

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

**World Intellectual
Property
Organization
WIPO - Geneva**

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Distribution: limited

UNESCO/WIPO/WG.II/FOLK/2
Original: English
Date: December 15, 1980

WORKING GROUP ON THE INTELLECTUAL PROPERTY ASPECTS
OF FOLKLORE PROTECTION

(SECOND MEETING)

(Paris, 9 - 13 February 1981)

REVISED MODEL PROVISIONS FOR NATIONAL LAWS
ON THE PROTECTION OF EXPRESSIONS OF FOLKLORE

Considering that indigenous folklore represents an essential part of the living cultural heritage of the nation, originating in and constantly further developed by the national communities within the nation;

Considering that certain methods of commercializing the visual or audible expressions of folklore may lead to improper exploitation of the cultural heritage of the nation;

Considering that any abuse or distortion of its folklore is prejudicial to the cultural interests of the nation;

Expressions of folklore originating in [insert the name of the country] shall be protected by this [law] against illicit exploitation and other prejudicial actions.

I

SUBSTANTIVE PROVISIONS

Section 1

Protected Expressions of Folklore

(1) For the purposes of this [law], "folklore" means the totality of the traditional artistic heritage originating in and developed by a national community of the country.

(2) For the purposes of this [law], "expressions of folklore" mean creations consisting of characteristic elements of folklore, such as

(i) folk tales, folk poetry and riddles;

(ii) folk songs and instrumental music;

(iii) folk dances, plays and artistic forms of rituals;

(iv) works of folk art, including in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, needlework, textiles, costumes;

(v) musical instruments.

Section 2

Utilizations Subject to Authorization

Subject to Section 3, the following utilizations of expressions of folklore shall be subject to authorization by the competent authority referred to in Section 8, subsection (i):

(i) any reproduction, and any distribution of copies, of expressions of folklore, if made with gainful intent;

(ii) any public recitation or performance, any transmission by wireless means or by wire, and any other form of communication to the public, of expressions of folklore, if made with gainful intent.

Section 3

Exceptions

(1) Section 2 shall not apply where any individual member or members of a national community of the country reproduces, recites or performs expressions of the folklore of his own community.

(2) Section 2 shall not apply where the utilization of the expressions of folklore is incidental. Incidental utilization includes, in particular:

(i) utilization by way of illustration in the course of teaching;

(ii) utilization by way of illustration in the original work of an author, provided that the extent of such utilization is compatible with fair practice;

(iii) borrowing of elements of expressions of folklore for creating an original work of an author, provided such utilization is compatible with fair practice;

(iv) utilization of any expression of folklore that can be seen or heard in the course of a current event for the purposes of reporting on that current by means of photograph, broadcasting, or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose;

(v) utilization of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists in including their image in a film or in a television broadcast [provided this is done only by way of background or incidental to the essential matters represented].

Section 4

Acknowledgement of Source

(1) In all printed publications, and in connection with any communications to the public, of any identifiable expression of folklore, its origin shall be indicated in an appropriate manner, by mentioning the community and/or geographic place from where the expression utilized originates.

(2) The requirement set forth in paragraph (1) shall not apply to utilizations of the kinds referred to in Section 3, subsection (2) (iii) to (v).

Section 5

Offences

(1) Any person who, without the authorization of the competent authority referred to in Section 8, subsection (1), utilizes an expression of folklore in violation of the provisions of Section 2, shall be obliged by the competent authority to cease such utilization; he shall be liable to a fine not exceeding ...

(2) Any person not complying with the requirement provided for in Section 4, shall be liable to a fine not exceeding ...

(3) Any person purposely deceiving others in respect of the origin of objects made or marketed by him, or in respect of public recitations or performances given or organized, broadcast or otherwise communicated to the public by him, by creating the impression that such objects, on the subject matter of such recitation or performances, are expressions of folklore of a certain national community, where, in fact they do not so originate, shall be punishable by a fine not exceeding ... or imprisonment not exceeding ... or both.

(4) Any person who makes or markets objects, publicly recites or performs, or organizes the public recital or performance of, or broadcasts or otherwise communicates to the public expressions of folklore in a way that such articles, recitals or performances distort the same in a manner prejudicial to the cultural interests of the country, shall be punishable by a fine not exceeding ... or imprisonment not exceeding ... or both.

Section 6

Seizure

Any object which was made in violation of Section 2 and any receipts of the person violating that Section and corresponding to such violations, as well as any implements used for perpetrating the violation, shall be subject to seizure.

Section 7

Duration of Protection

The protection of expressions of folklore under this [law] is unlimited in time; no action can be instituted, however, concerning any offence under Section 5, after the lapse of ... years following the date on which the offence has been committed.

II

ADMINISTRATIVE PROVISIONS

Section 8

Authorities

- (1) For the purpose of this [law], the expression "competent authority" means ...
- (2) For the purpose of this [law], the expression "supervisory authority" means ...

Section 9

Authorization

(1) Authorization of any utilization of expressions of folklore subject to authorization under this [law] has to be applied for [in writing] with the competent authority.

(2) In the application, the applicant has to indicate his name, professional activity and address, specification and source of the expression of folklore intended to be utilized and the manner of the utilization intended. In the case of intended reproduction, the proposed number of copies and territory of distribution of the reproduced copies, have also to be indicated. As regards recitals, performances and other communications to the public, the nature and number as well as the territory to be covered by the authorization has to be specified.

(3) The decision of the competent authority shall be communicated to the applicant in written form within [15][30]days following the receipt of the application; any denial of authorization shall be motivated. If no decision is made within the said time limit, the authorization shall be regarded as granted.

(4) Where the competent authority grants authorization it shall fix in its decision the amount of and shall collect fees corresponding to a tariff [established] [approved] by the supervisory authority. The fees collected shall be used for the purpose of promoting or safeguarding national [culture] [folklore]; a share of ... % in the fees collected shall be granted to the community from which the expressions of folklore for the utilization of which the fees were paid originate. The competent authority is entitled to deduct from the fees collected a part corresponding to its costs arising from the administration of this Section.

(5) Appeals against the decisions of the competent authority are admissible by the person applying for the authorization and the representative of the interested community.

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Section 10

Jurisdiction

(1) Appeals against the decisions of the [competent authority] [supervisory authority] are admissible to the Court of ...

(2) In case of any offence under Section 5, the Court of ... has jurisdiction.

Section 11

Relation to Other Forms of
Protection offered by Legislation

This [law] shall in no way limit or prejudice any protection applicable to expressions of folklore under the copyright law, the law protecting performers, producers of phonograms and broadcasting organizations, the laws protecting industrial property, or any other law or international agreement to which the country is party. It shall in no way prejudice other forms of protection provided for the safeguard and preservation of folklore, either.

Section 12

Interpretation

The protection granted under this [law] shall in no way be interpreted in a manner which could hinder the normal use and development of expressions of folklore by the interested national communities of the country.

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