

**United Nations**  
**Educational, Scientific**  
**and Cultural Organization**  
  
**Unesco - Paris**

**World Intellectual**  
**Property**  
**Organization**  
  
**WIPO - Geneva**

7/10  
**E**

UNESCO/WIPO/WG.1/FOLK/5  
Original: English  
Date: January 28, 1980

WORKING GROUP ON THE INTELLECTUAL PROPERTY ASPECTS  
OF FOLKLORE PROTECTION

(Geneva, January 7 to 9, 1980)

REPORT

prepared by the Secretariat and adopted by the Working Group

Introduction

1. In accordance with the deliberations of the Executive Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) and the Intergovernmental Committee of the Universal Copyright Convention at their sessions held from February 5 to 9, 1979, and to the decisions of the respective Governing Bodies of Unesco and WIPO, the Secretariat of Unesco and the International Bureau of WIPO convened the Working Group to study a draft of Model Provisions intended for national legislation as well as international measures for the protection of works of folklore. The Working Group was attended by experts from 16 countries invited in a personal capacity by the Directors General of Unesco and WIPO. The meeting was also attended by representatives of two intergovernmental and seven international non-governmental organizations as observers. The list of participants is annexed to this report.

2. The documentation available to the Working Group consisted of documents prepared by the International Bureau of WIPO containing Model Provisions for National Laws on the Protection of Creations of Folklore and the Commentary on those Model Provisions (documents UNESCO/WIPO/WG.1/FOLK 2 and 2 Add.) as well as of a document prepared by the Secretariat of Unesco, with the assistance of Professor Jean Carbonnier, containing a Study on the International Regulations of Intellectual Property Aspects of Folklore Protection (document UNESCO/WIPO/WG.1/FOLK 3).

Opening of the Meeting

3. The meeting was opened by Dr. Arpad Bogsch, Director General of WIPO and, on behalf of the Director-General of Unesco, by Miss Marie-Claude Dock, Director of the Copyright Division, who welcomed the participants.

4. The representative of the Director-General of Unesco mentioned that in accordance with the decisions of the Governing Bodies of Unesco and of the Intergovernmental Committee of the Universal Copyright Convention, a study had been undertaken on an interdisciplinary basis within the framework of a global approach, and that this study was in an advance stage of completion enabling Unesco also to participate along with WIPO in efforts aiming at establishing of legal protection of folklore.

5. In a brief introductory address, the Director General of WIPO described the purpose of the meeting, in so far as the national aspects were concerned, as aiming at carrying further the thoughts as to how to protect creations of folklore. He emphasized the desirability of protection of the creations of folklore against unauthorized and unwarranted exploitation and distortion. This protection in order to be meaningful, had to be established in a legally sanctioned form. For that purpose, the International Bureau of WIPO had prepared tentative provisions for national laws for consideration by the Working Group. It was explained that in these provisions the difficulty in finding a definition of the concept of "folklore" valid for all purposes was sought to be surmounted by suggesting a definition serving specifically the purpose of legal protection.

6. The representative of the Director-General of Unesco explained the position in regard to the need for protection of folklore at the international level and mentioned the present status of the work done by Unesco in this field.

#### Election of Officers

7. The Working Group unanimously elected Dr. J. O. Alende (Argentina) as Chairman; Mr. P. Banki (Australia) and Dr. E. P. Gavrillov (Soviet Union) as Vice Chairmen.

#### Model Provisions for National Laws on the Protection of Creations of Folklore

8. Discussion was based on documents UNESCO/WIPO/WG.1/FOLK 2 and 2 Add. prepared and presented by the International Bureau of WIPO.

9. In the course of a general discussion it was agreed that (i) adequate legal protection of folklore was desirable; (ii) such legal protection could be promoted at the national level by Model Provisions for legislation; (iii) these Model provisions should be so elaborated as to be applicable both in countries where no relevant legislation was in force and in countries where existing legislation could be further developed; (iv) the said Model provisions should also allow for protection by means of copyright and neighboring rights where such form of protection could apply and (v) the Model Provisions for national laws should pave the way for sub-regional, regional and international protection of creations of folklore.

