

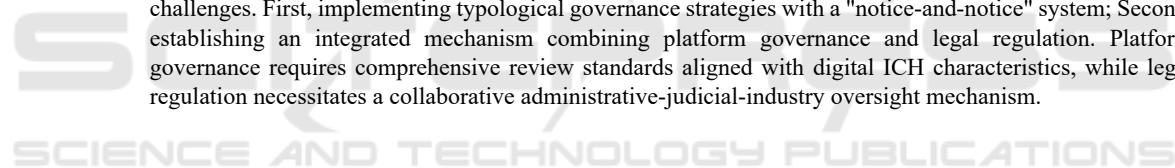
Research on the Determination of Copyright Infringement Liability for Online: Taking the Copyright Protection of Digital Products of Intangible Cultural Heritage as an Example

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Abstract: The digital transformation of cultural dissemination underscores the critical importance of digitizing and disseminating Intangible Cultural Heritage (ICH) for cultural continuity. However, the open architecture of internet platforms substantially disrupts the equilibrium between ICH preservation and innovative development, primarily due to pervasive copyright infringement. This study examines copyright protection for digital ICH products, addressing challenges in identifying online copyright violations and proposing countermeasures. Research reveals that current difficulties in copyright adjudication involve four key dimensions: the criteria for evaluating the originality of digital ICH works, the standards for regulating online platforms' liability for copyright infringement of digital ICH products, the costs of cross-border infringement claim for digital ICH products, and the shortcomings in relevant technologies on online platforms within the ICH domain. Based on this analysis, the study proposes a series of regulatory measures to address these challenges. First, implementing typological governance strategies with a "notice-and-notice" system; Second, establishing an integrated mechanism combining platform governance and legal regulation. Platform governance requires comprehensive review standards aligned with digital ICH characteristics, while legal regulation necessitates a collaborative administrative-judicial-industry oversight mechanism.



1 INTRODUCTION

Intangible Cultural Heritage (ICH), a vital cultural resource, plays an indispensable role in advancing cultural prosperity and development. It embodies both historical memory and the integrated manifestations of traditional craftsmanship, folk arts, performing arts, and related cultural expressions. With the advancement of digital technologies and innovative dissemination methodologies, digital ICH products now serve as critical conduits bridging historical and contemporary contexts, as well as traditional and modern paradigms. These products offer vital means for comprehending and transmitting the essence of traditional Chinese culture.

With the advancement of internet technology, digital products related to ICH have gained prominence. However, these digital derivatives face significant infringement risks throughout their lifecycle—from creation to commercialization. Existing research indicates that intellectual property violations on e-commerce platforms are

predominantly copyright-related; empirical data reveals that copyright infringement constitutes 63.41% of such cases. ICH digital products, typically manifested as textual, visual, or audio-visual formats, exhibit particularly acute copyright vulnerabilities (Bi, 2024). Consequently, balancing ICH's status as public cultural resources against the proprietary nature of their digital derivatives constitutes a critical issue requiring resolution across academic and practical domains.

This study takes the copyright protection of digital products of ICH as an entry point, aiming to deepen the understanding of the current copyright protection dilemma faced in the process of digitizing intangible cultural heritage, to deconstruct the creation chain and the relationship between rights and responsibilities of digital products of intangible cultural heritage through further analysis of existing research, and to explore the protection paradigm of digital products of intangible cultural heritage that is more closely related to the actual situation in China. This paper focuses on two central issues: the

identification of copyright infringement in digital products of intangible cultural heritage by online platforms, and the regulatory framework for managing such infringement.

This study investigates the intersection of ICH digital products and copyright law, providing analytical frameworks to support legally compliant development within the ICH digitalization sector. The research aims to facilitate the dual imperatives of cultural preservation and industrial innovation, thereby contributing to the creative transformation of China's distinguished traditional cultural heritage.

