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**INTERNATIONAL PROTECTION OF EXPRESSIONS OF FOLKLORE:
UNESCO FOLLOW-UP TO THE 1989 RECOMMENDATION ON
THE SAFEGUARDING OF TRADITIONAL CULTURE AND FOLKLORE**

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EXECUTIVE SUMMARY

The 1989 UNESCO *Recommendation on the Safeguarding of Traditional Culture and Folklore* is generally recognized as the highest profile declaration on the importance of intangible heritage in the world.

The urgency of that initiative is more obvious today than it was at the time of the Recommendation (1989). The growing threat of ethnocentrism to world peace, makes the international conservation, exchange and appreciation of intangible heritage more important to international and intercultural understanding than it ever was in the past. These expressions of traditional culture and folklore play a significant role in the overall UNESCO objective of a "culture of peace".

That is the conclusion, when the Recommendation is viewed as a *unit*. However, when it is broken down into its component parts, it becomes obvious that the document has six action areas — with varying objectives, methodologies and results:

- a) **A viable international institutional network:** this is arguably the single most important feature of the Recommendation. Significant work has been done in this area since 1989, but considerable work still lies ahead to create such a network internationally and regionally (electronically, in writing, or by whatever other means).
- b) **Common typology:** UNESCO has carried that task as far as any non-user could be expected.
- c) **Training:** Much progressive work is still to be done.
- d) **Cooperation:** these initiatives are continuing.
- e) **Preventing distortion:** For historical reasons, the Recommendation refers only to the dissemination of the *Model Provisions* (1984), which evolved from what was originally a copyright-type model of protection, but
 - the companion documentation repeated that this subject was "complex", that its success would depend upon the technical "definitions" used etc. In the face of this single option and of the warnings above, very few Member States replied, when asked how they would implement this part of the Recommendation.
 - This model offers protection against *verbatim* reproduction and *modest* distortion...assuming that the original has been accurately recorded, and assuming that the original has been withdrawn from "the public domain" and duly registered as such.
 - This model is more awkward to apply in case of *massive* distortion (mere emulation of a general "style", i.e. "pastiche"). In fact, under copyright notions of "fair dealing", copyright-type protection might not have existed at all under such circumstances.
 - There are, however, other legislative options (e.g. "consumer-type" legislation) which can potentially address cases of "pastiche". It would be in the interests of Member States to learn *what all their options are*, what the pros and cons of each option may be, and what precedents are available for each option. Member States may then feel more *comfortable* in selecting a strategy suited to their own purposes.
- f) **Remuneration:** the *intent* was to create a system of remuneration so that

creators/interpreters of folklore would be on an even footing with e.g. copyright-holders. The Recommendation again referred only to the *Model Provisions*, which had evolved from copyright concepts. As in the case of "protection" above, these concepts were originally designed to compel authorization (and usually payment) for *verbatim* reproduction, or reproduction with only modest variations. They were not designed for "pastiche".

- It has been argued that the overwhelming majority of misappropriations of folklore are in the form of pastiche, not of *verbatim* reproduction.
- It is possible to legislate for "pastiche" (see above); but if the intent is to create a system of *remuneration* when a culture borrows the "style" from another culture, then that triggers an element of risk.
- The risk is simple: on any given day, "dominant cultures" export more cultural expression to "threatened cultures" than vice versa (that is precisely why the former are called "dominant" and the latter are called "threatened"). If *remuneration* must accompany the transfer of these cultural expressions, lawyers within the dominant cultures may quickly argue that since they are exporting more than they are importing, the "balance of payments" — for transfers of cultural "styles" — should favour the "dominant cultures" at the expense of the "threatened cultures". That would be the diametric opposite of what the Recommendation had intended.
- The only way to reverse that balance of payments would be to have such subtle drafting that (a) payment would be owing when "dominant cultures" borrowed expressions from the "threatened cultures", but (b) payment would *not* be owing when the "threatened cultures" borrowed idioms from the "dominant cultures". To date, no one has shown *how* such an arrangement could be worded.

