

Dispute Resolution Paradigm for Intangible Cultural Heritage and Its Cultural Interpretation under Intellectual Property Framework

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Abstract: Intellectual Property remains pivotal in safeguarding Intangible Cultural Heritage (ICH). While China's ICH-safeguarding has established legal frameworks, trademark and copyright infringements persist in commercialization, necessitating urgent coordinated public-private legal protection. Chaozhou City, a cultural hub in Lingnan, pioneers pre-litigation mediation paradigms to resolve IP disputes. Case studies of its mediation center in Chao'an District demonstrate institutional enhancements for ICH-safeguarding, though challenges persist: limited mediation scope, insufficient application scenarios, and difficulties in cross-regional infringement identification. The interaction between ritual norms ("Li") and folk customs ("Su") within local traditions further informs this exploration. Concluding reflections address folkloristic perspectives on optimizing ICH-safeguarding paradigms.

Keywords: Intangible Cultural Heritage; Intellectual Property Rights; Pre-litigation Mediation; Legal Folklore Studies

1. Introduction

How to reconcile the tension between the communal nature of intangible cultural heritage (ICH) and the private nature of intellectual property rights? While affirming the public attributes of ICH rights, how can we clarify the cultural and economic interests of different stakeholders^[1]? From the perspective of intellectual property legal protection, academic consensus has been reached at the jurisprudential level regarding three approaches: public law protection (emphasizing national and public interests) as the fundamental premise, private law protection serving as an incentive for creative transformation by rights holders (focusing on individual rights), or a comprehensive public-private law protection model^{[2][3]}. However, in micro-level practices, the high incidence of infringements has necessitated expanded pathways for resolving ICH-related intellectual property disputes, with pre-litigation mediation beginning to take root and show promise. This paper attempts to "discern broader patterns through specific cases" by integrating judicial practice with cultural interpretation, thereby responding to practical demands in the field.

2. Ownership of ICH Rights: Academic Debates and Legal Practices Coexist

2.1. The Longstanding International Controversy over Rights Attribution in ICH-Safeguarding

The concept of intangible cultural heritage (ICH) has been intrinsically linked to "intellectual property" since its inclusion in UNESCO's agenda. In the 1970s, Bolivia's appeal regarding ownership and adaptation rights disputes over the traditional South American folk song El Condor Pasa (The Condor's Flight) marked a milestone in the birth of the ICH concept and related conventions^[4]. For decades, international organizations and academia have held divergent value orientations—"shared" versus "private"—regarding ICH rights attribution. While UNESCO leads safeguarding efforts, the World Intellectual Property Organization (WIPO) plays a contradictory role in this process. Between 1978 and 1982, these two international organizations held multiple meetings. The competition between different national forces behind them is also intriguing. For instance, developed countries outside Europe (represented by North America, Japan, South Korea, and Australia) advocate maintaining a shared state without legislative protection for folk literature and art, which is related to their cultural resources, historical traditions, and processes of national construction (such as immigrant nations). This stance

reflects the choice made when existing cultural resources are relatively scarce. On the other hand, developing countries in Africa, the Asia-Pacific region, and Latin America emphasize "private property" and establish regional protections with legislative safeguards. In 1989, at the 25th session of UNESCO, the 'Recommendation on the Safeguarding of Traditional Culture and Folklore' was passed, marking a formal divergence between the two organizations. It was not until 2006 that the Convention for the Safeguarding of the Intangible Cultural Heritage officially came into effect.

Academically, unlike intellectual property scholars, folklorists tend to prioritize the safeguarding of "cultural significance" over "intellectual property rights." They emphasize the communal nature of ICH and the crucial role of community participation, thereby sidestepping the complex issue of "private rights" inherent in intellectual property frameworks^[5]. Despite these differing perspectives, scholarly consensus has emerged on statements such as: "Intangible cultural heritage sustains the cultural identity and continuity of related communities, groups, and individuals, being transmitted through generational practices, and holds significant cultural meaning and social function in contemporary society"^[6].

