

UNESCO-WIPO/FOLK/PKT/97/12

ORIGINAL: English

DATE: April 7, 1997



DEPARTMENT
OF INTELLECTUAL PROPERTY
GOVERNMENT OF THAILAND



UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL
ORGANIZATION



WORLD INTELLECTUAL
PROPERTY ORGANIZATION

UNESCO-WIPO WORLD FORUM ON THE PROTECTION OF FOLKLORE

organized by
the United Nations Educational, Scientific and Cultural Organization (UNESCO)

and
the World Intellectual Property Organization (WIPO)

in cooperation with
the Department of Intellectual Property,
Ministry of Commerce,
Government of Thailand

Phuket, Thailand, April 8 to 10, 1997

**LEGAL MEANS OF PROTECTION OF EXPRESSIONS OF FOLKLORE IN NATIONAL
LEGISLATION: PROTECTION OF THE COLLECTION OF EXPRESSIONS OF
FOLKLORE; THE ROLE OF LIBRARIES AND ARCHIVES**

*Paper prepared by Ms. Marybeth Peters
Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C.*

I. Introduction

It is with some trepidation that I explore this subject since I am neither a librarian nor an archivist. Rather I am an expert in copyright law. I head the United States Copyright Office, which is located in the Library of Congress (the Library) which serves as the defacto national library in the United States. I have worked in the Library for over 30 years, which has what I believe to be the most preeminent folklore archive in the United States, the American Folklife Center. My paper is based on the work of that center, and in preparing this paper I worked with Dr. Alan Jabbour, the director of this center, who represented the United States at earlier meetings on the subject of protection of folklore.

II. Background

The United States is a relatively young country--it's just over 220 years old. From the beginning it was a nation made up of many cultures and nationalities, transformed by the experiences in America. The United States celebrated its 200th anniversary in 1976, and the 1970's was a period of increased attention to "roots," that is, "those aspects of heritage that lie between the individual and the nation, and that connect individuals to communities while defining the nation as a whole pluralistically."¹ Also in 1976 the United States Congress passed the "American Folklife Preservation Act,"² which created the American Folklife Center in the Library of Congress.

The Center was charged with preserving and "presenting American folklife," which according to that law, means the traditional, expressive, shared culture of various groups in the United States: familial, ethnic, occupational, religious, and regional; expressive culture includes a wide range of creative and symbolic forms, such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft. These expressions are mainly learned orally, by imitation, or in performance, and are generally maintained without benefit of formal instruction or institutional direction.

This legislation recognizes that expressions of folklore are extremely important to the United States both for their historical and artistic value; it does not address or try to protect the commercial value that these expressions may have.

Collection of folklore materials was not new to the Library of Congress. The Library had been in the folklore business since 1928 when it founded the Archive of American Folk-Song in the Music Division. The archive was renamed in the 50's; the new name was simply the Archive of Folk Song in recognition of its international scope.

The 1976 legislation specifically authorized the creation of an archival center for folklife, and the Folk-Song archive was transferred to the new Center in 1978. In 1979 the archive was again renamed to recognize the breadth of the Center's activities; it became the Archive of Folk Culture. This archive has grown to become one of the most significant collections of cultural research materials in the world; it includes over one million items consisting of manuscripts, sound and video recordings, still photographs, and related ephemera.

The Center has a staff of professionals who conduct programs under the general guidance of the Librarian of Congress and a Board of Trustees. It serves federal and state agencies; national, international, regional, and local organizations; scholars, researchers, and students; and the general public. The Center's programs and services include field projects, conferences, exhibitions, workshops, concerts, publications, archival preservation, reference service, and advisory assistance.

III. Protection of Folklore Through the Activities of the American Folklife Center

Expressions of folklore include, but are not limited to, stories, poems, music, dance, mythology, rituals, paintings, murals, carvings, sculptures, pottery, handicrafts, medicine and cures, customs, etc. Frequently, the products will be evolving, with many persons contributing over time; a work may be modified and enhanced as it is used and is passed from one generation to another.

