

UNITED NATIONS EDUCATIONAL,  
SCIENTIFIC AND CULTURAL ORGANIZATION

Unesco - Paris

WORLD INTELLECTUAL  
PROPERTY ORGANIZATION

WIPO - Geneva

Distribution: limited

UNESCO/WIPO/FOLK/GEI.1/3  
PARIS, 30 November 1984  
Original: English/French

GROUP OF EXPERTS ON THE INTERNATIONAL PROTECTION  
OF EXPRESSIONS OF FOLKLORE  
BY INTELLECTUAL PROPERTY

(Unesco House, 10-14 December 1984)

COMMUNICATION FROM THE FEDERAL REPUBLIC OF GERMANY

In a letter dated 5 October 1984, reference 611.90/P2-5.12/45, the Permanent Delegation of the Federal Republic of Germany to Unesco forwarded a communication to the joint Secretariat of the meeting. That communication is reproduced as an annex to this document.

ANNEX

The Government of the Federal Republic of Germany appreciates the efforts of the developing countries to counter the endangerment of their folklore by means of international arrangements. It is known, for example, that the developing countries have on numerous occasions put forward the argument that presentations of folklore in their countries are frequently recorded and used for commercial purposes without the consent of the performers. Such uncontrolled exploitation can indeed endanger the unadulterated quality and the existence of individual manifestations of folklore in developing countries. However, in order to eliminate this abuse and protect their cultural heritage, the developing countries are free to enact suitable national legislation. Moreover, folklore is, where it constitutes works within the meaning of copyright provisions, subject to international protection by means of the revised Berne Convention and the Universal Copyright Convention.

The introduction of more extensive copyright protection for folklore at the international level must be rejected, however, as regards both the term of protection and the items subject to protection. Copyright should only cover presentations of folklore which are works within the meaning of copyright provisions. The inclusion of other presentations that do not attain the level of such works would mean an undesirable erosion of copyright.

Where they are works within the meaning of copyright provisions, manifestations of folklore such as folk-music, folk-dances and folk-tales are at any rate subject to copyright protection during the author's life and - under German law - for another 70 years after his death. Upon expiry of this period the works fall into the public domain, i.e. anyone is entitled to make unlimited use of them. Copyright is a personal right, i.e. a right linked to the existence of an author or some other entitled person. The recognition of protection for folklore similar to copyright at the point in time when the works fall into the public domain would run counter to the aforementioned principle in cases where the individual creator or entitled person is no longer alive or known. The existence of works of folklore in the public domain can therefore, in the opinion of the Federal Republic of Germany, at most be safeguarded by means of legal provisions similar to those for the protection of monuments.

In the Federal Republic of Germany there is, incidentally, no need to subject the use of folklore to any limitations. Instead, efforts are being made to ensure the greatest possible access to works of folklore in order to safeguard the dissemination and existence of this common property. In the Federal Republic of Germany this demand is voiced above all by choral and folk-dance societies, who frequently complain that the folk-songs sung or folk-dances performed by them which they believe to be in the public domain often result in compensation being demanded under copyright provisions because the 70-year term of protection after the author's death has not yet expired or because musical adaptations have been used which are themselves subject to separate protection.

Furthermore, general and free access to folklore should be an argument that is also of relevance to the developing countries since it fosters the dissemination and hence conservation of their cultural heritage.