2.2. Current Status of Legal Protection of China's ICH Intellectual Property Rights

In the 'Copyright Law of the People's Republic of China,' enacted in 1990, only one indicative provision was made in Article Six: "Measures for the protection of copyright of folk literature and art works shall be separately stipulated by the State Council." In 2011, the 'Law of the People's Republic of China on Intangible Cultural Heritage' was promulgated, clearly stipulating that the state takes measures such as inheritance and dissemination to safeguard ICH; the use of ICH should respect its form and connotation, prohibiting the use of ICH in ways that distort or denigrate it. For behaviors involving distortion or denigration in the use of ICH, the competent authorities of the Ministry of Culture under the State Council and local cultural departments at all levels should take necessary actions to investigate and safeguard. Among the 92 guiding cases announced in 17 batches by the Supreme People's Court, only three involve ICH^[7], indicating a relatively scarce supply of legislation concerning ICH intellectual property rights. Academia continues to discuss whether the cultural public attributes emphasized in the ontology of ICH can develop compatibly with the intellectual property model aimed at incentivizing private rights protection and innovation.

However, in the practice of safeguarding and developing ICH, the priority of intellectual property protection is clearly subordinate to urgent safeguarding work. Scattered ICH projects across the country must first undergo systematic archiving and recording before considering issues of inheritance, development, and intellectual property protection. Indeed, intellectual property protection also faces certain difficulties^[8], such as inconsistencies between infringement costs and enforcement costs; the low intellectual property value of ICH projects themselves, where the exclusive economic benefits advocated by intellectual property are difficult to quantify in ICH projects; weak rights awareness among inheritors, unclear group versus individual attribution of rights, and the relationship between ICH inheritors and right holders not being entirely equivalent, etc. Overall, the protection of ICH intellectual property requires not only subject awareness from inheritors and intellectual support from academia but also impetus and practice from judicial and law enforcement departments such as courts and cultural protection units.

2.3. Possibility of Applying Pre-litigation Mediation in the Field of ICH Intellectual Property Rights

The right to litigate is a fundamental civil right, while the pre-litigation mediation system serves as an alternative dispute resolution mechanism, primarily targeting cases with clear legal relationships and minor disputes. It has demonstrated significant advantages in alleviating judicial pressure and reducing administrative costs. In intellectual property protection, this system has been widely applied to disputes involving trademarks, patents, and online copyrights. However, its application in the realm of intangible cultural heritage (ICH) remains in its infancy. From the perspective of coordinated "public" and "private" legal protections, some regions have adopted administrative public interest litigation as an entry point. For instance, in 2023, Suzhou procuratorial organs utilized public interest litigation to urge administrative authorities to fulfill their duties^[9], addressing issues such as machine embroidery being falsely marketed as handmade Su embroidery. Simultaneously, in response to frequent disputes over the design patents of Su embroidery products and copyright conflicts over Su embroidery drafts, the authorities promoted industry associations to refine private rights protection mechanisms, including trademark registration and patent applications.

While top-down public interest litigation can coordinate multiple administrative forces for industry-

wide governance, resolving individual infringement disputes still requires practical implementation through avenues like pre-litigation mediation. Disputes related to ICH intellectual property differ from ordinary civil and commercial cases due to the technical complexity involved in identifying infringements (e.g., re-creation of works, blurred boundaries between imitations and originals) and evidentiary challenges. These cases emphasize a "joint mediation mechanism" involving multiple stakeholders, where mediators must possess both expertise in intellectual property law and experience in ICH safeguarding, alongside a strong sense of social responsibility. The Guangdong Intangible Cultural Heritage Legal Aid Lawyers Group, established in 2018, exemplifies the exploration of societal participation in ICH intellectual property protection. This organization currently engages in dispute mediation, legal aid, intellectual property appraisal, and cultural-creative development initiatives.

3. Local Judicial Practice: A Case Study of the Chaozhou Chao'an

3.1. Institutional Background and Primary Functions

As a coastal cultural hub and pivotal center of Lingnan civilization, Chaozhou City has been at the forefront of intangible cultural heritage (ICH) safeguarding in Guangdong Province. On April 9, 2023, the Chao'an District People's Court collaborated with the Chao'an District Intangible Cultural Heritage Safeguarding Center to establish China's first judicial-ICH co-established mediation institution - the Intangible Cultural Heritage Safeguarding Mediation Center, officially inaugurated at the Dawu Clay Sculpture Museum^[10]. This pioneering initiative innovatively incorporates intellectual property disputes within ICH domains into judicial mediation frameworks.