The Center has a broad mandate. I will start with activities related to its archive. There the activities center on acquisition of materials, creation of records and inventory, providing access to the collections, as well as preservation.

A. Acquisition

The Center acquires materials that are consistent with its mission and which further its goals. One major criterion is usefulness to researchers. Materials are acquired by gift, bequest, purchase, and field work. The focus is on American materials, with 80% of the collections American.

To the extent possible, the Archive attempts to obtain materials that contain no restrictions as to use or disposition. The goal is to make the materials that are acquired available as widely as possible. However, if the materials are of exceptional value, then restrictions will be accepted. Efforts are made to place time limits on restrictions or to define the conditions under which they may be terminated. Restrictions are documented and noted in the records. Also, if a work is protected by copyright, that too would be noted. Most of the materials in the archive are not currently subject to copyright protection.

In a gift or purchase situation, there is a legal instrument of conveyance which sets forth an adequate description of the objects or materials involved and the conditions of the transfer. In certain cases evidence of the right of possession and the appropriateness of the acquisition, provenance or history, may be requested.

A key part of the Center's acquisition program is its field activities. The Center began to conduct field projects in 1977. In that year there were projects to document such things as artistic expression in rural Georgia and Chicago's ethnic communities and traditional life. Over the years the Center's fieldwork has ranged from documentation of folk arts to immersion in community cultural planning. The hallmarks of the Center's field projects are:

- Use of teams working together in the field;
- Emphasis on professional documentation, including high quality sound recordings and professional photography;
- Attention to the full span of expressive culture in all forms;
- Interest in documenting the full range of everyday life;
- Development of publications, exhibitions, and other public products from the fieldwork;
- Cooperation with other federal and state agencies;
- Involvement of local people in defining the thrust of fieldwork and in developing plans and recommendations;
- Creation of large multi-format ethnographic collections as a major product of the fieldwork;
- Creation of reference archives in regional repositories; and
- Strengthening local capacity to continue the work in the future.³

Importantly, permissions are obtained from those who are recorded or photographed.

Documentation in the field, which includes the creation of sound recordings, photographs, and film footage, manuscript field notes and logs, and today computer disks, is a major activity of the Center, and field projects have added over a half million items to the Archive's collections.

B. Records (Catalog) and Inventory

Organizing and cataloging is done by collection. Thus, one finds an item through a collection rather than by mere physical item number. Each item is identified but there is no separate catalog record for the items contained in a collection.

C. Access to materials

The collections in the Folklife Reading Room receive heavy use. The Center provides comprehensive reference services with many visitors, telephone calls, letters, faxes, and e-mail queries. In addition to materials of the past, there is much information about contemporary traditions, for example, displaying yellow ribbons for absent loved one. There is an extensive file on this tradition, which is regularly consulted by historians and journalists.

The goal of the Center is to make its collections as widely available as possible. It, therefore, loans materials; the "loan," however, is usually in the form of a reproduction rather than to loan the actual item.

The Center is turning to the Internet to disseminate some of its collections. In the near future, the Center will make a collection of music from ethnic groups in California available on the Internet.

To make materials more accessible, the Archive produces bibliographies, directories, and finding aids for researchers. In 1983 the Archive launched a new series, LC Folk Archive Finding Aids; the series provides detailed surveys of Archive holdings on particular subjects or from particular geographical regions. There are state by state finding aids, prepared by interns and other volunteers; these provide coverage for holdings from twenty-seven states and territories. These aides are published in print editions and are made available electronically on the Center's Gopher and Web pages.

D. Preservation

The Center has the same preservation interests as the Library of Congress. An interesting preservation (and cataloging) project involved ten thousand turn of the century waxed cylinder recordings of American Indian music. These recordings were copied on to magnetic tape. Copies of many of these recordings were returned to the tribal groups in which they were originally made, thus helping to restore the priceless elements of tribal heritage to their hereditary homes. This follows the spirit of repatriation that is key in the domain of tangible, physical cultural property.