10. The general debate was followed by detailed sectionwise discussion of the said Model Provisions. They were generally held to be imaginative and most of them met with general approval. These facts are not separately recorded in respect of each section. On the other hand, the following observations or suggestions made by one or more experts (or by the Secretariats, as indicated) in connection with certain sections are hereinafter recorded:

ad Section 1(1): (i) instead of speaking of "creations" of folklore, one should speak about "works" or "manifestations" or "expressions"; (ii) the words "through forms which have been evolved from generation to generation" should be omitted; (iii) one should omit the word "indigenous" or that one should not speak of "indigenous" communities of the "nation" but rather of the "ethnic" communities in a "country" (although one expert expressed the view that the use of the word "ethnic" was undesirable for political reasons and that "national communities" would be preferable); (iv) whether something was to be regarded as folklore or not should be decided upon the basis of what the interested community thinks about the question: in other words, the consensus of that

community would be the determinative factor; (v) the requirement of "authenticity" should be mentioned; (vi) any definition of folklore should be omitted or at least it should be made clear that the (more restricted) definition of the notion of folklore is only for the purposes of legal protection and does not affect that notion's (larger) scope in common parlance or for the purposes of social or cultural disciplines; (vii) it should be clarified whether the law would apply only to folklore originating in the country or also to foreign folklore;

ad Section 1(2): (i) the examples given should include riddles, rituals and musical instruments; (ii) in the Spanish version, the word "songs" was not translated and the word "plays" was improperly translated;

ad Section 2: this Section should appear after the substantive provisions or the provisions on appeal should be incorporated in Section 5;

ad Section 2(1): the reference to Authors' Societies and National Museums should be omitted or these references should be placed between square brackets;

ad Section 2(2): (i) the reference to the Ministry should not be used, (ii) the need for the provision on appeals should be re-examined (as possibly superfluous); (iii) the need for a provision on appeal to the courts should be considered;

ad Section 2(3): this provision should be omitted as superfluous;

ad Section 2(4): this provision should be omitted as superfluous;

ad Section 3: (i) identification elements of creations of folklore or maintaining their inventory was largely a matter of preservation of folklore; (ii) the requirement of inventories in connection with the special purpose of legal protection could result in an avoidable overlapping and unreasonable burden on the competent authorities; (iii) it might be unrealistic to require special kinds of inventories of creations of folklore separately from the general cataloguing of the manifold body of folklore which already existed in certain countries; consequently, as suggested by the Secretariats, Section 3 should be deleted from the text of the draft Model Provisions; instead it should be mentioned in the Commentary on the Model Provisions that whenever the competent authority was in doubt concerning the identification of creation of folklore, it should consult all available sources, including existing catalogues, other records, expert opinion, witnesses, including elders of a community;

ad Section 4: (i) utilization of the creations of folklore with gainful intent should be exempt from authorization if made by members of the community from which the creation originated and also in certain cases in addition to those mentioned as exceptions in Section 6; (ii) the terminology used in this Section should be in harmony with that in Section 1; (iii) the meaning of the word "imitation" should be clarified;

ad Section 5: (i) at the beginning of this Section, provision might also be made for a direct obligation in respect of application for authorization; (ii) the last sentence of Section 2(2) concerning appeals against decisions of the competent authorities regarding creations of folklore should be transferred as a subsection (between subsections 2 and 3) of Section 5;

ad Section 5(1): (i) a written application for authorization should not necessarily be made obligatory; (ii) on the other hand, the contents of such an application might be prescribed in greater detail;

ad Section 5(3): (i) this provision should be made more flexible by providing for different options in respect of utilization of the collected fees, be it for promotion of folklore, for the support of national authors or for other cultural purposes; (ii) the fees to be collected by the competent authority under this subsection should not necessarily be according to a tariff to be established necessarily by the supervisory Ministry and that this should be optional as between the competent authority and the supervisory Ministry; (iii) a possibility

should also be allowed for a contractual solution of the amount of the fees; (iv) the term "fees" should, at least in French, be replaced by the term "redevances";

ad Section 6(1): The Secretariats announced that taking into consideration several statements made by experts in the course of preceding discussions, this subsection should read as follows: "Section 4 shall not apply where any member of the community performs or reproduces creations of folklore of his own community." During the deliberations on this point, one or two experts suggested that (i) uses of creations of folklore permitted without authorization should also be subject to payment; (ii) such payment, if required, should be provided for in a flexible manner; (iii) as regards exception from Section 4, difference should be made between exploitation of folklore by means of modern technology, and its utilization in the traditional ways; (iv) the exception should become the rule and cases subject to authorization the exceptions; (v) some control should be provided for also over free utilization of creations of folklore;

ad Section 6(2): (i) the expression "incidental use" was too vague for sufficiently determining the scope of free use; (ii) some types of free use established by copyright legislation should also be enumerated; (iii) reference should be made to cases of free use as established in the copyright law; (iv) the interpretation of the term "incidental use" should be left to competent authorities; (v) the commentary on the Model Provisions should refer in detail to cases to which this exception applies;

