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EXECUTIVE COMMITTEE OF THE
INTERNATIONAL UNION FOR THE PROTECTION
OF LITERARY AND ARTISTIC WORKS
(BERNE UNION)

INTERGOVERNMENTAL COMMITTEE OF THE
UNIVERSAL COPYRIGHT CONVENTION

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Item II.15.3 of the Provisional Agenda of the Intergovernmental Committee
of the Universal Copyright Convention

Item 13.3 of the Provisional Agenda of the Executive Committee
of the Berne Union

PROTECTION OF FOLKLORE:

PRESENT STATUS OF THE WORK IN PROGRESS AT THE
INTERNATIONAL LEVEL AND ON AN INTERDISCIPLINARY
BASIS DESIGNED TO SAFEGUARD THE EXISTENCE AND DEVELOPMENT
OF FOLKLORE AND TO PROTECT IT AGAINST RISK OF DISTORTION

I. Introduction

1. At their sessions held in November-December 1977, the Intergovernmental Committee of the Universal Copyright Convention and the Executive Committee of the Berne Union took note of the results of the Committee of Experts on the Legal Protection of Folklore, convened by Unesco in Tunis, in July 1977 to the extent that the problems involved in the protection of folklore comprised defining it, identifying it, conserving it, preserving it and the ways in which it was used; and decided 'that studies on this subject should be pursued by the Unesco Secretariat on an interdisciplinary basis within the framework of an overall approach, but that WIPO should be associated in the examination of any copyright aspects involved ...'.

2. In accordance with the above decision of the two Committees the work of the Unesco Secretariat has been pursued at two levels: firstly, a global study of the protection of folklore on an interdisciplinary basis within the framework of an overall approach, by Unesco alone, and, secondly, a study of the copyright and broader 'intellectual property' aspects involved, being carried out jointly with WIPO. This document deals only with the work done at the first, Unesco's individual, level. As for the Unesco-WIPO joint action at the second level, it is the subject-matter of two other documents (documents B/EC/XXII/14 and 15, IGC(1971)/V/14 and 15).

II. Comprehensive study of the protection of folklore

(a) The survey carried out among Member States

3. In pursuance of the said decision taken by the two Committees referred to in paragraph 1 above, and of paragraph 5022 of the Work Plan relating to resolution 5/9.2/1 adopted by the General Conference of Unesco at its twentieth session, the Secretariat of Unesco undertook a global and interdisciplinary study of all aspects--cultural, social, legal, etc.--of folklore, through a questionnaire which the Director-General sent out to Member States regarding the five points that had been singled out by the above-cited Tunis Committee of Experts.
4. By 30 September 1981, the Secretariat had received one or more replies from seventy Member States: Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Central African Republic, Chad, Chile, Colombia, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Finland, France, German Democratic Republic, Federal Republic of Germany, Ghana, Greece, Guinea, Honduras, Hungary, India, Indonesia, Iraq, Ireland, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Luxembourg, Malta, Mauritius, Mexico, Monaco, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, San Marino, Singapore, Socialist People's Libyan Arab Jamahiriya, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, United Kingdom, Upper Volta, Venezuela, Yugoslavia, Zaire. On 22 February 1982, the Secretariat received a reply from Gabon as well.
5. Firstly, it seems that all the replies received agree as to the need for a definition of the term folklore, but have differing ideas of the form such a definition should take.
6. In the second place, rules regarding the identification of folklore appear essential for the protection of this heritage.
7. As regards the question of the method or methods applied in the collection and recording of manifestations or expressions of folklore, the replies received show that more or less equal numbers of countries apply the extensive method (consisting in establishing a wide survey network over the whole area under consideration and then proceeding to sort out the information) and the intensive method (survey on specific, scientifically determined points carried out among persons qualified to provide such information: witch-doctors, singers, story-tellers, heads of castes, priests, master craftsmen, patriarchs, heads of family, etc.) while fifty-one countries use a combination of both methods. It appears that forty countries consistently apply the method of drawing up one or several model questionnaires designed for the recording and collection of the contents of folklore, its manifestations and expressions.
8. With regard to the systematization of the elements collected, only twenty-five countries use a standardized procedure for transcription and translation; when such a procedure is used, it provides most often for transcription of the text in the vernacular language (standardized alphabet, African alphabet, etc.), secondly for literary translation, and finally for literal juxtalinear translation in a widely spoken world language.
9. Thirdly, the need for rules regarding the conservation of folklore has been clearly affirmed.