2 THE DILEMMA OF DETERMINING COPYRIGHT INFRINGEMENT OF ICH DIGITAL PRODUCTS BY ONLINE PLATFORMS

2.1 Certain Differences in the Criteria for Determining the Originality of Digitized ICH Works

Originality constitutes a fundamental prerequisite for copyright protection of digital works (Li & Gu, 2021). According to the "Professional Standards for Digital Preservation of Intangible Cultural Heritage", "Digital Resource Acquisition and Recording for Digital Preservation of Intangible Cultural Heritage", Qin Yuxiang categorizes the difference in heterogeneity of the content of digital products of ICH can be divided into "recording", "processing", "optimization" and "reorganization" from low to high. Among them, the results of the "recording" level are only a simple copy of the non-heritage and lack originality. Conversely, "processing" and higher-level derivatives demonstrate progressively stronger originality due to substantive creative inputs and artistic reinterpretation (Qin, 2023). The current legislative frameworks, however, lack specific criteria for determining originality in ICH digital derivatives, resulting in inconsistent adjudication standards within judicial practice.

Contemporary scholarship reveals significant divergence regarding originality determination for expressions within digital works of ICH. A conceptual dichotomy exists: one posits that a digital work's expression of the creator's individual personality suffices, while the other requires a certain level of creative achievement for the work to be recognized as a digital work (Li & Gu, 2021).

At present, the former is the mainstream view in the academic circle. Li Jinbao and Gu Liping pointed out in their article that with the development of the cultural industry, the originality standard of works has shifted from "forehead sweat standard" to "minimum standard" and "small coin standard", emphasizing that the standard for determining the originality of ICH digital works should not be too high (Li & Gu, 2021). They use short videos with ICH content as an example, demonstrating that derivatives exhibiting mere replication or simplistic adaptation of traditional elements constitute unprotected "productions" rather than copyrightable "works" due to insufficient creative individuation. In Li Chen's research, he disputes the argument that "audiovisual works require a high degree of originality," arguing that digital works promoted through new forms of dissemination, such as short videos, should adhere to the fundamental principles of the Copyright Law to ensure proper protection (Li, 2019). This viewpoint was vividly illustrated in the case of Beijing Kuai Shou Technology Co., Ltd. v. Guangzhou Hua duo Network Technology Co., Ltd. regarding copyright infringement. The judgment stated that "according to the relevant provisions of the Copyright Law, as long as a work is independently created by the author and reflects some degree of selection, arrangement, design, and other personality, it should be considered original; and this originality is a minimum level of creativity" (Wu, 2023).

After consolidating the above research results of scholars and observing the trend of practical operation in the industry, it can be found that the criterion of 'a digital work can be regarded as having originality as long as it can embody the creator's unique personalized expression' has become the mainstream principle of judgement within the current legal framework. The establishment of this criterion not only expands the scope of digital products covered by the Copyright Law to a reasonable but not excessive range, but also enables the digital content of a large number of traditional intangible cultural heritage to be included in the legal regulatory system. This approach facilitates unrestricted circulation of innovative ICH derivatives. It circumvents creativity-constraining effects of excessive originality thresholds, such as stifling creative thought and expression, thereby achieving concurrent objectives of safeguarding creator rights while establishing institutional legal safeguards for ICH preservation and innovation.

2.2 Unclear Standards for Regulating the Tort Liability of Network Platforms for ICH Digital Products

In this digital age, the proliferation and development of cultural works cannot be achieved without the support of various means of communication. Online platforms function not merely as information-exchange tools but as critical infrastructure for preserving and transmitting ICH in digital form. However, platform architectures inherently engender copyright protection challenges and liability attribution complexities during widespread ICH digital dissemination. Article 1195 of the Civil Code stipulates that “where a network user commits an infringement by using network services, the right holder is entitled to notify the network service provider to take necessary measures such as deleting, blocking, or disconnecting links. If the network service provider fails to take necessary measures in a timely manner after receiving the notification, it shall bear joint and several liability with the network user for the expanded part of the damage.” Based on the “safe harbor rule”, network platforms are often able to avoid infringement liability by simply assuming the obligation of ‘notification and deletion’ in case of infringement. Article 1197 states that “where a network service provider knows or should have known that a network user is infringing upon the civil rights and interests of others by using its network services, and fails to take necessary measures, it shall bear joint and several liability with the network user.” In this regard, Ding Xiaodong argues that the determination of fault for infringement by online platforms should not be based solely on whether they knew about indirect infringement in individual cases, but rather on whether they have fulfilled a reasonable duty of care for large-scale governance (Anon., 2017 & Ding, 2025). Platforms should employ algorithmic monitoring and technical measures to reduce infringing content.