E. Additional/Outreach Activities

1. Concerts and workshops. The legislative mandate for the Center includes "presenting American folklife." The Center construes this to include concerts, and in 1977 it instituted an outside concert series at the Library which took place on the Neptune Plaza. That series included 130 concerts and spanned 19 years.⁴ Eventually the concerts were broadcast, first live and later delayed, over a local radio station.

The programs at first emphasized blues, bluegrass, gospel, and Hispanic and Caribbean traditions. More ethnic traditions came later as did performing groups from abroad. Dance and drama increased over time.

During the cooler months, workshops, lectures and other programs are held. Many workshops have featured crafts, spoken-word traditions, and foodways.⁵ There have been interviews with crafts people and hands-on demonstrations. Several were accompanied by informative brochures on the subject (rag rugs, paper-cutting or the like) that later served as reference materials.

2. Exhibitions. Exhibitions are used to present aspects of folklife, and there have been a large number. Some included the preparation of interactive videodiscs, which later were published. The contents of these may be made available online through the World Wide Web of the National Digital Library of the Library of Congress.

3. Publications. There are substantial publishing activities. The first effort was to canvass folklife activities in U.S. government agencies; the result was the publication "Folklife and the Federal Government" (1977). This was the first of a series known as Publications of the American Folklife Center, which continues to this day. Studies in American Folklife, a second series, are scholarly publications. The third publication, a quarterly newsletter, "Folklife Center News" is aimed at the Center's constituency: it focuses on the activities of the center.

In addition, in collaboration with the Library's Publishing Office, the Center launched a series of annual volumes containing general essays on folklife accompanied by color and black-and-white illustrations. The first "Folklife Annual" was published in 1985; however, publication was discontinued in 1991 because of a lack of public funds.

With the dwindling of appropriated funds, the Center has to rely much more heavily on public-private partnership arrangements to accomplish some of its purposes. Concomitantly, the Center realized that nationwide distribution would be accomplished more effectively by private-sector partners.

The Archive's most famous series of publications is its series of documentary folk music recordings issued from its collections. An interesting venture began in 1982 when the Center organized a meeting with the private-sector record companies responsible for production and distribution of folk recordings and libraries who acquire such recordings. The Center asked how it could help these companies accomplish their mission. The answer was that the companies wanted help in placing their records in libraries. On the other hand, libraries told the Center that they wanted to buy recordings but they didn't know what to choose. The result of this meeting was the production of the "American Folk Music and Folklore Recordings: A Selected List." The list, issued and widely distributed each year from 1983 through 1992, contained thirty to thirty-five recordings selected by a panel of experts of the year's folk records. The program ended in 1992 because of lack of funding. Also, in the late 1980's the Center's production of recorded publications ceased. The Center now works with private sector partners rather than publishing and distributing directly. There have been a number of collaborative efforts. A recent effort is with Rounder Records for the re-issue of recordings originally released as LPs in CD format.

In addition to its own publishing activities, the Archive has yielded hundreds of recordings that have been published by the private sector over the years; more and more books and articles have drawn on Archive holdings; and film, television, and radio programs regularly use archive materials. The digital age promises to increase this pattern of heavy use.

IV. Funding

The experience of the Center is that its first ten years were characterized by an expanding budget and an emphasis on field-work and public programming. The next ten years were characterized as a time of a shrinking budget, which required the Center to get into fundraising and forging partnerships for its programming. Given the downsizing efforts of the United States Government, it seems likely that this trend will continue.

V. How Well Do Libraries and Archives Protect Folklore?

It is important to note that much of the emphasis in the past has been on legal protection of folklore. To that end there has been consideration of copyright, moral rights, unfair competition, public domain, and domaine public payant as existing forms of protection. Other forms of protection include neighboring rights, trademarks, trade secrets, plant breeders' rights and geographic appellations of origin.

