

The Essence and Attribution of Intellectual Property Rights Generated in the Digitization of Intangible Cultural Heritage

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Abstract : Digitizing intangible cultural heritage is a complex and comprehensive process from which sorts of intellectual property rights may be generated. Digitizing may be a repacking process of cultural heritage, which creates copyrights; recording folk songs and indigenous performances can create 'related rights'. At the same time, digitizing intangible cultural heritage may infringe the intellectual property rights of others unintentionally. Recording religious rituals of indigenous communities without authorization can violate the moral right of the ceremony participants of the community; making digital copies of rock paintings may infringe the right of reproduction. In addition, several parties are involved in the digitization process: indigenous peoples, museums, and archives can be holders of cultural heritage; companies and research institutions can be technology providers; internet platforms can be promoters and sellers; the public and groups above can be beneficiaries. When diverse intellectual property rights versus various parties, problems and disputes can arise easily. What are the types of intellectual property rights generated in the digitization process? What is the essence of these rights? Who should these rights belong to? How to use intellectual property to protect the digitalization of cultural heritage? How to avoid infringing on the intellectual property rights of others? While the digitization has been regarded as an effective approach to preserve intangible cultural heritage, related intellectual property issues have not received the attention and full discussion. Thus, parties involving in the digitization process may face intellectual property infringement lawsuits. The article will explore those problems from the intersection perspective of intellectual property law and cultural heritage. From a comparative approach, the paper will analysis related legal documents and cases, and shed some lights of those questions listed. The findings show, although there are no intellectual property laws targeting the cultural heritage in most countries, the involved stakeholders can seek protection from existing intellectual property rights following the suggestions of the article. The research will contribute to the digitization of intangible cultural heritage from a legal and policy aspect.

Keywords : copyright, digitization, intangible cultural heritage, intellectual property, Internet platforms

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