2.3 Difficulty in Defending Transnational Copyright Infringement of Digitized ICH Products

After an in-depth comparison of Chinese and foreign digital copyright regimes, Huang Xianrong and Li Jingjing found that globally different countries have their own regulations on digital protection and dissemination of intangible cultural heritage, and that there are often significant differences in the specific

details of this area. These discrepancies, particularly in the specifics of legal frameworks, present considerable challenges for cross-border enforcement. For instance, the Directive on Copyright in the Digital Single Market mandates a “notice and takedown” approach for platforms addressing repeat infringements, whereas the Digital Millennium Copyright Act emphasizes “notice and removal” (Huang & Li, 2013). Such legal disparities elevate the costs associated with international legal action when ICH is subject to copyright infringement.

Beyond jurisdictional divergences, the imperfections of the international coordination mechanism have also made it more difficult to protect rights across borders. Prevailing international treaties primarily address signatory states' obligations concerning domestic and regional ICH safeguarding, while inadequately incorporating transnational legal protection frameworks. This gap manifests through a lack of established platforms for dispute resolution and arbitration concerning related intellectual property issues, as well as the absence of mature dispute resolution mechanisms (Lu, 2019).

2.4 Limitations in the Related Technologies of Network Platforms in the Field of ICH

Copyright identification and filtering technologies are currently effective in curbing copyright infringement. Existing methods primarily include content metadata indexing, hash algorithm recognition, and audio-video fingerprinting. However, their application within the domain of ICH faces significant limitations.

Regarding inherent data constraints in digital ICH products, Chen Jinchuan pointed out that the existing identification and filtering technologies, in order to play their proper roles, must rely on a complete and accurate library of licensed works, and cannot be separated from the support and co-operation of the right holders (Chen, 2024). Digital ICH derivatives frequently encounter operational limitations due to non-standardized metadata protocols during creation and dissemination phases. The accuracy of metadata directly impacts the efficiency of work identification and filtering; the absence of unified standards significantly reduces the precision of identification. Furthermore, most digital ICH products lack formal copyright registration, compounding technological application challenges. Digital ICH products are often difficult to accurately match within existing databases, thereby hindering their precise identification within the digital sphere (Chen, 2024).

In addition to the data limitations imposed by the characteristics of non-digital products, identification and filtering technologies exhibit fundamental operational deficiencies due to absent “legal adjudicative capabilities”. Identification and filtering technology can only make judgments based on the existing facts, but does not have the ability to analyze and assess legal issues, making it difficult to accurately determine whether a work constitutes an infringement, which leads to the application dilemma of mistakenly deleting, mistakenly blocking, and mistakenly filtering. In response to this dilemma, Li Yang further pointed out that algorithmic recommendation systems generate hyper-personalized interfaces (“one-thousand-users, one-thousand-interfaces”), and the diffusion path of the non-legacy digital products is highly hidden in the algorithmic APP, and the non-legacy digital products may be personalized through the “thousand people with thousands of faces” recommendation, and “notification” of ‘thousands of people’ for diffusion. The diffusion path of non-legacy digital products is highly hidden in the algorithmic APP, and non-legacy digital products may diffuse through the personalized recommendation of “thousands of people”, and the “notification of deletion” rule has a high cost of relief (Li, 2020).