ad Section 7: the Secretariats proposed to omit this provision since it was not legally binding due to the lack of any sanctions; instead, the Commentary would suggest methods recommended for indicating of the origin of the creation utilized;

ad Section 8: (i) the title of the Section should be revised to cover all the contents of this Section; (ii) the last sentence relating to recidivism should be deleted from each of the subsections; (iii) the words after the words "punishable by....." in each of the subsections should be deleted; (iv) penal sanctions were abhorrent; (v) administrative sanctions should be preferred to penal ones; (vi) financial sanctions should be preferred to imprisonment;

ad Section 8(1): this provision should be redrafted to make it clear that it was limited to cases where there is deception;

ad Section 9: (i) this Section might be amalgamated with Section 8; (ii) if not amalgamated, its title should be changed, seizure being a sanction rather than a procedural provision; (iii) some other procedural aspects should likewise be considered such as the deadline in Section 5;

ad Section 9(2): (i) this subsection should be deleted; (ii) seizure was an important sanction and should be provided for by using a terminology consistent with the relevant constitutional provisions in various countries; (iii) the meaning of the expressions "copies" and "discrediting" should be harmonized with other sections of the Model Provisions;

ad Section 10: (i) it should be more directly stated that "this Law shall in no way limit or prejudice" protection under another title; (ii) reference should also be made to protection offered by legislation in the field of industrial property (designs, marks, appellations of origin, etc.).

11. Suggestions were also made by one or two participants to add some further provisions to the existing sections, setting out that (i) the protection of creations of folklore was not limited in time; (ii) no provisions of the law should have the effect of hindering the normal use of creations of folklore.

12. The expert from Bolivia suggested that a Latin American pilot meeting be held in La Paz to consider international norms for the protection of folklore on a regional, rather than purely national, basis.

International Regulation of the Intellectual Property Aspects of Folklore Protection

13. The representative of the Director-General of Unesco referred to the studies conducted by that Secretariat with a view to the safeguarding of folklore at the international level within the framework of a set of rules and precepts which, in view of the integrated nature of folklore, would cover all disciplines likely to be involved. She stressed that the various aspects comprised in the safeguard of folklore concerned (i) the definition of the actual concept of folklore, (ii) its identification requiring methodological rules (collection, training of technicians) and the use of technical means for collecting, classifying and recording it, (iii) conservation of folklore, which itself had two aspects, physical conservation (recording of folklore events, conservation and storage of documents) and the maintenance of the social environment which generates folklore phenomenon, (iv) preservation of folklore necessitating structures capable of guaranteeing its existence and development, (v) rules for its use.

14. It was the latter chapter that was concerned by the study drawn up by the Unesco Secretariat with the help of Professor Carbonnier and reproduced in document UNESCO/WIPO/WG.1/FOLK/3, which while examining the various legal means capable of protecting folklore at the international level against unlawful exploitation and preventing its deterioration, also outlined technical arrangements for that purpose.

15. Professor Carbonnier said that no pre-existing legal category provided an entirely satisfactory framework for the protection that folklore, seen as an intellectual production, needed within the international context. In particular, the collective and evolutionary genesis of folklore and the impossibility of limiting protection to a term with a specifiable starting-point militated against any rapprochement with copyright. Certainly the protection of folklore had to embody moral rights in the same way as literary or artistic property. Here, however, moral rights probably had more importance, relatively speaking, than in copyright, as folklore was first and foremost protected as being the expression of the cultural personality of a community. This did not preclude the existence of a pecuniary right based on the concepts of collective work and cultural heritage, but such a right had to manifest itself in obligations, and in particular in the obligation of intellectual cooperation between communities and nations. The difficulties facing the protection of folklore in the domestic context would probably be still greater in the international context. One such difficulty would be that resulting from the disparity between the emergent community and the centralized State, the latter being the only entity recognized under international law. It seemed, however, that, one way or another, the community that created the folklore would have to be given a share in the profits that a body within the national State structure could claim in its name. The complexity of the problem was a reason for its study to be focused, in an initial stage, on the folklore phenomena that had given rise to the most flagrant abuses of adulteration and despoiling, namely, in music, dances, songs and oral recitations.

16. A number of experts congratulated Professor Carbonnier on his study and emphasized the wealth of ideas which had emerged from the report.

17. They also observed that the time at their disposal did not permit them to comment on the whole of the report but that it could be worthwhile holding a debate on the conclusions advanced in the study.