1. INTRODUCTION

On February 12th, 1997, this writer was engaged by UNESCO to review the preparation, adoption and implementation of the *Recommendation (UNESCO, 1989) on the Safeguarding of Traditional Culture and Folklore*." It can be divided into several distinct parts:

- (A) Definition: "the totality of tradition-based creations of a cultural community (reflecting) social identity...transmitted orally, by imitation or by other means (including) language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts."
- (B) "Identification":
 - (a) inventory of institutions
 - (b) identification and recording systems
 - (c) standard typology.
- (C) "Conservation":
 - (a) archives
 - (b) archival services
 - (c) exhibits
 - (d) presentation within cultural context
 - (e) harmonization of archives
 - (f) training staff
 - (g) secure copies
- (D) "Preservation":
 - (a) curricula
 - (b) self-documentation
 - (c) national folklore councils
 - (d) support for dissemination
 - (e) research
- (E) Dissemination:
 - (a) events
 - (b) media
 - (c) hiring folklorists
 - (d) educational materials
 - (e) information centres
 - (f) meetings and exchanges
 - (g) a researcher's Code of Ethics
- (F) Protection: "Folklore constitutes manifestations of intellectual creativity (and)...deserves to be protected in a manor inspired by the protection provided for intellectual productions. Such protection of folklore has become indispensable as a means of promoting further

development, maintenance and dissemination.”

- (a) Publicize UNESCO/WIPO *Model Provisions* (1984) and related work
- (b) (i) protect privacy of folklore informants
- (ii) collections in good condition
- (iii) protect against misuse
- (iv) archives to monitor subsequent use.

(G) International:

- (a) cooperate with international and regional organizations
- (b) (i) exchanges
- (ii) training
- (iii) joint projects
- (iv) meetings and courses
- (c) ensure internationally the economic, moral and so-called neighbouring rights
- (d) provide copy of research/materials to host country
- (e) no damage
- (f) risk avoidance.

As described by one organization, some countries interpreted it as a call to reassess and develop the capacity of countries to

- create networks for their folklore institutions
- develop synchronized typologies
- synchronize cataloguing
- do sufficient training
- allow ethnic communities to have access to their own culture
- have a national voice for folklore
- support dissemination
- assure freedom of research
- disseminating folklore (and infrastructure for same)
- disseminate information on folklore
- meeting and exchanges of folk artists
- develop appropriate legal frameworks to assist folk artists
- a legal framework for collections
- international cooperation.

2. UNESCO'S ROLE

Technically speaking, under the exact wording of the Recommendation,

- UNESCO itself is not given any specific mandate, and
- the Recommendation imposes obligations on Member States, but provides no explanation of how to implement them.

In actual *practice*, the UNESCO action areas could be summarized as follows:

SIX PRIMARY ACTION/ITEMS:

1. A VIABLE NETWORK OF SUPPORT/ACTIVITIES
2. A COMMON TYPOLOGY
TRAINING
4. PROTECTION AGAINST DISTORTION
5. REMUNERATION FOR CREATORS/INTERPRETERS
6. FURTHER CO-OPERATION

3. HISTORY

The desire to create a viable international framework for of traditional culture is as old as the Organization itself. As early as 1948, the question of the protection of languages was already being discussed at the meetings around the founding of UNESCO. The first symposium on languages occurred in 1951. The issue of protecting folklore was also being discussed at the time of adoption of the Universal Copyright Convention in 1952.

In 1972 the General Conference of UNESCO resolved to adopt a "ten-year plan for the systematic study of oral traditions and the promotion of African languages", soon followed "by similar efforts in Asia and Latin America". UNESCO also responded to a 1973 overture by Bolivia, by calling for analysis of the "intellectual property" dimension of folklore. UNESCO's comprehensive programme on the intangible (non-physical) cultural heritage was officially launched in 1976 under the auspices of Programme Resolution 4.111 adopted by the General Conference (Nairobi, 1976).

After many expert meetings hosted by WIPO and UNESCO , in 1979 the Director General of UNESCO also contacted Member States with a questionnaire identifying five problem areas concerning "folklore":

- Definition
- Identification
- Conservation
- "Exploitation"
- "Use" (later called "Protection")

After still further meetings UNESCO and WIPO jointly developed (in 1984) the *Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions*.

As a follow-up, a new survey was launched in 1986 "among Member States to find out about the situation of their non-physical heritage and what safeguarding actions were most badly needed." After still further meetings and reports, the text of a Recommendation was finalized and was adopted unanimously by the General Conference on November 15, 1989.

Not all background legal opinions were equally unanimous. The various legal implications of the Recommendation, for Member States, were outlined in detail in the *First Draft of a Recommendation on the Safeguarding of Culture: Final Draft Prepared in Accordance with Article 10(3) of the Rules of Procedure* (1988). During the consultation process immediately leading up to the adoption of the Recommendation, countries were invited to comment on the draft. One country objected to the assimilation of folklore protection to copyright, and finally objected to the draft's definition of folklore itself. Another insisted that if a country wished to confer intellectual property rights on its folklore, it should use Article 15.4 of the Berne Convention instead. That country therefore suggested that the entire section dealing with intellectual property and protection be deleted altogether. "Unless this is analysed more carefully, these questions cannot give rise to a Recommendation."