10. As for the means used to attain this end, it appears that forty countries use an inventory of manifestations and expressions of folklore and thirty a register centralizing information on the different manifestations of folklore.
11. With regard to the storage of manifestations or expressions of folklore, forty-nine countries use index cards, records, tapes, microfiches, films, microfilms, etc. From the replies received it can be seen that only ten countries currently use computers for this purpose.
12. Rules on the preservation of folklore appear to be just as essential, for instance keeping inventories of the groups producing manifestations or expressions of folklore, which is apparently already the case in forty-four Member States.
13. Moreover, fifty-two Member States have structures (specialized institutes, museums, specialized sections in ministries, an arts centre, a national library, etc.) or have adopted measures providing access to the phenomenon of folklore (the curricula of schools, universities or other higher education establishments; the media, exhibitions, festivals, shows; interregional exchanges).
14. In sixty-five countries, cultural policies include measures in support of manifestations of folklore (the organization of seminars, exhibitions, festivals, regional, interregional or national artistic competitions; the training of specialists in folklore; publications; financial support; the creation of museums and groups concerned with folklore, etc.).
15. Finally, it appears that restrictions regarding the places in which folklore may be used and the persons entitled to use it exist in certain countries in order to preserve its authenticity and guarantee it against any distortion.
16. Finally, legal measures governing the utilization of folklore appear indispensable.
17. In twenty countries, folklore is already legally protected. On the other hand, in forty-nine countries it is regarded as belonging in the public domain.
18. Where folklore is protected by legislation, the legal principles applicable are those of copyright law, the notion of plagiarism, the notion of unfair competition, and those of a law sui generis.
19. Conditions governing the utilization of works of folklore exist in twenty-five countries (previous authorization, completion of formalities, payment of a royalty). In certain countries the conditions laid down for the utilization of folklore apply to all forms of utilization, whereas in others they relate only to commercial utilization. Likewise, in some countries these conditions are only applicable in the event of utilization by foreigners in the country of origin of the work.
20. When folklore is regarded as belonging in the public domain, its utilization is subject either to the system of 'domaine public payant' as in nineteen countries or to the payment of a royalty.
21. As regards the use to which royalties from the utilization of works of folklore are put, it should be noted that they are allocated to different cultural or social purposes (national fund for arts, music, literature; welfare services for authors and composers; aid for artistic creation or research; scholarships; support for public holidays; rewards for intellectual creativity; the provision of prizes; etc.)

22. It therefore appears that this survey has made it possible to attain the desired target, which is to obtain precise and detailed information on the current situation with regard to the protection of folklore in the Member States.

(b) The Committee of Governmental Experts of February 1982

23. In pursuance of resolution 5/01 adopted by the General Conference of Unesco at its twenty-first session, a Committee of Governmental Experts on the Safeguarding of Folklore met from 22 to 26 February 1982.

24. The purpose of the meeting was to analyse on an interdisciplinary basis, within the framework of an overall and integrated approach, various aspects of folklore with a view to defining measures to safeguard the existence, development and authenticity of folklore and to protect it against the risk of distortion; including the definition of folklore, its identification, its conservation, its preservation and its utilization. The representatives of forty-four Member States participated in the work and experts from six Member States and one non-Member State attended the meeting as observers.

25. After the participants had unanimously emphasized the difficulty, not to say impossibility, of reaching a consensus on the concept of folklore, the Committee confined itself, as far as the definition of folklore was concerned, to distinguishing certain parameters.

26. With regard to the scope of the concept of folklore, the Committee acknowledged that it was a form of expression covering all phases and aspects of human life, as well as all types of cultural behaviour. As a social phenomenon in the broadest sense encompassing all cultural sectors, it could not be broken down into material folklore and intellectual folklore.

27. The academic aspect of folklore (collection, storage and study) was also stressed as well as the crucial importance of folklore research within the context of the preservation of folklore.

28. The importance of the identification of folklore was also noted, and it was suggested that appropriate institutions should be established for the collection and protection of folklore.

29. Several delegations presented folklore as a form of culture possessing an ethical role of social and cultural identification, one which contributed to the suppression of prejudices and the assertion of freedom. These considerations led the delegations in question to emphasize the importance of preserving those elements specific to the cultural identity of a people.