18. The proposal that an Expert Group should again be convened was echoed by one participant who also suggested that the two Secretariats submit to such a Group a more detailed document taking into account the conclusions that had emerged from the study by Professor Carbonnier.

19. The need for international protection of folklore was emphasized by the majority of the experts. One of them made definite proposals as to the procedure for protection at the international level, which would entail:

- (i) automatic protection inspired by the protection of literary and artistic works;
- (ii) registration of works of folklore at the national level;
- (iii) establishment of a system of international registration of folklore, combined with national registration;
- (iv) introduction of a licensing system for commercial uses, involving payment of a royalty for use of the folklore.

20. One of the experts drew attention to paragraph 26 of Professor Carbonnier's study, and added that his country's interest was not in preventing the use of national folklore, but in having the source of the folklore used clearly indicated. He also stressed the need for the international organizations to afford technical and financial assistance to developing countries in order that folklore phenomena might be more thoroughly understood.

#### Conclusion

21. In conclusion, the Working Group recommended, in respect of the Model Provisions for National Laws on the Protection of Creations of Folklore, that the Secretariats should prepare a revised draft and commentary thereon, taking into consideration all the interventions, whether or not reflected in this report, and that such a draft with its commentary should be presented for further consideration at a subsequent meeting.

22. As far as the international aspects are concerned, the Working Group strongly recommended that the Secretariats while continuing the study of the intellectual property aspects of folklore protection at the international level, should endeavor in the first stage to identify on a regional basis the possibilities of protection of folklore. Simultaneously, the ongoing studies being undertaken by Unesco in the framework of a global and interdisciplinary approach, should be continued and utilized in so far as they concern the intellectual property aspects of the protection of folklore.

#### Adoption of the Report and Closing of the Meeting

23. After the adoption of this report and after the usual thanks, the Chairman declared the meeting closed.

[Annex follows]

## ANNEX/ANNEXE/ANEXO

LIST OF PARTICIPANTS  
LISTE DES PARTICIPANTS  
LISTA DE PARTICIPANTES

## I. MEMBERS OF THE WORKING GROUP/MEMBRES DU GROUPE DE TRAVAIL/MIEMBROS DEL GRUPO DE TRABAJO

M. S. ABADA

Directeur général, Office national du droit d'auteur, Alger, Algérie

Dr. J. O. ALENDE

Coordinador Area Derecho Civil, Ministerio de Justicia, Buenos Aires, Argentina

Mr. D. AWODOYE

Head of Performing Arts and Copyrights, Federal Ministry of Youths and Culture, Department of Culture, Lagos, Nigeria

Dr. B. BACHMANN-GEISER

Présidente de la Société suisse des traditions populaires, Berne, Suisse

Mr. P. BANKI

Legal Research Officer, Australian Copyright Council, New South Wales, Australia

M. J. CARBONNIER

Professeur à l'Université de Droit, d'Economie et de Sciences Sociales, Paris, France

Dr. M. FICSOR

Director General, Bureau for the Protection of Authors' Rights (ARTISJUS), Budapest, Hungary

Dr. E. P. GAVRILOV

Head, Legal Department, Copyright Agency of the USSR (VAAP), Moscow, USSR

Dr. A. JABBOUR

Director, American Folklife Center, Library of Congress, Washington, USA

Dr. R. R. MONROY

Director Ejecutivo, Instituto Boliviano de Cultura, La Paz, Bolivia

M. N. NDIAYE

Directeur général, Bureau sénégalais du droit d'auteur, Dakar, Sénégal

Mme M. A. NIEDZIELSKA

Maître de Conférence à l'Université Marie Curie, responsable de la Chaire du droit commercial, Lublin, Pologne

Dr. S. PRETNAR

Professeur émérite, Faculté de droit, Université de Ljubljana, Yougoslavie

Dr. S. D. QUIASON

Director, The National Library, Manila, Philippines

Mr. D. SAVANANANDA

Director General, Fine Arts Department, Bangkok, Thailand

Sr. J. M. TERÁN CONTRERAS

Director General de Derecho de Autor, México, México

II. INTERGOVERNMENTAL ORGANIZATIONS/ORGANISATIONS INTERGOUVERNEMENTALES/  
ORGANIZACIONES INTERGUBERNAMENTALES

ARAB EDUCATIONAL, CULTURAL AND SCIENTIFIC ORGANIZATION (ALECSO)/ORGANISATION  
ARABE POUR L'EDUCATION, LA CULTURE ET LA SCIENCE/ORGANIZACION ARABE PARA LA  
EDUCACION, LA CULTURA Y LA CIENCIA