As mentioned, the Recommendation was nonetheless adopted unanimously. However, when the UNESCO Secretariat sent a circular letter on April 8, 1991 asking countries about their follow-up to the Recommendation, only six Member States replied, and even there, most answers were so general as to be essentially meaningless. UNESCO therefore evaluated its position in 1992-93, and again in 1997. The outcome is described in this report.

4. FOLLOW-UP ACTIVITIES

In all, during almost eight years since adoption of the Recommendation, UNESCO has undertaken a variety of supportive initiatives at the international, regional and sub-regional levels, including:

a) Support for Institutional Infrastructure:

- The European Centre for Traditional Culture was established in Budapest.
- The Archives Data Bases of Balkan Folklore was created in Sofia.
- A joint project was launched with the Centre of Data Bases on Endangered Languages (University of Tokyo) on a *Red Book of Endangered Languages*.
- the support for the International Clearing House for Endangered Languages (University of Tokyo).
- Support for MASA (African Performing Art Market) for its extension to English and Portuguese-speaking countries in Africa.
- Establishment of a network for institutions specializing in folk culture in "countries in transition".
- Establishment of a network of institutions for traditional Arab music.
- Establishment of a network of institutions for traditional Andean music.
- Support for the Network of African Music Institutions.
- Feasibility study of transferring some of UNESCO's music collection to CD-Rom.
- Feasibility study of transferring UNESCO's audio-visual material on intangible heritage to the Internet.
- "An international fund of intellectual property of the traditional populations, (in) tribute to (their) biological and scientific contribution."
- Assistance to classification of Arab musical documents.
- Encouragement of institutions to prepare "a preliminary inventory of priority research."

- Encouragement for the circulation of works “in their authentic form and do not convert them for circulation on the pretext of making them more readily ‘understandable’ to tourists.”
- Encouragement for specialists to write in a manner which is more accessible to the general public (and) film producers (to) produce films that are more popular.

b) Support for Training:

- Training courses (sub-regional) on terminology (Africa, Latin America, the Pacific) and publication of works devoted to languages.
- African workshop on teaching traditional music in primary grades.
- African workshop on training traditional musicians.
- Support for regional and sub-regional training courses for teacher educators and specialists (notably women) on traditional cultural forms.
- A seminar on drawing up an inventory of endangered Arctic languages.
- Regional seminars (Africa, Asia, Europe) on policies on use of national languages.
- Symposium in Asia on traditional music/dance.
- Assistance for systematic archiving (e.g. training of sound archivists, management training etc.)

c) Strategic Publications:

- A guide on strengthening protection against ill-advised commercialization.
- Collected data on linguistic policies in Africa.
- Encouragement for the adoption of linguistic policies by certain African countries.
- Establishment of a protective plan for intangible heritage of minority groups in Laos, and of traditional techniques related to bamboo.
- An overview of language initiatives under the title *Sauvegarde des langues à l'unesco*.
- *A Guide for the Collection of Traditional Music and Influence.*

d) Festivals Etc.:

The question of festivals was studied by the Secretariat in 1987, and again in 1993. There was also:

- A Festival in Africa on traditional music/dance.
- An international central Asia saga festival will be organized for Mongolia.
- UNESCO will participate in sacred music festivals and in the African Art and Theatre Fair.

e) Special Recognition:

- Financial and moral support for national and international competitions.
- A diploma of honour and an international award for leading exponents.
- A prize for “masterpieces of the universal heritage”.
- Compilation of interdisciplinary encyclopaedias of the knowledge of traditional societies.”
- A new programme entitled “**System of Living Human Treasures**” (outlined in further detail in a folder package which UNESCO distributes under the same name).

f) Encouragement for Protection

- Encouragement to member states for framework legislation on national phonographic collections.
- Collection of mechanisms, by Member States “designed to protect the traditional intangible cultures against uncontrolled and excessive commercial exploitation.”
- Encouragement for by NGOs at the national level.
- Reminders that the intangible culture of ethnic minorities is “like monuments are works of the plastic arts,...part of the national heritage and that of all mankind.”

g) Miscellaneous Projects

- Aid to certain South-east Asian countries for intangible heritage of minorities.
- 30 new compact discs in the UNESCO Collection of Traditional Music.
- Support for books on traditional forms of cultural expression.
- Support for the Association of Lacquer Crafts People of East Asia.
- Assistance for artists' equipment when a performing art had been “abandoned”.
- The *Stages of Life* project, discussed by Gruzinski and discontinued.
- Support for an audiothèque in Mali.
- The Griot Recording Project in Gambia.
- A programme pertaining to the Nahuatl language etc.
- Support for a music centre in Niger.
- Support for cultural projects in Tunisia and Mexico City.
- Support for a traditional theatre Centre in the Crimea..
- One CD-ROM on intangible heritage and minorities in Vietnam
- Four videos for the UNESCO collection on traditional theatre.
- A catalogue on traditional crafts of the Sedang population of Vietnam.

