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REGIONAL COMMITTEE OF EXPERTS
ON MEANS OF IMPLEMENTATION IN THE ARAB STATES OF
MODEL PROVISIONS ON INTELLECTUAL PROPERTY ASPECTS OF
PROTECTION OF EXPRESSIONS OF FOLKLORE
Doha, October 8 to 10, 1984

DRAFT REPORT

I. Introduction

1. In pursuance of Resolution 15.1 adopted by the General Conference of Unesco at its twenty second session and the decision taken by the Governing Bodies of WIPO at the fourteenth series of their Meetings in 1983, the Directors General of Unesco and WIPO convened a Regional Committee of Experts on Means of Implementation in the Arab States of Model Provisions on Intellectual Property Aspects of Protection of Expressions of Folklore (hereinafter referred to as "The Committee") which met, at the invitation of the Government of Qatar, in Doha from October 8 to 10, 1984.

2. The purpose of the meeting was to consider the text of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and other Prejudicial Actions, adopted by the Committee of Governmental Experts convened by the Directors General of Unesco and WIPO in Geneva from June 28 to July 2, 1982, and to make suggestions on the means of implementation of the said text in the Arab States.

3. Experts from Seven Arab countries (Algeria, Egypt, Jordan, Kuwait, Lebanon, Qatar, Saudi Arabia) participated in the meeting. Two intergovernmental organizations, the Arab League Educational, Cultural and Scientific Organization (ALECSO) and the Arab Bureau Of Education for the Gulf States were represented in an observer capacity.

4. The list of participants will be annexed to the final report.

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II. Opening of the Meeting

5. The meeting was inaugurated by His Excellency Mr. Mohammad Abdul Rahman Al-Kholaifi, Undersecretary in the Ministry of Information of the Government of Qatar and Director General of the Arab Gulf States Folklore Centre. The Undersecretary welcomed the participants and stated that Folklore which is a heritage handed down from generation to generation is an indication of the people's spirit and wisdom and their link with the roots of their civilization. He pointed out that Arab Folklore is rich in its variety and reflects the originality of its people; that the Folklore of this strategic part of the world which was the origin of one of the important civilizations has enriched human heritage. The Undersecretary stressed the importance they attached to this meeting which was a link in the chain for protection of expressions of folklore throughout the world, and felt that it was the duty of the Arab people to consider this matter seriously and help through governmental and private organizations to protect the cultural heritage represented by expressions of folklore. He spoke with considerable appreciation of the dedicated work of Unesco and WIPO in studying this question and also emphasized the links that the Gulf States have with both these Organizations of the United Nations System.

6. The representative of the Director General of UNESCO, Mr. Abdullah Ould Erebih, UNESCO's Regional Representative a.i. in the Arab States of the Gulf, and the representative of the Director General of the World Intellectual Property Organization (WIPO), Mr. Shahid Alikhan, Director, Developing Countries Division (Copyright), thanked the Government of Qatar and His Excellency the Minister of Information, Mr. Issa Ghanem Al-Kawari, for their initiative in hosting this meeting and the Undersecretary, Ministry of Information for inaugurating it. They also thanked Mr. Ali Abdullah Khalifa, Head of the Arab Gulf States Folklore Centre for the excellent arrangements made for the conduct of the meeting. Mr. Abderrahmane Amri, Juriste principal, Copyright Division UNESCO, also spoke on the occasion.

III. Election of Officers

7. On the proposal of Mr. Haider Mahmoud, the expert from Jordan, supported by Mr. Salah Abada, the expert from Algeria, the Committee unanimously elected Mr. Ali Abdullah Khalifa, expert from Qatar, as its chairman. Also on the proposal of Mr. Selim Bessiso, the expert from Kuwait supported by Mr. Mussfer Al-Mussfer, the expert from Saudi Arabia, Mr. Haider Mahmoud, the expert from Jordan was elected Rapporteur.

IV. General Discussion

8. In the course of the general debate, the experts gave a brief account of the status of protection of Expressions of folklore in their respective countries.

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9. The expert from Algeria informed the Committee that, in his country, the protection of folklore was subject to a set of complex regulations, closely related to various aspects and nature of the heritage as well as the use to which that heritage was being put. A survey of folk art had been conducted and folklore classified in respect of its form and content, regionwise. As concerns folk music, an Institute of Music has been set up with musicians and poets on its staff who had studied rhythmic traditions, it collects and classifies such music. Likewise, a separate directorate had been set up in the Ministry of Culture to identify and classify, regionwise, the work on pottery, jewellery and similar crafts in each area. There is also the National Institute of Popular Art which provides a focal point for artists.

In so far as the use of folklore for broadcasting and other forms of diffusion was concerned, this came within the preview of copyright protection, where the legislation prevented its distortion or distribution of any such distortions. Income from the use of folklore expressions went into a cultural fund.

While indicating the steps taken to prevent abuse or distortion of folklore in his country, he felt that although there should be protection against exploitation of folklore, such protection should not become an obstacle in the way of its dissemination.

10. The expert from Lebanon mentioned that despite an old tradition of folklore, it was, in his country, protected more by custom since there was no law yet in this connection. He said Lebanon would welcome such a text of the model provisions for protection of expressions of folklore.

11. The expert from Egypt informed the Committee that the task of classification and documentation of folklore had been taken up in his country; that an Institute of Folklore as well as a Faculty in the University of Cairo had been established for studies on folklore. These institutions sift expressions of folklore handed over from generation to generation and try to identify the authentic versions and to classify them. Protection by law is still lacking despite the wealth of folklore, which is being exploited without compensation to the original owners of such expressions. He welcomed the establishing of the model provisions under consideration by the Committee, and felt that through such provisions folkloric heritage could be protected; funds accruing through use of such expressions could be utilized for encouraging folklore.