The institutional architecture demonstrates multi-stakeholder collaboration characterized by organic coordination: judicial authorities assume leadership roles, cultural safeguarding agencies provide professional support, while local ICH enterprises and inheritors contribute operational venues and practical safeguards. Post-establishment, the center has recruited six specialized mediators with dual expertise in dispute resolution and ICH conservation. Adopting a "judge + mediator" collaborative model, it delivers pre-litigation mediation, investigative seminars, and legal consultation services tailored for ICH practitioners and enterprises. To date, four copyright protection disputes involving original ICH creations have been successfully resolved. This institutional innovation achieves dual objectives: resolving ICH-related intellectual property conflicts at their source while enhancing risk prevention awareness among inheritors. Notably, it addresses unintentional infringement during creative processes through proactive judicial interventions, thereby providing elevated legal safeguards to bolster regional ICH preservation endeavors.

3.2. Case Analysis of Core Mediation Practices

The mediation procedures of this center primarily reference the regulations for intellectual property dispute mediation, with targeted modifications addressing the status quo of local intangible cultural heritage (ICH) preservation and practical challenges in IP protection. The key procedural stages include: 1) voluntary application by both parties or court-recommended mediation; 2) court acceptance review and mediation team formation; 3) document exchange and evidentiary organization; 4) mediation conference communication; and 5) mediation agreement execution or suspension. As original case documentation falls outside government information disclosure requirements, this analysis focuses on case discussion.

A representative case involves Zhen, a provincial-level ICH inheritor (wood carving craftsmanship), who identified live-streaming host Jia selling crafts on e-commerce platforms bearing striking resemblance to his copyrighted "Chaozhou Traditional Wood Carving Fish Ornament." Investigation confirmed Zhen had completed copyright registration two years prior, while Jia's unauthorized reproduction and distribution violated reproduction rights and information network dissemination rights under Article 10 of China's Copyright Law. Following unsuccessful negotiations, Zhen sought judicial remedy. During preliminary review, the court recognized this case met pre-litigation mediation criteria under Article 122 of the Civil Procedure Law, highlighting dual exemplary significance: 1) protection of ICH inheritors' intellectual achievements; and 2) manifestation of digital-era ICH infringement patterns. The court subsequently activated a pre-litigation joint mediation mechanism through the Chao'an District ICH-Safeguarding Mediation Center.

In specialized mediation procedures, mediators conducted three-phase analysis: First, substantial similarity comparison identified distinctive expressive elements in Zhen's work (e.g., scale patterns and

dynamic sculpting techniques). Second, technical examination revealed significant feature overlap in Jia's products. Third, application of aesthetic significance criteria under Article 4 of the Copyright Law Implementation Regulations confirmed substantial similarity. Countering Jia's "universality of fish imagery" defense, mediators clarified the judicial principle that "public domain elements achieve originality through individualized arrangement," reinforced by precedent analysis (e.g., "Clay Figure Zhang" ICH infringement case), while emphasizing potential punitive damages under Article 54 for willful infringement. The mediation process incorporated ICH safeguarding imperatives, invoking Article 44 of China's Intangible Cultural Heritage Law to demonstrate how safeguarding inheritors' exclusive rights sustains cultural ecosystems. This enlightenment prompted Jia's recognition of infringement impacts on regional cultural continuity. After tripartite mediation sessions, parties reached agreement: Jia ceased infringement with public apology, while Zhen waived financial claims.

This case exemplifies institutional advantages and innovative approaches in pre-litigation mediation mechanisms for ICH-related IP disputes, reflecting coordinated efforts among judicial organs, cultural institutions, and social stakeholders. By balancing legal authority with cultural sustainability considerations, such mediation provides replicable conflict resolution paradigms for IP compliance in digital ICH dissemination.

3.3. Summary of Existing Issues

Although the scope of protection under intellectual property law diverges from the ontological attributes of intangible cultural heritage (ICH), numerous intellectual property disputes encountered in practice have brought this theoretically unresolved issue into the purview of both the public and judicial authorities, while simultaneously manifesting as practical challenges in the daily lives of rights holders. It is precisely this reality that underscores the practical applicability and implementability of the institutional mechanisms governing mediation scope and objectives.