For the 1998-99 biennium, the Executive Board has adopted a number of priority policies; including the following

- to reinforce training;
- to devote particular attention to the development and implementation of strategies pertaining to the safeguard, revitalization and dissemination of intangible heritage;
- focussing attention on traditional cultural expressions and folk arts;
- exchanges of experience on cultural management techniques.

In all, the intangible heritage initiatives are estimated to focus 20% of their activities on southeast Asia, 30% on sub-Saharan Africa, 20% on “countries in transition”, and 20% on Andean countries. The programme estimates that some 40% of its activities would be occurring in Africa, Asia, the Pacific region, Latin America and Arab states — as occurred in the previous biennium. In terms of UNESCO priorities, The Intangible Heritage Section estimates that its activities focus 30% of their attention on “least developed countries” (LDCs), 20% on women, 30% on Africa, and 20% on youth.

5. PROTECTION OF FOLKLORE

For decades, the international community has spoken out against the distortion of folklore. That concern did not dissipate. When folklore is artificially reproduced out of context far from its roots, it risks undergoing caricature which one delegation to UNESCO described as “mediocritization”. Others call it “fakelore”.

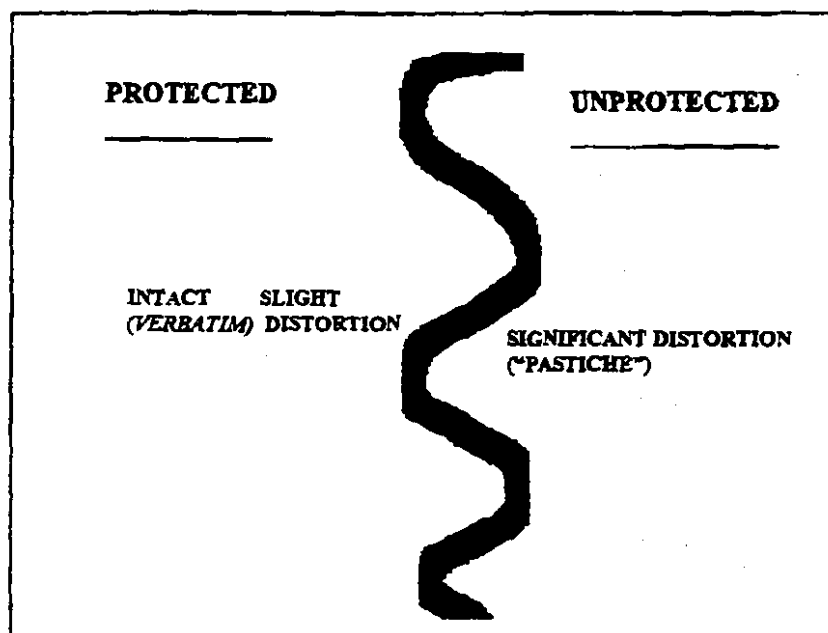
However, no one ever promised that the remedial legislation would be easy to draft. In the *Model Provisions* and the lead-up to the Recommendation,

- no one ever labelled this a *comprehensive survey* of legal techniques, beyond the “intellectual property” techniques (*one legal field among several*);
- the legal field chosen was described as “complex”.
- The adaptability of “intellectual property” to folklore was said to hinge on “*definitions*” — requiring further technical thinking.

However, there were dissenting voices, i.e.

- objecting to the selection of “intellectual property” rules, *on principle*;
- arguing that “intellectual property” rules address only *part* of the problem of distortion; and/or
- preferring a *different category* of legal tools.

In assessing the potential impact of “intellectual property” instruments, it is essential to understand the classic concepts. When looking at the work of an *individual creator*, it is possible to conceive a number of scenarios:



If a third party wishes to use the work of another person in its **intact state (i.e. *verbatim*)**, then

- the creator's consent must be obtained (and often paid for) because the classic concepts of copyright recognize that the creator has a *proprietary* interest in that creation.
- Since it is his/her "*intellectual property*", the creation cannot be "borrowed" without the owner's consent.
- To take it without consent would be theft ("*plagiarism*").