12. The expert from Saudi Arabia informed the Committee that there were various ethnic groups and troupes in different regions and areas of his country, that performed without any regular material compensation; a number of books had also been written on the expressions of folklore but there was no legal protection so far. In their draft of a Copyright Law, provision had been made for protection of folklore; these provisions would be further augmented, upon his return, to include suggestions on the basis of the model provisions as may emerge from the discussions of this Committee.

13. The expert from Jordan felt that there was a great deal in common in the expression of folklore in the Arab States; the gypsies who moved from place to place had perpetuated this cultural unity. He informed the Committee that while there was considerable recording and dissemination of expressions of folklore over radio Jordan, no legal protection of such expressions had been so far provided.

14. The expert from Kuwait informed the Committee that there was considerable interest in his country in folklore which while it was being encouraged, it was regrettable that no legal protection yet existed. A Folklore Centre had been established which has gathered a variety of material in a planned manner. Maritime life had been a rich source of such folklore in the past. The Folklore Centre had documented this; it had also followed the popular form of riddles and compiled an anthology of these; it has gathered folktales, and published popular literature on folklore; it has now undertaken work on preparation of an encyclopaedia of Kuwaiti proverbs. This Folklore Centre has acquired a good name as a result of its considerable endeavors in this field; it is also disseminating information on folklore through the media.

15. The expert from Qatar pointed out that the Government of Qatar had established a number of specialized institutions under the Department of Culture and Arts to collect and study the various aspects of folklore, both religious and material, and a special section is functioning under the Department of Publications to protect copyright. While the Ministry of Information in his country had listed the works and expressions of folklore, there was need not only for legal protection of expressions of folklore but also of those who performed them. A Committee had been appointed by the Gulf Cooperation Council for drafting the text of a subregional Convention on Copyright for the Gulf States; they shall also provide for protection of performers on the basis of the Rome Convention; in respect of protection of expressions of folklore the model provisions now under consideration could provide the basis.

16. The representative of the Arab League Educational, Cultural and Scientific Organization (ALECSO) informed the Committee concerning the Arab Convention on Copyright with particular reference to the provisions on protection of folklore. He also described the provisions of the Convention generally; explained that since its adoption in Baghdad in November 1981, it had been signed by 13 States; he explained that a Permanent Committee on Copyright has been provided for under the said convention for the purpose of following up on the implementation of the Convention and for examining the difficulties, if any, in the application of the Convention. He spoke of the close contacts that his Organization had with Unesco and with WIPO in the field of copyright; he mentioned that a number of Arab States were party to the Berne Convention for the Protection of Literary and Artistic Works, as also party to the Universal Copyright Convention and that the Arab Convention on Copyright sought to complement, not contradict, the International Copyright Conventions administered by Unesco and WIPO.

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- page 5 -V. Discussion Section by Section

17. The general debate was followed by an examination, section by section of the Model Provisions and the Commentary thereon, as submitted to the Committee through document UNESCO/WIPO/FOLK/AR/2. There was considerable discussion on this and the experts made a number of observations in the context of implementation of the said model provisions in the Arab States. These observations and suggestions are summarized below.

Preamble

18. One of the experts suggested that the Preamble should be entitled 'General Provisions' as was customary in Arab Legislations. Another expert suggested that the Preamble remain in square brackets because laws in some Arab States do not have such Preamble and the text could be used in an explanatory note. After discussion it was decided to maintain the preamble in square brackets so that the text could be used by such national legislations as wished to do so; others may incorporate this in their legislation in suitable articles.

Section 1: Principle of Protection

19. No change.

Section 2: Protected Expressions of Folklore

20. No change.

Section 3: Utilizations Subject to Authorization

21. No change, except addition of the following at the end of Subsection (II): "whether by direct or indirect means".

Section 4: Exceptions

22. No change.

Section 5: Acknowledgement of Source

23. After discussion some experts suggested deletion of reference to paragraph 1 (III) in subsection 2 of this section, since they felt that acknowledgement of source should be indicated even when borrowing expressions of folklore for creating an original work of an author. The Committee, however, felt that no change was needed.

Section 6: Offences

24. After considerable discussion the Committee felt that the words "liable to" at the end of subsections 1 and 2 of this Section should be replaced by the words "punishable by". In subsection 4, a minor verbal change was suggested in the Arabic text only.

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- page 6 -Section 7: Seizure or Other Actions

25. One expert suggested that the wording of this section might be changed as follows:

"Any object which was made in violation of this [Law] and any receipts of the person violating it should be subject to [Seizure] [applicable actions and remedies] without prejudice to the sanctions in Section 6 and the right to claim damages as in Section 8".

Section 8: Civil Remedies

26. No change.

Section 9: Authorities

27. No change.

Section 10: Authorization

28. One expert suggested and the Committee agreed that the words "as the case may be" should be added at the end of subsection 3.

Section 11: Jurisdiction

29. Some experts suggested a minor verbal change in the Arabic text. One expert suggested that the word "Court" in subsection 1 should be in square brackets, since in his country such matters are referred to state councils and not to courts.

Section 12: Relation to Other Forms of Protection

30. No change.

Section 13: Interpretation

31. No change.

Section 14: Protection of Expressions of Folklore of Foreign Countries

32. After discussion the Committee accepted that in the first line of this section the words "used in....." should be included in square brackets, after the words "Expressions of Folklore"; also that subsection (II) should read as follows: "on the basis of international treaties or other agreements in force in the countries in which protection is sought".

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