

The 'Tangification' of Intangible Cultural Heritage through Self-reinforcing Intellectual Property Systems and Norms

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It is notoriously difficult to design and attach suitable legal rights to intangible cultural heritage (ICH), due to its nature as an evolving, living heritage. This article examines the impact of social and legal systems that disproportionately reward tangible manifestations of cultural heritage, such as built heritage or fixed works suitable to copyright protections. The 'tangification' process converts ICH and other intangibles into a form that can be owned, a process that ossifies the living heritage and may evolve into a generic saleable good as opposed to a cultural practice. The article proceeds in three steps: (1) examining briefly the history of the rapid global expansion of Western intellectual property protection, accustomed to a culture of collecting tangible things and exclusionary personal property protections; (2) exploring the concept of 'tangification' and the relationship to propertisation, commodification, and commoditisation, propelled by forces including copyright education, social expectations, economic motivation, and technological innovations; and (3) investigating the impact of this 'tangification' on the social and cultural benefits of ICH. While past ICH safeguarding has focused primarily on developing countries, the social and economic impact of the subtle erosion or, conversely, the ossification of living heritages in developed countries is also of concern, particularly in the face of some developed countries' non-ratification of the 2003 Convention for Safeguarding Intangible Cultural Heritage (such as the U.K. and U.S.) This article will focus particularly on Celtic-derived cultures in Ireland, Wales, and Scotland and will explore diverse legal mechanisms and resulting impacts on ICH, such as trademark-enforcing legislation, registries, and cultural branding. All cultures have valuable ICH that may be endangered by the spread of copyright maximisation and overvaluation of the tangible. Finally, this article aims to emphasise the unifying power of ICH as opposed to furthering the gap between cultures perceived to be 'knowledge producing' or 'culture producing', as well as highlighting the challenges of reconciling the domestic regulation of diverse ICH in countries typically less geared at ICH safeguarding.