These rules continue to apply even if the work has been **somewhat distorted**.

However, if the work has been *dramatically* distorted (what is sometimes called "**pastiche**", although that is not a technical term), then it might fall into the category of a "new" work.

- Under classic concepts, massive tampering is called "**fair dealing**" which could lead a court to conclude that the product has now become a "new" work.
- The question is then the following: how much distortion must have occurred, in order to classify a work as a "new" creation...
- and hence *exclude* it from the protection (associated to *previous* works) normally offered by "*intellectual property*"?
- Under classic concepts, that is a grey area where the line of demarcation is not always easy to define.

So three primary scenarios are conceivable:

- (a) ***verbatim* reproduction**, e.g. note-for-note copying of a folk song, word-for-word repeating of a folk tale etc.;
- (b) **partial distortion**, and
- (c) "***pastiche***", e.g. an unrecognizable composite or alternatively an "*interpretation*" based upon the broad *style*, without any *single* discernable model etc.

a) ***Verbatim* Reproduction**

Copyright-type protection of folklore confronts the generally-accepted rule, in many western countries, that artistic creations fall into the **public domain** after a certain time. One possible solution, in *theory*, would be for these governments to announce that as arbitrary as it may sound,

- *some* older works will fall into the public domain and
- others will not.

Most works might pass into the public domain after a certain lapse of time; but a minority (perhaps an infinitesimal minority) would instead be relegated to a new original ("*sui generis*") legal category whose philosophy was

- closer to that of historic *cultural property* statutes
- than of *copyright* statutes.

It presupposes

- the creation of a kind of **Register** in which there was a perfectly unambiguous portrayal of the folkloric item in question, i.e. with a level of *precision* that could later satisfy a court of law, on a par with copyright cases.
- This kind of Register is *feasible*. In fact, some countries (e.g. Algeria) have not only

created such a Register, but they have also recorded major folkloric works for inclusion in that Register.

However, if the national legal protection (or a future hypothetical Convention) triggers a copyright-type royalty (e.g. "PLRs", i.e. "Public Lending Rights") in the case of *verbatim* reproductions of registered expressions of traditional culture (but not pastiche), then the total amount of money changing hands in any given year is likely to be small, for three reasons:

- a) it will take some *time* to physically register (for legal purposes) a very significant number of different expressions of traditional culture;
- b) there is nothing in UNESCO's files to indicate that in any given year there are very many *instances* of *verbatim* appropriation of a traditional cultural expression for gainful intent;
- c) if the appropriating party wanted to avoid liability for payment, all that it would have to do is *tamper sufficiently* with the folkloric expression ("fair dealing"), thereby turning it into pastiche and excluding it from normal "intellectual property" obligations.

