

Research on Protection of Intellectual Property Rights of Intangible Cultural Heritage

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Abstract

China is a country with a long history. The working people have created a lot of cultural wealth in the long history of development and left a lot of intangible cultural heritage for us. The intellectual property rights protection is an effective means to ensure the dissemination of intangible cultural heritage. This paper expounds the necessity and feasibility analysis of intellectual property protection of intangible cultural heritage and puts forward the strategies of the protection of the intellectual property of intangible cultural heritage to provide some references for the related researchers.

Keywords: intangible cultural heritage, intellectual property rights, inheritance, protection

1. Relationship between intangible cultural heritage and intellectual property rights

Human beings apply their wisdom to create a large number of rich and colourful cultures in the long history of human history, which are our precious wealth of all mankind. But in the rapid development of the social economic background, many ethnic traditional arts has gradually disappeared or was coming to an end, they have gradually been destroyed and forgotten, the intangible cultural heritage protection is urgent. Intangible cultural heritage refers to people of all nationalities as part of generations of traditional cultural expressions for the national culture, and objects and places associated with traditional forms of culture therefore, must realize the construction of the mechanism of intellectual property protection of intangible cultural heritage, need an intangible cultural resources support. The cultural connotation can protect the reconstruction of the

intangible culture. In cloud computing, big data and intelligence of the formation and development of the perplexing stage, promote the dissemination and application of intangible culture, establish and cultivate the cultural consciousness and confidence to realize the change with the times of transformation and utilization. The core connotation of the intangible cultural heritage is that it is a kind of intellectual creation, protection of it is consistent with the legislative purpose of modern intellectual property law, in order to encourage social innovation, promote technological progress and protect people's intellectual achievements. The object of intellectual property rights is the spiritual products created by people in the fields of science, technology and culture. Obviously, in the protection of the object, they are coincident with the local. On the specific features, the intangible cultural heritage is also consistent with the protection of the intellectual property law.

2. Necessity and Feasibility of Protection of Intellectual Property Rights of Intangible Cultural Heritage

2.1 Necessity Analysis

The application of intellectual property protection in intangible cultural heritage can ensure the use quality. It avoids the use of the lawless elements and the intangible cultural heritage cannot be reasonably applied, developed and protected. In the condition of protection of intellectual property is applied to the intangible cultural heritage, must obtain the relevant departments agreed to license, and also need to provide the appropriate price to ensure the development of the intangible cultural heritage and application of science and rationality, which can not only protect individual intellectual property rights, but also conducive to the development of cultural innovation of the whole society. The protection of intangible cultural heritage, Heritage Foundation is weak, lack in china. In addition, under the impact of the modern civilization and popular culture, the phenomenon of the abuse and distortion of the intangible cultural heritage is increasing, and the related intellectual property disputes are emerging. But the legal protection of intangible cultural heritage in China is not a system, especially the protection of intellectual property rights is not yet mature, cannot keep up with the needs of judicial practice. Driven by the commercial interests, some short-sighted workshops crudely made counterfeiting, and even cause the loss of cultural heritage in order to cater for the market distortions. The status quo of the protection of intangible cultural heritage in China is not optimistic. The intellectual property protection of the intangible cultural heritage is to maintain cultural diversity, stimulate creative art, an important means of promoting the sustainable development of society and culture. It can gradually improve China's cultural soft power and the protection awareness of the intangible cultural heritage to solve the crisis, to ease the situation. Economically, the intangible cultural heritage can meet the growing spiritual and cultural needs of the people, with a strong market outlook. It can also stimulate the development of tourism,

catering and other related industries, which is a good brand to promote regional economic growth.

2.2 Feasibility Analysis

The intangible cultural heritage is closely related to the object of intellectual property. As a kind of immaterial intellectual achievement, it embodies the accumulation of human's spirit creation, and it meets the requirement of the object of the intellectual property system in general. Theoretically speaking, intangible cultural heritage has the characteristics of intellectual property law protection object, so it can be incorporated into the scope of protection of intellectual property law. The ways for the protection of intangible cultural heritage should be diversified. If under the guidance of the government using administrative power by public law protection, will get strong protection and execution, but ignores the intangible cultural heritage holders, the enthusiasm of the traditional communities and residents frustrated, not conducive to the inheritance of intangible cultural heritage and development. But the intellectual property system essentially solves the problem of the ownership of knowledge as a resource, and it is a kind of mechanism of interest. Intellectual property can effectively clear delineation of ownership, inheritance of individuals or groups for the intangible cultural heritage of ownership, and to prohibit others or his family of the intangible cultural heritage is violated, the maximum to encourage every individual to pursue self-interests and values, make use of the intangible cultural heritage to maximize. The protection of intellectual property rights can generate endogenous motive force to stimulate individual potential, which is a kind of effective interest incentive and regulation mechanism. The progress of the society makes the object of intellectual property right. Even if the current protection of intangible cultural heritage is not fully applicable to the degree of intellectual property rights, it also can be changed with the system reform and development.

