has arisen.
   □   The stage for preparation
   □   The stage for collecting and creating information
   □   The stage for maintaining information
   □   The stage for processing and producing information
   □   The stage utilising and disseminating information

d) What was the cause and content of the issue? (over 500 words in English)
e) Who were the stakeholders involved with the issue?
f) What did the institute do to resolve the issue? Please describe the process and the results of the resolution. (over 500 words in English)
g) What was the institute's principle in the process of dealing with the issue?
h) Does your institute have a guideline, policy, or protocol regarding legal issues that could arise during the stage?
   □ Yes
   □ No
   If yes, please attach the copy of the guidelines, policies, or protocols.
i) Please attach any other forms (ex. form of agreement) that were used during the stage.

8) Through your institute's experience, what kind of legal issues regarding IP aspects of ICH do you think could arise in each stage? (over 400 words in English)

9) In relation to [D-7] and [D-8], what kind of alternatives, guidelines, policies, or protocols do you think should be prepared? (over 400 words in English)

E. Institute's Activities

Here are questions on issues that could arise in the entire process of the institute's activities.

10) What kind of relationship does your institute have with ICH subjects, such as informants, collectors, researchers?
   Ex) one-way asymmetrical relationship, one-way symmetrical relationship, two-way asymmetrical relationship, two-way symmetrical relationship, owner vs. custodian, etc.

11) Does your institute include intellectual property issues in the institute's vision, purpose, function, polices, etc.? If yes, please indicate your institute's vision, purpose, function, polices, etc. that addresses intellectual property issues.

12) Does your institute have a representative legal dispute regarding the institute's information building and sharing activities?
   □ Yes
   □ No

If yes, please describe the case. If you have had more than one case, please provide a set of answers for each one.

   a) Name of project
   b) Sort of activity
   c) Purpose of project
   d) Procedures and context (over 200 words in English)
   e) Issue activated (over 200 words in English)
   f) Response to the issue
     (Who or what department was in charge of the issue? How did the department cope with the issue? Were the principles or guidelines adjusted to the case? [over 300 words in English])

13) Does your institute have a case of guaranteeing the rights and the participation of ICH subjects (bearers, practitioners, or communities) in the institute's information building and sharing activities?

   □ Yes
   □ No

If yes, please describe the case below. If you have more than one case, please provide a set of answers for each one.

   a) Name of project
   b) Sort of activity
   c) Purpose of project
   d) Participation of subject in the procedure (over 300 words in English)
   e) Rights of subject guaranteed
   f) Please attach related documents.

14) Have policies or guidelines for protecting intellectual property rights of ICH in the process of information building and sharing been well organised in your institute?

   □ Yes
   □ No

If yes, please provide information on the policy or the guideline, including

   a) Context of the policy or the guideline
   b) Please attach related forms. (ex. form of agreement)

F.   Related Legislation

15) In your institute's country, is legislation or the legal system for the protection of cultural heritage organised?

   □ Yes
   □ No

If yes, please describe the legislation or the legal system below.
a) Full title
b) The relevant sections or paragraphs
c) Date of coming into force
d) Details of the office responsible for administering the laws
e) Copies of laws and regulations
f) What are issues or problems regarding IP aspects of ICH that cannot be covered by the legislation or the legal system described above?
g) What kind of legal systems or devices need to be added for the protection of IP aspects of ICH?

If no, please provide additional information below.
h) Legal systems or regulations expected to be issued
i) Status of processing

G. Future Plans

In case your institute has not been equipped with policies or guidelines for protecting intellectual property related aspects of ICH, please answer the following questions.

16) Does your institute have plans for organising guidelines or regulations for protecting ICH intellectual property related rights in the process of information building and sharing?
    □ Yes
    □ No
    a) If yes, please describe your institute's future plans (manner and context) for organising guidelines or regulations. (over 250 words in English)
    b) If a future plan is in the process of being organised, please provide additional information below.
       (1) Guidelines or regulations expected to be organised
       (2) Status of processing

17) Does your institute have plans for projects regarding the protection of intellectual property related rights in the process of information building and sharing?
    □ Yes
    □ No

If yes, please describe the project below.
    a) Purpose of project
    b) Term and duration
    c) Context
    d) Anticipated procedures

H. Other Opinions

18) Please provide any kind of information related to the purpose of this survey.

4. Contacts

Please provide contact information of the person who is in charge of this survey report.

Name	
Position	
Department	
Address	
E-mail	
Telephone	
Mobile	
Fax	

5. Reference materials

Please provide all attached materials with information below.

Distinction (relevant question)	
Form of material	
Name	
Source	
Context	

6. Results

Replies to this questionnaire should kindly be sent no later than the prearranged date to the following address.

Ms Saymin Lee (Information & Research Section)
Intangible Cultural Heritage Centre for Asia and the Pacific (ICHCAP)
National Research Institute of Cultural Heritage Bldg (4F)
132 Munji-ro, Yuseong-gu, Deajeon 305-380
Republic of Korea
Tel. +82 42 820 3513 / Fax. +82 42 820 3500

The survey may also be e-mailed to the address below, but in addition to the e-mailed materials, please kindly send the requested references materials to the above address.

E-mail: ichcap@gmail.com
       smlee@ichcap.org

Reference materials can be submitted using Webhard.

Address: www.webhard.net
Id: ICHCAP
Password: ichcap

Thank you for your valuable contribution to the survey.