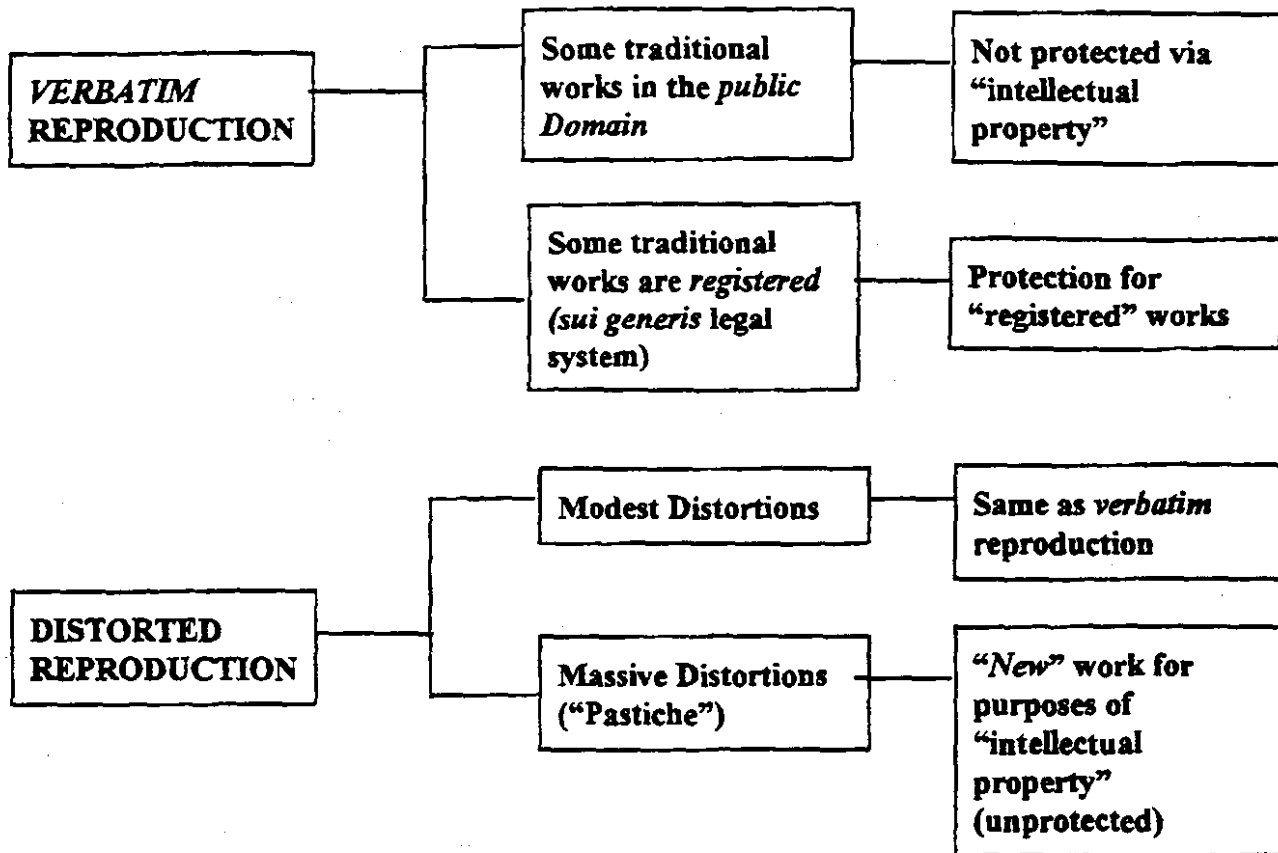
b) Modest Distortions:

This can usually be dealt with in the same way as *verbatim* reproduction. Indeed, the intellectual property community has developed computer programs helping identify plagiarism when it occurs.

c) Massive Distortions ("Pastiche"):

When there is more than a slight change in a work of intellectual property, the normal rules usually refer to this re-interpretation as "fair dealing", i.e. it can normally be used as the "inspiration" or a "basis" for a new work, without permission. This is why, under normal intellectual property approaches, it is difficult to protect a given "style" as an offshoot of copyright.

SCENARIO



There have been alternative legislative solutions years e.g.

- a) **Legislation for the protection of "sacred" symbols:** this exists in a number of countries, and relates to items such as flags, religious symbols, heraldry etc.
- b) **Extension of "industrial design" legislation:** this is one of the few kinds of legislation which deals specifically with "style" — although it is not the only one. Another kind of legislation which often deals with style is...
- c) **Consumer protection legislation:** it is not uncommon for such statutes to address style and pastiche when there is a possibility that buyers could be misled. Sometimes, this legislation takes the form of a Code of Ethics; and in other cases, it takes a different form.

There are *different* ways in which legal documents can spell out terms of reference unambiguously. "Style" is not impossible to regulate (it is already used in the industrial design legislation in several countries), but is sometimes difficult to interpret. An easier course of action (in drafting terminology which is unambiguous) is to refer to e.g. materials. One strategy for defining intangible heritage, but this time *including* pastiche, is to focus on a combination of two elements:

- traditional *materials* (which are usually relatively easy to define for legal purposes, e.g.