3. Strategies of Protection of Intellectual Property Rights of Intangible Cultural Heritage

3.1 Diversified protection system

Intangible cultural heritage is the accumulation of traditional Chinese culture for thousands of years, the accumulation of crystal. We have a lot of intangible cultural heritage cannot determine the specific generation, the right to belong to no known. The duration of protection of intellectual property rights is also very difficult to use the relevant provisions of the copyright protection period to clear. Some of the intangible cultural heritage and the copyright of the gap is far more distant. Therefore, we should determine the specific protection mode according to the actual situation of the intangible cultural heritage. China has announced a national intangible cultural heritage list, some of the projects for the protection of copyright should ancient folk stories and our current copyright law from the

protection of the heritage of the people is undoubtedly there is a disconnect, but the right to protection from generation to generation people continue to work with creative achievement is perfectly logical and reasonable. Therefore, it is in line with the relevant provisions of the copyright law to protect the Chinese people from the creation or consolidation of the works by the copyright law. The intangible cultural heritage and diverse types of various forms of intellectual property system design cannot be exhaustive, so in the construction of intellectual property rights protection mechanism, the government should play the organ in the maintenance of cultural heritage, through legislation and policy in accordance with local and national characteristics, the formation of a full range of protection without dead in the form of cover. We combine the intellectual property rights of the private law means and the power of the administrative power to fully to form a combination of protection.

3.2 Long-term protection system

The traditional intellectual property has certain limitation period, ranging from ten years to decades, But compared to the inheritance of intangible cultural heritage, the protection period is still relatively short, and the term of protection in intellectual property rights after the expiration of the various protection of intellectual property rights will not have characteristics of legal protection, which has become public property so the intellectual property protection of traditional time period cannot effectively ensure the protection of the intangible cultural heritage requirements. In this context, we need to establish a long-term mechanism to protect the intellectual property protection of the intangible cultural heritage, but also ensure that the corresponding rights of the intangible cultural heritage can inherit and develop continuously, as long as meet the demand of development, we should continue the renewal, so as to ensure that the intangible cultural heritage can be obtained for a long time continuous protection. Reasonable solutions is to develop a non-material cultural heritage is different from the ordinary intellectual property protection deadline, the term of protection of intangible cultural heritage characteristic should be long-term should also be modeled on the relevant regulations of registered trademark renewal of China's current trademark law, allowing the inheritance of intangible cultural heritage of renewal the intellectual property rights. Different from the registered trademark is in compliance with the relevant conditions strictly under the condition that the number of people of non-renewal of intellectual property right of intangible cultural heritage is not restricted.

3.3 Limited protection system

Due to the great differences between the value appeal, the right attribute, the subject and the object, the protection of the intangible cultural heritage is limited. This kind of limitation will not be a breakthrough in the short term because of the development of the intellectual property system. And the intangible cultural heritage of the main interests are diverse, is the diversity of human culture, is part of a country's cultural sovereignty, said the stakeholders from the horizontal

structure for mankind, countries, groups and creators disseminators and users, the interests of the main structure from the vertical and the traditional knowledge of contemporary and future generations. But more protection of intellectual property rights of users, all of the other interests, especially the state, social interests cannot be taken into account. Therefore, in the national economic and cultural environment, the protection of intangible cultural heritage should pay attention to the balance between individual interests and social interests cannot fully uphold the spirit of the sacred private property. In the protection of intellectual property rights, while the national collective interests of the community in conflict, on the basis of the principle of limited protection, timely make reasonable concessions. Intellectual property laws in order to stimulate the people's creativity, giving the right to the subject of special sex, in addition to the parties agree or legal permission, the discharge of other people enjoy. Although the specificity of the intangible cultural heritage is not proprietary so powerful, they are still similar in many aspects.

4. Conclusion

With the rapid development of China's spiritual civilization construction, we must attach importance to the protection of intellectual property rights of intangible cultural heritage to ensure that our country's intangible cultural heritage can be sustained and development. At the same time, we should improve all kinds of protection systems to ensure that the intangible cultural heritage of our country has been effectively protected.

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