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Intangible Cultural Heritage  
and Comparative Law



# Protection of ICH in Korea

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# HOW TO PROTECT?

Legal Protection as Intellectual Property  
vs.  
Preservation as it is.

# ICH WITH INTELLECTUAL PROPERTY LAW

- The Feature of ICH: The results developed or sustained over the centuries within a community
- Finding from TK's Feature
  1. The collective nature of a creative process
  2. The unclear ownership

# PATENT

- A statutorily granted monopoly to an invention for a limited period
- Requirements: novelty, non-obviousness and usefulness
- Issues
  - 1) No novelty
  - 2) No creator of the inventive step

- Not fit for patent protection
- A few cases of patent registration
  - Improved national archery and its manufacturing method
  - Mold composition for high-print metal type casting
  - Manufacturing method of Korean paper for backing paper
- Several nullified patents

# COPYRIGHT

- Subject of Protection: Traditional cultural expression
- Requirement of Copyright: Originality
- Without fixation under copyright law in Korea
- No originality and identifiable author in traditional cultural expression
- Hiddink necktie case: Adaptation of Geon, Gon, Gam, Ri and Taegeuk

# TRADEMARK

- Local community as the creator of ICH
- Protection of indication of the source of product
- Requirement:  
Registration as mostly collective mark or certification mark with geographical indication
- The product originated only from ICH can affix the mark
- ICH can be protected indirectly under trademark law

# ICH PRESERVATION INSTITUTION

- Preservation as alternative way to protect ICH
- Cultural Heritage Administration
  - Part of Missions:  
Conservation of cultural heritage,
  - National Intangible Heritage Center under Convention for the Safeguarding of the Intangible Cultural Heritage

- The Missions of National Intangible Heritage Center:  
Conservation, transmission, research, investigation, archiving  
and promotion of ICH
- Korea Cultural Heritage Foundation under Cultural Heritage  
Protection Act
- The Missions of Korea Cultural Heritage Foundation:  
Managing concerts, exhibitions, and cultural experience  
programs for the transmission and dissemination of intangible  
heritage

# CULTURAL HERITAGE PROTECTION ACT

- Enacted in 1962
- The most recent amendment in 2022
- Establishing fundamental principle of protection for both tangible and intangible cultural heritage
- Preservation and promotion of intangible cultural heritage under the Act on the Safeguarding and Promotion of Intangible Cultural Heritage

# THE ACT ON THE SAFEGUARDING AND PROMOTION OF INTANGIBLE CULTURAL HERITAGE

- Basic Principle: Maintaining the archetype of ICH
- Also it shall include:
  - cultivation of the national identity
  - transmission and development of traditional culture
  - realization and enhancement of the value of intangible cultural heritage

- Successors of ICH: the center of transmitting and developing ICH
- Support for Transmission: By State or local government
  - Support to successors in purchasing raw materials for traditional craft products
  - Support for facilities and equipment necessary for the performance, exhibition, etc. by successors
  - Support for activities of successors for elementary and secondary education and lifelong education

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**THE END**