lacquer, soapstone, turquoise, etc.) and-

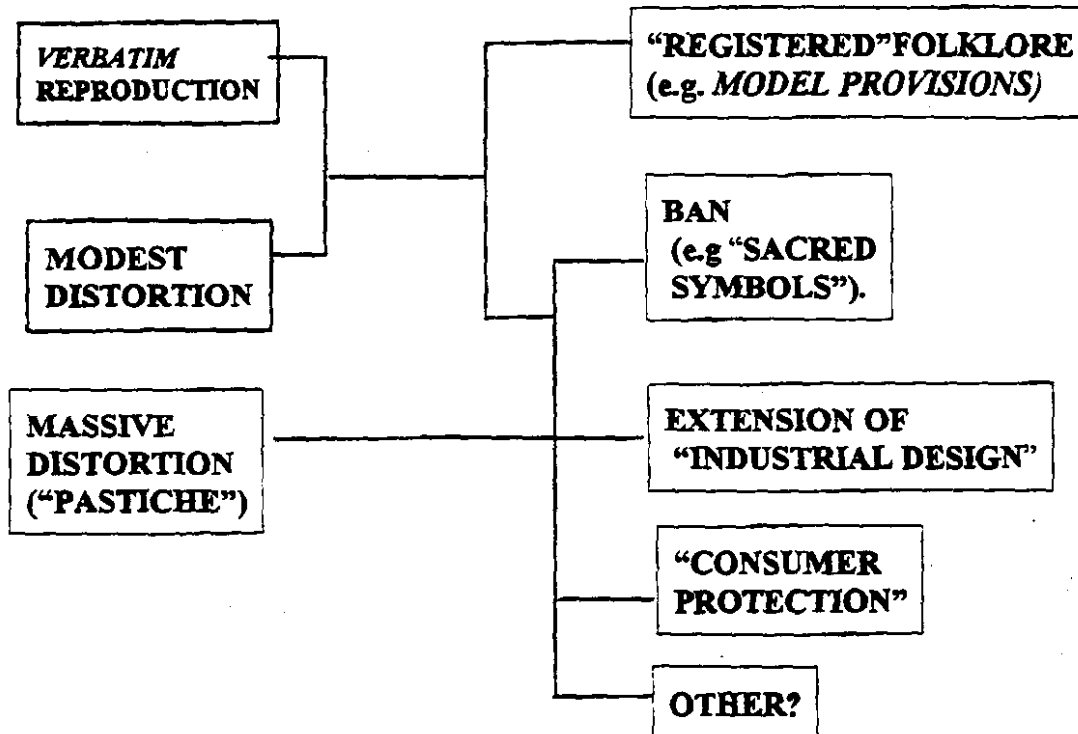
- a particular *style* on the same basis as industrial design legislation.

Of these two factors, "materials" are obviously easier to define for the purposes of a statute.

"Style" is more tricky, but not impossible: there are many countries which protect "style" under their industrial design legislation and/or their consumer protection legislation.

The time has probably come for the full range of conceivable legislative measures — both inside and outside the realm of "intellectual property" to be **outlined to the Member States**; and to inform the Member States on the **pros and cons** of each approach, with actual **precedents** for each. If that were done, it is possible that a given country may choose to adopt a version of the *Model Provisions* almost *verbatim*; or it may pick a different formula which is more or less interventionist, depending on its own choice.

OPTIONS



6. REMUNERATION

One major reason why some countries wanted

- legislation to follow the model of "intellectual property" (as opposed to say, the "consumer protection" model was that
- under classic intellectual property rules, there are usually payments for the items used ("royalties" or "PLRs").

The hazards of imprecise drafting are considerable; indeed, loose definitions could produce the diametric opposite result to what was intended by the Member States which advocated this Recommendation. This drafting problem can be illustrated by one example which may initially appear absurd, but closer examination will disclose how tricky this wording can be. Let us suppose that "costume" is agreed to constitute an important element of "traditional culture"; and let us further assume that under hypothetical legislation and treaties, "costume" could be considered "intellectual property" in the sense that the "borrowing" of one country's costume with gainful intent by another country could trigger a liability for a royalty or the like.