30. The Committee moreover emphasized the need to ensure that folklore retained its dynamic character in so far as the concept of a process was included in that of folklore. Attention was also drawn to the dangers of using folklore out of its original context, and to the need to ensure the continuation of tradition; it was said that this cultural heritage should not be sacrificed for the sake of commercial gain or exploitation for the benefit of the tourist industry, since harmful effects such as plagiarism, imitation and caricature might ensue.

31. With regard to the protection of folklore, it was pointed out that when the safeguarding of folklore was referred to, it was usually its material aspect that was meant, whereas it was equally important to protect the populations concerned from cultural imperialism and to preserve the moral identity of individuals.

32. Upon concluding its deliberations, the Committee of Governmental Experts adopted a series of recommendations related to the definition, identification, conservation and analysis of folklore as well as its preservation, enhancement and reactivation, and its utilization. The report of the Committee (document UNESCO/CPY/TPC/I/4) to which the recommendations are appended is annexed to this document.

III. Preliminary study on the technical and legal aspects of the safeguarding of folklore and decision of the Executive Board of Unesco at its 116th session

33. In the light of the results of the Committees of Governmental Experts convened in 1982, the first by Unesco and the second by Unesco and WIPO, and in pursuance of resolution 5/03, adopted by the General Conference of Unesco at its twenty-first session, which considered it desirable 'that measures designed to safeguard the existence and development of folklore and to protect it against the risk of distortion should be laid down in international regulations', the Unesco Secretariat prepared a preliminary study on the technical and legal aspects of the safeguarding of folklore, which was submitted to the Organization's Executive Board at its 116th session (May-June 1983).

34. It emerges from this study that all the work done so far leads to the conclusion that it is not only desirable but a matter of urgency that measures be taken at the international level to preserve folklore.

35. According to this study, 'two approaches emerge from the work undertaken concerning the method to be selected for establishing regulations on folklore. According to the first approach, the preservation of folklore could take place within the framework of instruments of a specialized nature such as, for instance, the adoption of international regulations on the "intellectual property" aspects of the protection of folklore, as called for by the regional expert committees of Bogotá, New Delhi and Dakar. This would be one of a series of specific projects designed to develop the safeguarding of folklore step by step. The second approach considers that, since the different constituents of the preservation of folklore are closely interlinked, it is only in the framework of a consistent body of precepts and rules encompassing all the disciplines that folklore is liable to draw on that the preservation of this cultural heritage can be ensured'.

36. The preliminary study also stated that: 'at the present stage of work on the question, it does not appear that the different constituents of the preservation of folklore--definition, identification, conservation, preservation, utilization--have been made sufficiently explicit for the Unesco General Conference to be able to consider adopting general regulations as things stand. However, as it seems certain that a satisfactory solution is conditional upon the integration and synthesis, within the framework of an overall and interdisciplinary approach, of all the elements required to ensure the preservation of folklore, the studies being carried out at this level should be pursued. Furthermore, taking into account the relatively urgent consideration that should be given to the adoption of specific international regulations on the intellectual property aspects of the preservation of folklore, inasmuch as this heritage suffers serious damage when used outside the communities that produced it, the necessary steps to formulate such regulations could be taken at the same time as work continued on the lines indicated above. As questions of intellectual property also fall within the fields of competence of the World Intellectual Property Organization, all activities in this direction should be carried out jointly with the latter organization.

37. Following its deliberations on this subject, the Executive Board of Unesco adopted the following decision:

'The Executive Board,

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1. Taking into account Articles 2, 3 and 4 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
2. Having examined the report and preliminary study contained in document 116 EX/26,
3. Invites the Director-General to pursue, bearing in mind the observations and opinions expressed during the examination of this matter by the Executive Board, the preliminary study on the technical, legal and administrative aspects of general regulations concerning the preservation of folklore;
4. Decides to this end, in accordance with Article 4 (2) of the above-mentioned Rules of Procedure, that a Committee of Experts should carry out during the 1984-1985 biennium a thorough study of the possible range and scope of such regulations;

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5. Endorsing the conclusions of the Director-General with regard to the urgent consideration that should be given to the possible adoption of specific international regulations regarding the "intellectual property" aspects of the preservation of folklore,
6. Noting that questions of intellectual property also fall within the fields of competence of the World Intellectual Property Organization (WIPO),
7. Recommends the General Conference to invite the Director-General to take, jointly with the Director-General of WIPO, the requisite measures to look into the need for specific regulations of this kind and to prepare such regulations;
8. Requests the Director-General to submit to it a report on all these matters at its 121st session'.