However, analysis of the center's establishment context, primary functions, and mediation protocols reveals several limitations: First, within the region, apart from craft-based ICH items that have progressed beyond preliminary conservation phases, existing mediation cases exclusively address copyright disputes, with no engagement in trademark, geographical indication, or patent protections. Given the limited demand for mediation services, the center primarily focuses on legal education for inheritor communities. Second, while situating the mediation center within the premises of the region's most renowned ICH project—the Dawu Clay Sculpture—enhances institutional visibility and brand equity while incentivizing creative innovation, this geographical anchoring raises concerns about equitable protection for other ICH categories requiring urgent intellectual property safeguards, such as folk literature, traditional opera, and ethnomedicine. Third, the center's original mandate targets dispute resolution among ICH rights holders and practitioners within Chaozhou City's Chaoan District. Yet, as internet technologies enable exponential amplification of cultural dissemination, the district's abundant cultural resources are gaining national prominence. This raises operational challenges: how should a locally-based mediation center coordinate resources when addressing cross-regional infringement cases? A pertinent example involves the Yingge Dance^[11], a traditional folk dance from the same cultural region that achieved viral popularity online but faced trademark squatting challenges. In 2022, upon application by Li Junhao—a municipal-level representative inheritor of Puning Yingge—the National Intellectual Property Administration adjudicated the "YingGe" trademark invalidation case, ruling against the validity of the trademark registered by Zheng from Shantou, Guangdong. The Administration determined that "YingGe" constitutes a generic term, and its monopolization through private trademark registration would hinder cultural preservation while generating adverse societal impacts, thus declaring the contested trademark invalid.

4. Constructing a Dispute Resolution Paradigm: "Ritual-Custom Interaction"

Tracing its origins, the establishment of the ICH-Safeguarding Mediation Center in Chaozhou can be attributed to the region's deep-rooted cultural traditions. The Chaoshan area has long upheld a tradition of communal consultation, an unwritten social order embodied through historical institutions such as village scholar councils, customary codes, modern charitable halls, and elder councils. These institutions have played pivotal roles in resolving both minor village affairs (such as weddings, funerals, ancestral hall renovations, deity processions) and major infrastructure projects and land disputes. This practice of folk negotiation finds theoretical support in the academic framework of "ritual-custom interplay": at the societal level, the prescriptive "rituals" (state-sanctioned systems) and spontaneous "customs" (grassroots

practices) coexist in a state of constant tension^[12], embodying both symbiosis and conflict. Mediation thus operates within this dialectic, preserving traditional authority while accommodating practical needs. Through negotiated conflict resolution within clan systems, the normative force of rituals (state policies, clan traditions) dynamically balances with the flexibility of customs (local practices, individual needs), sustaining cultural continuity and social cohesion.

With the acceleration of urbanization eroding traditional village structures and diluting the influence of folk mediation systems, there is an urgent need to preserve and reconstruct customary village codes. However, within concentrated cultural communities—particularly those transmitting intangible heritage skills through lineage-based village apprenticeships—conflicts frequently arise between preservationists and market-oriented innovators. Disputes range from opaque certification processes for heritage practitioners to complex intellectual property infringements (copyright violations, trademark misappropriations). These intricate practical challenges transcend traditional "customary" mediation frameworks, revealing the inadequacy of internal industry regulations. Here, the modern "ritual"—national legal frameworks—intervenes, with state law providing essential support to grassroots governance. Yet rooted in Confucian principles of harmony and moderation, there remains a cultural preference for ethical dispute resolution over litigation. Contemporary civil mediation increasingly incorporates local traditions and indigenous knowledge^[13], with "public order and good customs" becoming legal criteria in judicial decisions. This demonstrates the continued ritual-custom interaction underlying mediation systems. Unlike adversarial litigation, pre-trial mediation emphasizes cultural preservation's public welfare and collective interests while addressing parties' demands (e.g., ceasing infringement, formal apologies). In Chaozhou's Cha'an district, where most heritage disputes involve minimal economic impact within close-knit communities, multi-stakeholder mediation under judicial guidance proves optimal. This approach balances derivative development with dynamic safeguarding, efficiently resolving conflicts through social collaboration while conserving administrative resources.

5. Conclusion and Discussion

Indeed, as the nation's first intangible cultural heritage (ICH) safeguarding mediation center jointly established by a court and a local ICH safeguarding institution, the rule-of-law practices in the ICH domain of Chao'an District, Chaozhou City, are still in the exploratory stage, filling gaps in this field through actual mediation cases. Starting from the fundamental aspect of cultural continuity and publicness, it provides a replicable dispute resolution paradigm for intellectual property compliance pathways in the digital dissemination of ICH. Currently, the nationwide "litigation-free ICH" and intellectual property mediation practices are burgeoning, with ample room for growth from both legal and academic perspectives. The current judicial framework also requires a deeper integration of traditional elements such as "interaction between rituals and customs," constructing a dispute resolution paradigm that conforms to the dynamic inheritance patterns of ICH. It is recommended to expand the scope of mediation, establish a cross-regional infringement prevention and control system, while simultaneously enhancing the normative transformation of folk customs in the intellectual property rights confirmation process.

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