

## IV. IP Issues in Information Building and Sharing

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In regards to the legal issues that may arise in ICH information building and sharing, the National Research Institute of Cultural Heritage (NRICH) has two rules—one is the NRICH Archive Rule, and the other is the NRICH Intellectual Property Rights Guideline.

NRICH witnessed the emergence of intellectual property issues as it implemented the Important ICH Documentation Project. More concretely, after launching the project, which aimed to lay the foundation for transmitting important national ICH for generations to come, two issues related infringing on intellectual property rights manifested themselves in relation to using information. More details on each issue follow.

### **1. Copyright infringement concerning the Hwahyejang (craftsman skilled in the art of making traditional Korean shoes), an important national ICH**

#### 1) Issue overview

As a bearer of hwahyejang skills (a state-designated important ICH), Mr Hwang asked the NRICH to resolve an issue involving a Busan City report that had infringed upon his copyright. He stated that the report had plagiarised parts of a documentary book that depicts his overall processes of making traditional Korean shoes through the use of hwahyejang skills. Mr Hwang had entrusted his copyrights of the ICH documentary book with the NRICH. Hence, he asked the NRICH to take necessary measures to resolve the copyright infringement issue.

#### 2) Parties concerned

- Hwang Haebong, a bearer of hwahyejang as a state-designated ICH
- Ahn Haepyo, a bearer of hwahyejang as a city-designated ICH

- Cho Seonhui, an author of hwahyejang, a documentary book on the important ICH

### 3) Resolution and result

NRICH asked for advice from legal experts to address the issue, and it was concluded that a survey report published by Busan City infringed upon the copyright of the ICH documentary book. However, legal advisors identified that it was not Mr. Hwang but authors of the documentary book whose copyright had been infringed upon. This is because the documentary book was a composite work, and the copyright was a combination of copyrights and their neighbouring rights. Therefore, it can be said that the copyrights of Mr. Hwang, the concerned party who raised the issue, were not infringed upon. Meanwhile, Busan City revised the survey report, and the report was passed through a deliberation of the Cultural Heritage Committee. As Busan City promised to prevent any recurrence of copyright infringement of the authors of the documentary book, the issue was able to be resolved.

At first, Mr. Hwang cast doubt on Busan City's additional designation of the hwahyejang as the city's important ICH, though the same artistic skill had previously been designated as a national important ICH. He found it that when making the report to confirm the hwahyejang's designation as Busan City ICH, the city had plagiarised a documentary book, an earlier publication that describes what his skill is about and how he performs it. Then, he petitioned to the NRICH while asking for the invalidation of the additional designation of the hwahyejang skill as a city ICH.

However, the Korean Cultural Heritage Protection Act allows the dual designation system; in other words, an intangible cultural heritage, though having been designated as a national intangible heritage, can also be recognised as a city and provincial heritage. It is because Korean intangible heritage safeguarding system puts more emphasis on the dissemination of traditional knowledge and skills over granting of exclusive intellectual property rights to their bearers. NRICH gave an explanation about the dual system to Mr. Hwang so that he could have a clearer understanding of both intellectual property and ICH designation.

#### Principles adopted for addressing the issue

NRICH published documentary books on ICH as a part of an ICH documentation project. Those books describe the entire process of technical and artistic skills exercised or performed by the bearers and the

books include photos. The NRICH asked bearers or practitioners to entrust the NRICH with intellectual property rights of the documentation results for public use and publication. Thus, governmental organisations in principle have actively engaged in resolving the abovementioned issue of copyright infringement through arbitration.

## **2. Patent dispute over jucheoljang (master specialising in iron casting skills), an important intangible heritage**

### 1) Issue overview

As Mr Lee, a bearer of provincial ICH in traditional Korean bell-making techniques, acquired a patent for his skill, another craftsperson as a bearer of national ICH in the same field petitioned to invalidate the patent granted to Mr Lee's. After legal dispute, Mr. Lee's patent was identified as invalid.

