

Inheritance and development of China's non-material cultural heritage from the perspective of intellectual property protection

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Abstract: In the process of China's historical progress and social development, people of all ethnic groups have created rich non-material cultural heritage through long-term production and living practices, which is a valuable spiritual wealth. While affirming and enjoying the progress of human science and technology, we need to pay more attention to the survival and continuation of non-material cultural heritage. From the legal point of view, this paper systematically expounds the concept and protection purpose of non-material cultural heritage, analyzes the feasibility of intellectual property protection of non-material cultural heritage, and on this basis, puts forward relevant suggestions to improve the protection of non-material cultural heritage in China, in order to benefit the protection of non-material cultural heritage and the development of intellectual property law.

1. Introduction

Non-material cultural heritage is produced through long-term evolution and development. It is local and diverse, and contains a nation's spirit, wisdom and aesthetic taste. With the continuous development of globalization, various cultures merge and impact each other, and non-material cultural heritage gradually lacks inheritance and disappears [1]. The protection of non-material cultural heritage is facing severe challenges. A large number of non-material cultural heritages are being forgotten, destroyed and even died out, and the development and utilization of many non-material cultural heritages fall into the misunderstanding of commercialization. It is urgent to strengthen the protection of non-material cultural heritage. Among the numerous control measures, the legal system of intellectual property rights plays an important role and becomes an important choice for the protection of non-material cultural heritage.

2. Overview of non-material cultural heritage

Non-material cultural heritage is also called intangible heritage. According to the Convention for Safeguarding non-material cultural heritage adopted by the 32nd General Conference of UNESCO in 2003, non-material cultural heritage is defined as: "It refers to various social practices, concept expressions, expressions, knowledge, skills and related tools, objects, handicrafts and cultural places that are regarded as an integral part of its cultural heritage by various communities, groups and individuals.

Non-material cultural heritage has the following characteristics [2-3]:

(1)Non-materiality

The immateriality of non-material cultural heritage, also known as intangible, is relative to the material production that meets the basic needs of people's material life. It has no physical form in itself, and it must be expressed by people or things to be recognized and perceived by people. It usually exists in different performing arts, people's oral narration, various folk festivals and the concrete practice of traditional handicraft skills.

(2)Nationality

Nationality means that non-material cultural heritage exists in a specific space or a specific group, which is unique to a certain nation and reflects its unique national wisdom, aesthetic concept,

thinking consciousness and values. Generally speaking, non-material cultural heritage is produced in a certain region, which is closely related to the local environment. The unique natural ecological environment, production and living standards, religious beliefs, cultural traditions and customs of a certain region determine the characteristics and inheritance of non-material cultural heritage, which reflects and strengthens the nationality of non-material cultural heritage regionally.

(3)Inheritance

On the one hand, its inheritance teaches its connotation and extension in the form of imitation or performance, which cannot be expressed in words; on the other hand, non-material cultural heritage is inherited and accumulated with the changes of natural social environment and historical conditions in which the inheritance groups or individuals live. This process is slow but not static, and is constantly created and recreated with the development of human society.

(4)Live rheology

There are some changes in the dynamic dissemination of non-material cultural heritage. When the historical and social conditions and natural environment change, the non-material cultural heritage will change accordingly. At the same time, when inheritors, the core of inheritance activities, change, because each specific inheritor has different understanding of culture, and its specific forms of expression will be different, or because different audiences have different preferences, inheritors will give them different forms of expression and even change constantly.

3. Feasibility of intellectual property protection of non-material cultural heritage

3.1. Information attribute

Non-material cultural heritage and intellectual property object are identical in essence. To some extent, the object determines the protection mode. Intellectual property right is to let information creators have some property rights to relevant information, and control the dissemination of information and the use of information by others through this property, so as to recover the cost of creation and obtain certain profits [4]. At present, the international community has begun to recognize the intellectual property protection of genetic resources, and its protection object is the genetic information with actual or potential value in genetic resources. At the same time, the intellectual property protection of non-material cultural heritage is also a development trend.

3.2. Economic value

Non-material cultural heritage is rich in content and all-encompassing, including colorful national costume culture, rich and wonderful folk songs and dances, etc., all of which can become commodities with great commercial value in modern economic market. This also provides feasibility for intellectual property protection of non-material cultural heritage.

Non-material cultural heritage has the economic characteristics of recycling and pollution-free, which can promote economical and environment-friendly economic development model. As the object of intellectual property, it needs to be useful and scarce while sharing information [5]. The economic value of non-material cultural heritage accords with the useful conditions as the object of intellectual property rights, can meet the needs of human development, and is one of the most important sources of human interests. Chinese traditional technologies such as Chinese herbal medicine, batik and wine making are also gradually seeking the protection system of intellectual property rights, and actively responding to unfair competition of other market entities and ensuring their own advantages through the protection of trademarks, patents or trade secrets.

3.3. Openness

Investigating the development trend of intellectual property system, we can see that it is an open system with continuous development and innovation. The openness and development of intellectual property system itself leaves a broad space for intellectual property protection of non-material cultural heritage. Starting from the essence and protection purpose of non-material cultural heritage, it is feasible to discuss the protection system suitable for non-material cultural heritage on the basis

of intellectual property system. Develop a new legal system suitable for the protection of non-material cultural heritage. This is not only the need to protect the non-material cultural heritage, but also the need for the intellectual property system to follow the development of the times.