It has been acknowledged that copyright law provides the least available protection, and that most countries offer little protection beyond copyright protection alone or copyright protection coupled with unfair competition and/or moral rights. Analysis has focused on the

basic nature of folklore--that it is passed from generation to generation and developed or modified over time; that expressions of folklore are generally not attributable to an individual author, and that it is perceived as belonging to a group.

My task is not to go over this ground even from a United States perspective; thus, issues about moral rights (integrity) and compensation for commercial use are beyond the scope of this paper. Rather my task is to look at the role of libraries and archives in protecting folklore and assess how well they are doing and to suggest what they could do to improve the situation.

I have identified the following as the critical roles of libraries and archives: conservation, preservation, identification, use or dissemination, international cooperation, and maintenance or nurturing of the vitality of folk culture in the face of modernization and internationalization in the flow of commerce and culture. UNESCO has done considerable work in the area of safeguarding folklore.⁶

Conservation is concerned with documentation to help in understanding the process through which tradition evolves and changes. Libraries and archives excel at this. Libraries and archives are also exceptional at preserving a country's cultural works in the manner that their creators intended so that their inherent cultural value is not lost or distorted, and libraries and archives are good at identifying, indexing, cataloging and documenting the proximate origin⁷ of a work. Libraries and archives also are equipped to make materials available in an appropriate manner, and these institutions are naturals for maintaining and nurturing folklore. Finally, they are incredible resources which can provide help and assistance to each other through cooperative projects, exchanges, training courses, internships and technical assistance programs. This would raise the analytical and theoretical level of folklore work, and lead to substantive ethnographic expertise in all countries.

VI. Future Roles

I agree with the UNESCO recommendation that it would also be desirable if each country could designate a national library or archive that would serve as the central point for the folklore in its country. It would also be desirable if each country would also establish a network of institutions that have and that will receive and conserve folklore materials. Eventually an international network spanning all countries and all appropriate institutions as well as folklore specialists and ethnologists could be created.

Taking the above one step further, there should be further consideration of the creation of official registries of folklore. Alan Jabbour at a Committee of Experts meeting on the Protection of Folklore in 1984 stated that a registration system would be needed to define the corpus of protected expressions of folklore and to assist in the enforcement of any rights. He suggested that these registries be tied to the designated national inventories or archives.

Libraries and archives play a critical role in the protection of folklore; that role should be celebrated and enhanced. The American Folklife Center and the Library of Congress are most interested in furthering these goals.

NOTES

1. "The American Folklife Center: A Twenty Year Retrospective," Alan Jabbour, Folklife Center News, Winter-Spring 1996, Vol. XVIII, Nos. 1 & 2, p.5.
2. Public Law 94-201, January 2, 1976.
3. See Jabbour, supra note 1, at p. 19.
4. The concerts ended with the 1995 season because of budget constrictions.
5. This is the customary cultural behavior regarding food. It includes procedures from the garden to the pot to the table. Source: Alan Jabbour.
6. Recommendations on the Safeguarding of Traditional Culture and Folklore. Adopted by the General Conference of UNESCO at its Twenty-Fifth Copyright Session, Copyright Bull., vol. 24, no. 1, at 8 (1990).
7. Alan Jabbour has coined this phrase in distinguishing what he calls "ultimate origin" to the place from which the collector obtained the work. He uses the example of the Navajo rug whose proximate origin would be the Navajo tribe but whose ultimate origin is far beyond that tribe. The rug evolved from "earlier borrowings from other tribes, thence from Mexico, thence from Spain, and thence from Moorish North Africa." Alan Jabbour, "Folklore Protection and National Patrimony: Developments and Dilemmas in the Legal Protection of Folklore," Copyright Bull., vol.17, no. 1, at 13,14.

[End of document]