### 2) Parties concerned

- Won Gwangsik, a bearer of jucheoljang (craftsperson specialising in traditional Korean bell-making techniques), a state-designated ICH
- Lee Wangyu, a bearer of juseongjang, a provincial-designated ICH (designated by Gyeonggi Province)

### 3) Resolution and results

Mr Lee, a bearer of juseongjang, a provincial-designated ICH, applied for and acquired a patent for his bell-making skills in August 2007. However, Mr Won, another bearer of traditional Korean bell-making techniques petitioned to the Korean Intellectual Property Office (KIPO) to invalidate Mr Lee's patent. KIPO decided to revoke patent in September 2011 after concluding that no remarkable difference can be found between the two skills.

### Principles for managing the issue

KIPO had to decide whether the patent infringed upon a national ICH bearer. However, legal dispute arose over traditional knowledge of ICH during the invalidation trial. After this trial, it was commonly recognised that institutional improvements were required in regards to intellectual property protection of technological and artistic skills that were designated as important ICH.

In light of the history of building and sharing information over the past several years, legal issues related to intellectual property rights can be summarised as follows:

First, with enhanced awareness on intellectual property rights, issues of interest sharing might arise with regards to using information. Since national institutes' publications have so far been vested in the state, it is not difficult for the state to freely use them for the public purposes. However, if ICH contents are used commercially, it is likely that disputes could take place over sharing interests of property rights. Thus, institutional measures should be taken to address the disputes.

Second, when NRICH conducts general survey projects on ICH, except for some projects, such as recording what an ICH element is about and how to perform it, it brings together the survey results to release publications. They are usually based on interviews with ICH bearers and recordings of the bearer's explanation about the ICH. However, with regards to intellectual property and using the publications, prior informed consent and transference of copyrights had not been made before the project started. As a wide range of ICH surveys as well as donations of relevant records are expected to come, NRICH should prepare for legal disputes to resolve copyright infringement upon non-designated ICH.

Third, before the launch of an ICH documentation project, NRICH makes it a rule to have a letter of copyright entrustment from practitioners. However, it is not clear whether this entrustment could be interpreted as transference of intellectual property rights or permission of use. The Korean court rules it as permission, a legal judgment favourable to authors, unless the parties concerned do not clearly express their intent. As practitioners may not have much interest in the issue to express what they want, it is recommended that a transfer of copyright needs to be treated differently from an authorisation of intellectual property when writing a letter of intellectual property transfer. By doing so, it becomes clear who obtains the right of appeal to the copyright—the practitioner or NRICH.

Therefore, the NRICH should adopt new policy alternatives and directions, and these are presented as below.

First, taking into consideration that documentation results could act as a significant tool for safeguarding ICH, it is urgent for NRICH to seek ways to connect the documentation project with a traditional knowledge DB project conducted by KIPO

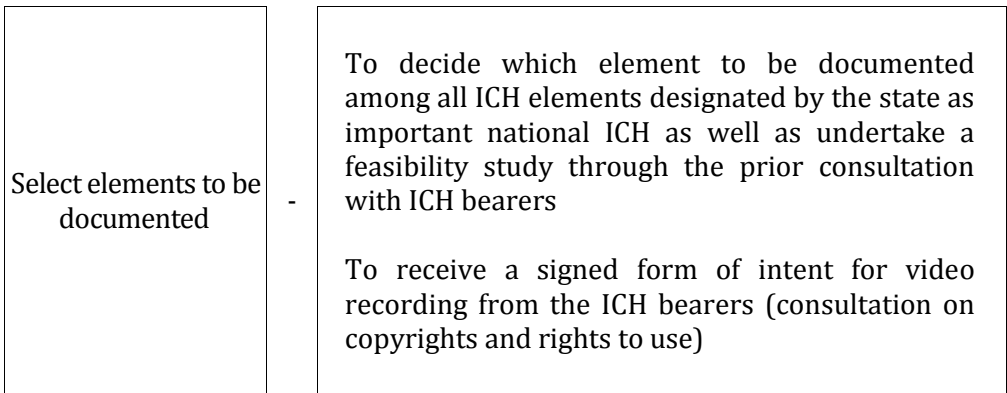
Second, it is imperative that provisions on intellectual property be included in new legislation (an act on protecting and promoting ICH).