4. Inheritance and development of non-material cultural heritage in China

4.1. Establish the inheritance system with the right subject as the core

Non-material cultural heritage needs to be expressed by inheritors to make people feel its existence, which is also the fundamental reason that many non-material cultural heritages are on the verge of extinction as inheritors lose their living environment. Therefore, to protect non-material cultural heritage with intellectual property law, the first thing is to innovate the existing intellectual property subject system.

When confirming the subject of rights of non-material cultural heritage, the subject of rights can be an individual, a certain group or organization, or even the state according to the specific circumstances. Obtaining copyright, neighboring right, patent right and exclusive right in a certain way, developing and utilizing the heritage reasonably, and preventing or authorizing the commercial use of outsiders will certainly promote the protection and dissemination of the heritage. When the obligee of non-material cultural heritage is a collective such as a community or ethnic group, it is necessary to establish a collective management mechanism and institution, or adopt an agency and trust system, and a specific institution will exercise the rights on its behalf, including issuing licenses, participating in litigation, distributing interests and safeguarding the objects of the heritage, etc.

4.2. Perfecting copyright protection of non-material cultural heritage in China

Copyright protects the rights of authors of works, and the determination of authors is the primary condition of copyright protection. non-material cultural heritage is the crystallization of intellectual achievements obtained by groups in a specific region through long-term practice, so the subject of its rights may be individuals or groups, or even countries under some special circumstances. Therefore, the author suggests that according to the particularity of non-material cultural heritage, as long as there are inheritors to pass it on, it should be protected by copyright law, which is an indefinite continuation.

The nationality of non-material cultural heritage determines that the intangible right subject has the characteristics of group, and the distribution of interests is set according to the characteristics of group. The property right of group non-material cultural heritage is shared by the group with the right. When the obligee uses the non-material cultural heritage for profit-making activities, it will inevitably involve the problem of interest distribution within the group, so an interest distribution institution can be established according to the benefit distribution system. Patents of non-material cultural heritage can mark the names on the products or certificates related to non-material cultural heritage to prevent the misappropriation of the heritage [6]. In addition, without the permission of the patentee of non-material cultural heritage, no one may use the heritage for profit, unless both parties sign a contract for use and the user pays the relevant fees.

China's non-material cultural heritage has been passed down from generation to generation after thousands of years of historical precipitation, so it is difficult to fully meet the requirements of novelty, and it is difficult for patent applicants of non-material cultural heritage to explain their creativity in detail, so it is necessary to establish a patent system that is more suitable for the protection of non-material cultural heritage. On the one hand, small patents simplify the application procedures, without complicated examination and various types, and the application door is too low; on the other hand, the application time of small patents is short and the cost is saved, which not only meets the requirements of saving non-material cultural heritage first, but also saves expenses for those non-material cultural heritage applicants in remote and poor areas.

4.3. Construction of information exchange system of non-material cultural heritage

Because of the widespread information barriers in the development and utilization of non-material cultural heritage, it is easy to distort the truth. Therefore, it is necessary to establish an information platform. The establishment of an information platform inevitably requires the establishment of an electronic or paper-based non-material cultural heritage database that is easy to retrieve. In the development and application of non-material cultural heritage, the database can greatly promote enterprises to inquire about the non-material cultural heritage information they need. To promote the exchange of information and intelligence, as well as the correct decision support system, in order to reduce the uncertainty in the decision [7]. At the same time, disputes can be effectively avoided and resolved through information exchange and intelligence exchange.

4.4. Improve the management institutions of non-material cultural heritage

China's current non-material cultural heritage management institutions have been gradually established, but they are still not perfect. The joint meeting mainly works by holding regular or temporary meetings to unify and coordinate the protection of non-material cultural heritage, focusing on the formulation and planning of policies and guidelines for the protection of non-material cultural heritage, while the implementation of specific measures has yet to be managed by a special department.

This paper argues that the main functions of China's national non-material cultural heritage management institutions can include [8]: First, be responsible for examination and approval. Responsible for the examination and approval of the non-material cultural heritage of the country for commercial application and development; Responsible for the innovative research results based on the non-material cultural heritage obtained from the country and prepare to apply for the examination and approval of intellectual property rights. Second, the protection of intellectual property rights. On behalf of the national government, raise objections to intellectual property rights granted in other countries that involve the non-material cultural heritage of the country, and take necessary actions to overturn unreasonable intellectual property rights. Third, the establishment of an exchange platform for non-material cultural heritage. Include registration, database establishment, research fund establishment and other services.

5. Conclusions

As the cultural accumulation of China for thousands of years, non-material cultural heritage is the crystallization of the collective wisdom of the Chinese nation. Strengthening and perfecting the inheritance and protection of non-material cultural heritage is conducive to carrying forward and inheriting our traditional culture, enhancing the cultural creativity and identity of people of all ethnic groups, and promoting cultural diversity, so the protection of non-material cultural heritage has extraordinary significance. In the protection of non-material cultural heritage, the state's policy support is important, but if the birthplace and inheritors lose the enthusiasm of continuing to maintain and develop non-material cultural heritage, the policy is tantamount to a drop in the bucket. Therefore, the protection system of non-material cultural heritage should not only reflect the importance of national policies, but also actively mobilize the enthusiasm of the birthplace and inheritors for non-material cultural heritage, so that it can be live transmission, continue non-material cultural heritage and promote the diversified development of culture.

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