M. M. BEN-AMOR

Représentant permanent de l'ALECSO auprès de l'UNESCO

ORGANIZATION OF AMERICAN STATES (OAS)/ORGANISATION DES ETATS AMERICAINES  
(OEA)/ORGANIZACION DE LOS ESTADOS AMERICANOS

Dr. F. E. HURTADO DE MENDOZA

Conseiller de la Délégation permanente à Genève

III. INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS/ORGANISATIONS  
INTERNATIONALES NON GOUVERNEMENTALES/ORGANIZACIONES INTERNACIONALES  
NON GUBERNAMENTALES

INTERNATIONAL LITERARY AND ARTISTIC ASSOCIATION (ALAI)/ASSOCIATION  
LITTERAIRE ET ARTISTIQUE INTERNATIONALE/ASOCIACION LITERARIA Y ARTISTICA  
INTERNACIONAL

M. J. A. KOUTCHOUMOW

Secrétaire général, UIE

EUROPEAN BROADCASTING UNION (EBU)/UNION EUROPEENNE DE RADIODIFFUSION (UER)/  
UNION EUROPEA DE RADIODIFUSION

Dr. W. RUMPHORST

Assistant to Legal Director

INTERNATIONAL CONFEDERATION OF SOCIETIES OF AUTHORS AND COMPOSERS (CISAC)/  
CONFEDERATION INTERNATIONALE DES SOCIETES D'AUTEURS ET COMPOSITEURS/  
CONFEDERACION INTERNACIONAL DE SOCIEDADES DE AUTORES Y COMPOSITORES

M. M. ASTRUC

Chargé de Mission auprès du Directeur Général, SACEM, Neuilly, France

INTERNATIONAL FEDERATION FOR DOCUMENTATION (FID)/FEDERATION INTERNATIONALE DE  
DOCUMENTATION (FID)/FEDERACION INTERNACIONAL DE DOCUMENTACION

Professor Dr H. ARNTZ

President

INTERNATIONAL FEDERATION OF MUSICIANS (FIM)/FEDERATION INTERNATIONALE DES  
MUSICIENS/FEDERACION INTERNACIONAL DE MUSICOS

Mr. R. LEUZINGER

Secrétaire général

INTERNATIONALE GESELLSCHAFT FUR URHEBERRECHT (INTERGU)/INTERNATIONAL  
COPYRIGHT SOCIETY/SOCIETE INTERNATIONALE POUR LE DROIT D'AUTEUR/SOCIEDAD  
INTERNACIONAL DE DERECHO DE AUTOR

Dr. G. HALLA

General Secretary

Professor Dr. J. KUCKERTZ



INTERNATIONAL PUBLISHERS ASSOCIATION (IPA)/UNION INTERNATIONALE DES EDITEURS (UIE)/UNION INTERNACIONAL DE EDITORES

M. J. A. KOUTCHOUMOW  
Secrétaire général

## IV. SECRETARIAT/SECRETARIA

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)/  
ORGANISATION DES NATIONS UNIES POUR L'EDUCATION, LA SCIENCE ET LA CULTURE/  
ORGANIZACION DE LAS NACIONES UNIDAS PARA LA EDUCACION, LA CIENCIA Y LA  
CULTURA

Mlle M.-C. DOCK  
Directeur, Division du droit d'auteur

M. A. AMRI  
Chef, Centre international d'information sur le droit d'auteur

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)/ORGANISATION MONDIALE DE LA  
PROPRIETE INTELLECTUELLE (OMPI)/ORGANIZACION MUNDIAL DE LA PROPIEDAD  
INTELLECTUAL

Dr. Arpad BOGSCH  
Director General

Mrs. K.-L. LIGUER-LAUBHOUEF  
Deputy Director General

Mr. C. MASOUE  
Director, Copyright and Public Information Department

Mr. S. ALIKHAN  
Director, Copyright Division

Mr. G. BOYTHA  
Head, Division for Copyright Development Cooperation Projects

## V. OFFICERS/BUREAU/MESA

Chairman/Président/Presidente:

Dr. J. O. ALENDE (Argentina/  
Argentine)

Vice Chairmen/Vice Présidents/  
Vicepresidentes:

Mr. P. BANKI (Australia/Australie)  
Dr. E. P. GAVRILOV (Soviet Union/  
Union soviétique/Unión Soviética)

Secretaries/Secrétaires/  
Secretarios:

Mlle M.-C. DOCK (Unesco)  
Mr. S. ALIKHAN (WIPO/OMPI)