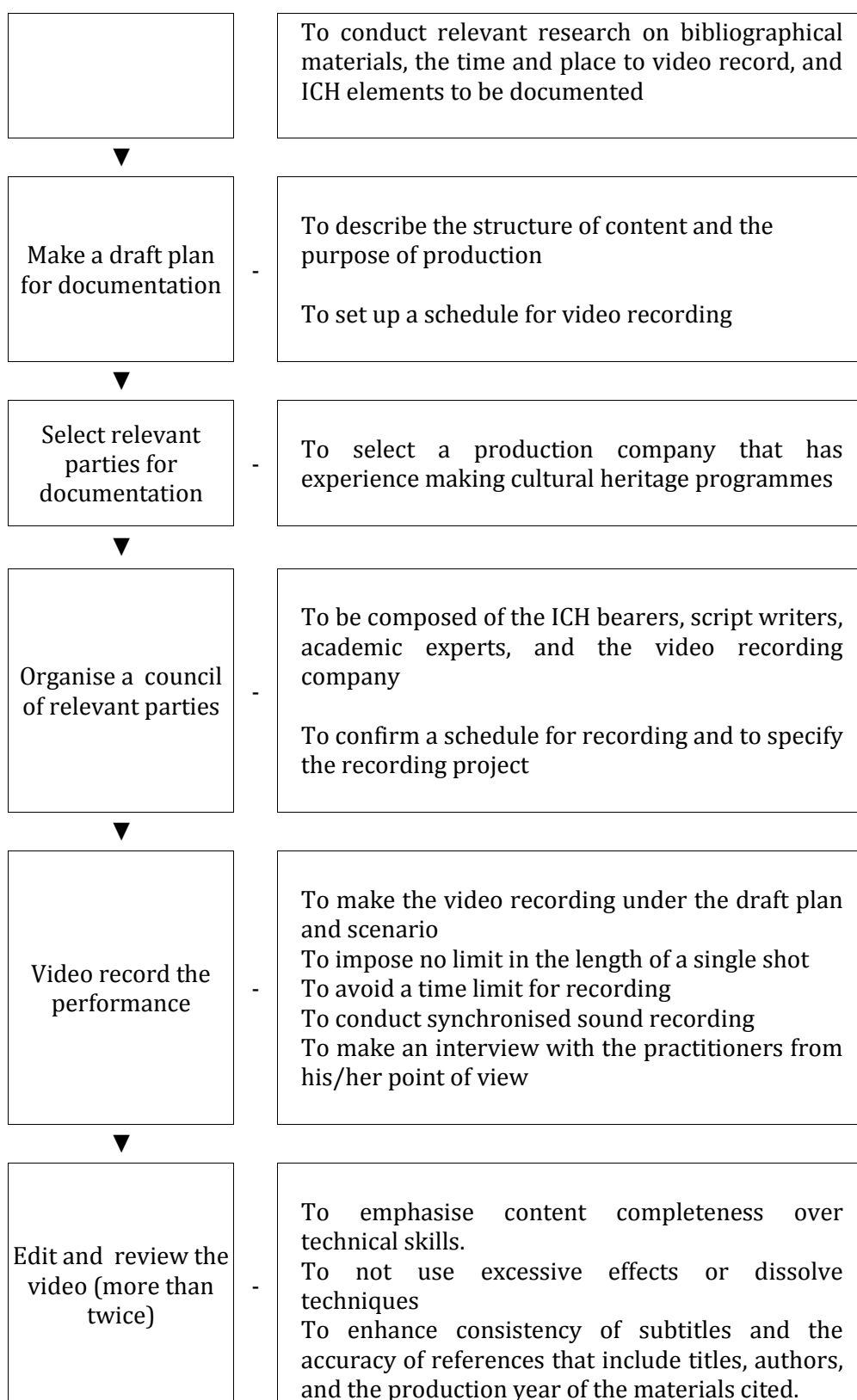
Third, it is no denying that the basic ICH surveys have usually been conducted regardless of whether practitioners entrust their intellectual property rights to the organisations. Thus, prior informed consent should be made by practitioners before the project launches for the use and publicity of the materials collected in the survey.