3 REGULATORY MEASURES FOR COPYRIGHT INFRINGEMENT OF INTANGIBLE CULTURAL HERITAGE DIGITAL PRODUCTS ON ONLINE PLATFORMS

3.1 Promote the Construction of Typed Governance and the "Notice + Notice" Relief Channel

In March 2019, the European Parliament adopted Article 17 of the Directive on Copyright in the Digital Single Market, amending the E-Commerce Directive, stipulating that online content-sharing service providers must secure authorization from copyright holders; otherwise, their service provision constitutes an act of communication to the public or making available to the public (Anon., 2000). This framework mandates platforms to exert their “best efforts” to prevent the dissemination of infringing content, thereby imposing significant organizational demands

on ICH management. On the contrary, the disaggregated nature of ICH rights holders in China and the inadequate safeguarding of numerous projects, which often lack effective coordination mechanisms, preclude the direct adoption of established models from the EU and other jurisdictions (Lu, 2023). Consequently, the design and implementation of differentiated, typological governance rules are crucial, considering the specific characteristics of digitized ICH products. For instance, a higher standard of protection should be applied to digitized ICH products with commercial secret attributes, while reasonable use within a limited scope should be permitted for digitized ICH products with strong public attributes.

The “notice and takedown” rule was introduced in the United States during the 1990s, an era characterized predominantly by media-centric content distribution. However, China's current internet industry is characterized by algorithm-driven distribution, spearheaded by artificial intelligence. This significant paradigm shift has rendered the traditional “notice and takedown” framework increasingly less applicable in this context. To address this gap, Li Yang proposes the addition of a “notice + notice” provision within the framework of online copyright remedies. This proposed mechanism mandates that upon receiving a notice of infringement, online platforms not only forward the notice to the alleged infringer but also implement technical measures to directly relay the identified infringing content to the rights holder, refraining from immediate removal. This approach allows rights holders to seek redress through “notice + notice” when the “notice and takedown” mechanism proves ineffective (Li, 2020).

3.2 Combination of Platform Governance and Legal Regulation

Sole reliance on a single intervention mechanism proves inadequate for effectively safeguarding the legitimate rights and interests of copyright holders in the protection of ICH digital products. A comprehensive governance model must therefore be established, integrating enhanced platform self-regulation with timely public authority intervention to generate synergistic effects. Through the construction of this model, the all-round protection of the copyright of non-legacy digital products can be realized. Regarding platform governance, Bi Wenxuan pointed out that e-commerce platforms should adopt a review standard combining “formal examination + substantive review excluding obvious

infringement" (Bi, 2024). Furthermore, platforms are supposed to leverage their technological advantages to establish specialized ICH content review systems, incorporating third-party expert committees for substantive examination. In terms of legal oversight, collaborative governance between judicial and administrative entities should be strengthened by establishing an "administrative-judicial-industry" collaborative mechanism. This entails creating a blockchain-based joint dispute resolution system involving courts and copyright administrative agencies, while capitalizing on the geographical concentration of network industry clusters and ICH-producing regions to develop diversified dispute resolution mechanisms (Beijing Internet Court Research Group, 2023).

4 CONCLUSION

The digital transformation of ICH constitutes a pivotal impetus for cultural preservation and innovation. Paradoxically, the pervasive adoption of digital technologies has concurrently precipitated widespread infringement within digital ecosystems, emerging as a significant impediment to the sustainable development of ICH.

On the one hand, from a legal perspective, infringement relating to digitized products of ICH on online platforms not only infringes on the rights and interests of individual creators, but also seriously challenges the respect and protection of collective cultural identity. The inherently communal nature of ICH determines the importance of its collective rights, which conflict with the individualistic logic of traditional intellectual property law. On the other hand, technological governance mechanisms inherently suffer from a lack of cultural appropriateness, which impedes their capacity to establish an operational equilibrium that effectively mitigates infringement while preserving the living legacy of cultural practices.

Existing governance approaches have employed diverse strategies—including platform self-regulation, legal framework optimization, and technology-enabled governance—to address prevailing challenges. Nevertheless, persistent limitations remain, such as over-emphasizing the protection of individual rights to the neglect of the public cultural values carried by ICH, as well as ignoring the living and regional characteristics of ICH. Future research should therefore establish an equilibrium between safeguarding ICH and enabling innovative dissemination, thereby pioneering digital

pathways for the continuity of traditional cultural practices.

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