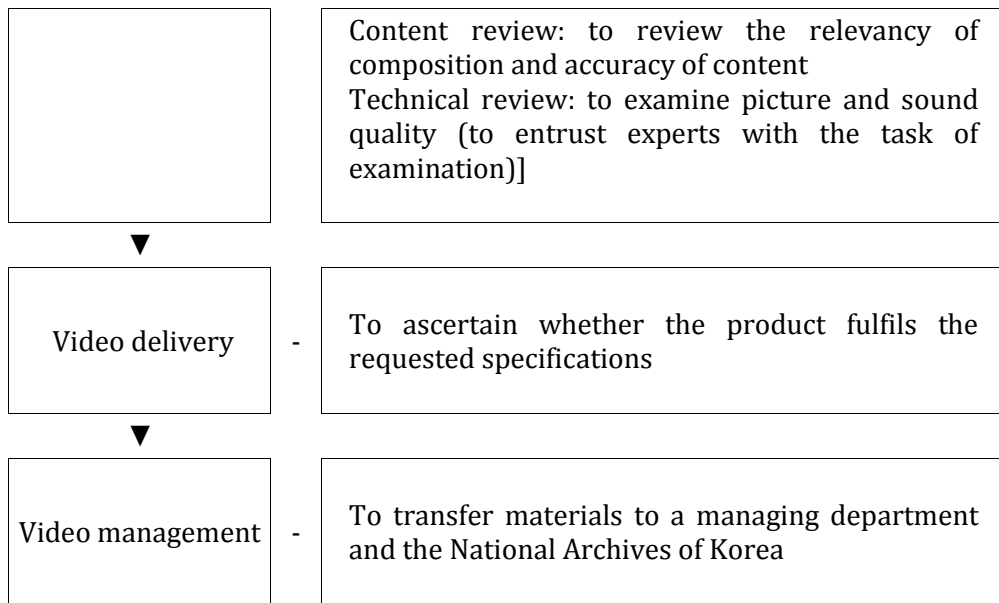
In regards to most ICH information building and sharing activities, the NRICH maintains balanced, interactive relations between itself and various stakeholders, including informants and local researchers.

NRICH has also made efforts not only to guarantee the rights of the main ICH actors (communities, bearers, and practitioners) but also to ensure their participation in the whole process of information building and sharing. The most representative among them is the Important ICH Documentation Project.

The project covers all nationwide ICH elements that are designated by the state as ICH. The main actors of ICH are the bearers (individuals or groups) of technical and artistic skills that are recognised as state-designated ICH. For the project, documented matters include all items designated as important ICH, such as music, dance, play, ceremony, handcraft, food, and martial arts. The project aims at the systemic preservation of ICH-related records as well as the use of those records as teaching materials necessary for transmitting traditional skills to future generations, video recordings and publication of ICH all items, and launching digitised ICH archives and online services. Specific procedures of the project are in the following chart.







Main actors of ICH participate in the entire process of the ICH documentation project. A video recording of ICH takes detailed images of the technical and artistic skills from the viewpoint of ICH bearers. Therefore, bearers (individuals or groups) of important ICH have actively engaged in the gamut of documentation processes, from the prior informed consent of ICH documentation (transfer of copyrights) to field records to examine the final products.

Main actors of each ICH are free to use the final products of the documentation project and the final products that describe the performing process and have been permanently preserved pursuant to the Public Records Management Act.