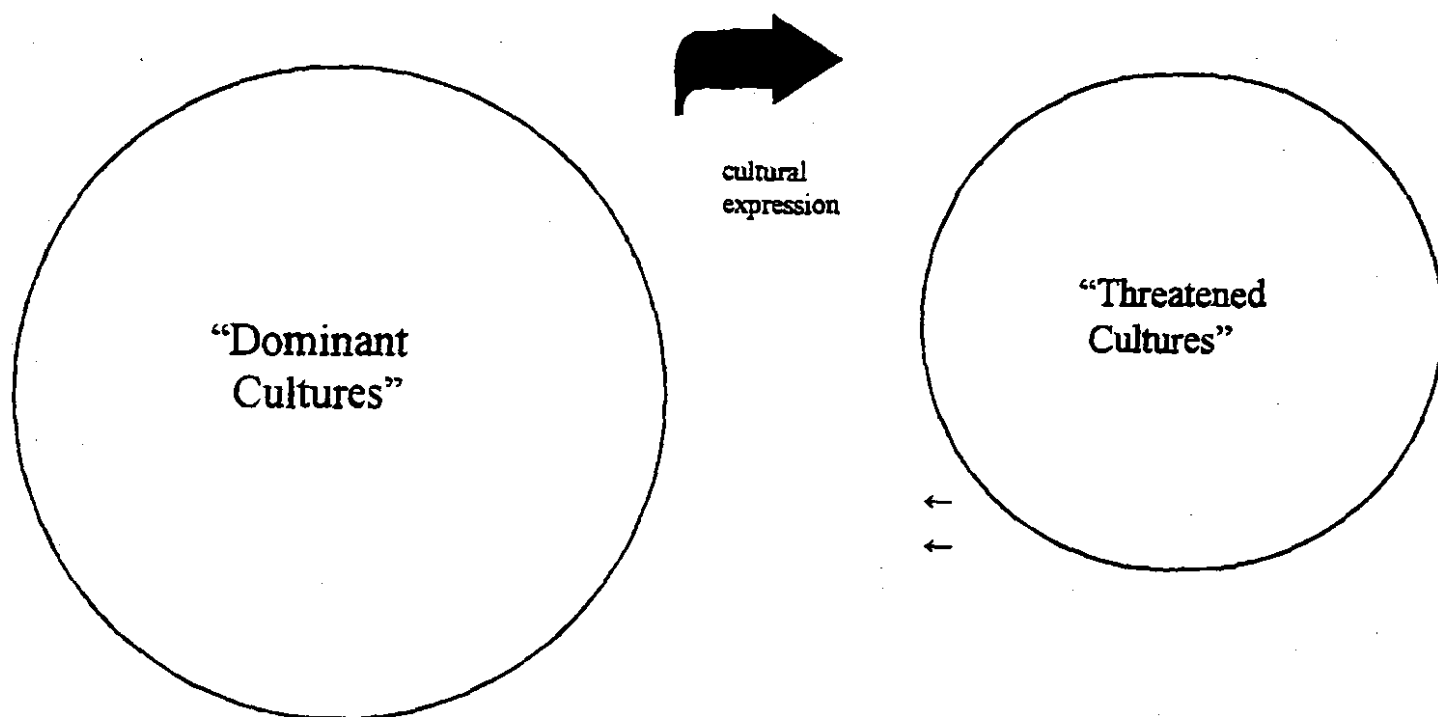
- Would that imply that every time a tailor in Hong Kong made a dress shirt, a token payment would need to be sent to Jermyn Street in London?
- Would it mean that when the respected Inuit entertainer Charlie Panigoniak performed for money (which is his profession) — and which is done in the Inuktitut language (thereby advancing another of UNESCO's objectives) — he would have to send a payment to Spain for the use of his guitar, one to Africa for the use of his rhythms, and one to Nashville USA for the use of his musical idiom?

If that is *not* the intended result, then exactly how are the rules supposed to be drafted?

The fundamental problem is that in the case of the world's "dominant cultures", the practices which are being absorbed into minority cultures (and sometimes engulfing the latter) often have a so-called "folkloric" root of their own. Indeed, if one adds so-called "syncretic urban cultures" to the equation (as some have suggested for the purposes of the Recommendation,) then how is it possible to draft a legal document which would *not* impose a royalty liability whenever a "minority" population chose to "popularize" itself with the help of idioms borrowed from the dominant cultures?

Similarly, if the very threat to minority cultures (e.g. in "Least Developed Countries" or "LDCs") is precisely because they "borrow" more daily from the dominant cultures than vice versa, then how would the international community prevent the *lawyers* from the dominant cultures from

- demanding more money from the LDCs (for borrowing these cultural expressions)
- than the LDCs can demand back?



That is the risk in attempting to construct a system of remuneration around the “borrowing” of “expressions of folklore”, like styles. At any given time,

- the “dominant cultures” are being borrowed from most frequently; that is precisely why they are called “dominant”.
- In the meantime, the “threatened” cultures are doing most of the borrowing; that is precisely why they are considered “threatened”.

If legal instruments merely entrenched a monetary liability every time that one culture “borrowed” so-called folkloric expressions from another, how long would it take before the *cash flow* favoured the dominant cultures, at the expense of the minorities? One may add, parenthetically, that it is usually the “dominant cultures” who also have the largest number of intellectual property lawyers at their disposal, to argue that a given item deserves remuneration.

8. CONCLUSION

UNESCO has adopted a wide range of initiatives to pursue the goals of the *Recommendation on the Safeguarding of Traditional Cultures and Folklore*. These focus on items like **networking, training and cooperation**; but there is still work to be done in this vitally important area.

Member States have not responded to UNESCO’s requests for information on **follow-up protective legislation**. Models derived from “intellectual property” are not easy (particularly in the common case of “pastiche”). To increase the comfort level of Member States, the time has come to outline

- their *options*,
- *pros and cons*, and
- *alternative precedents*.

Remuneration (for appropriations of folklore) is a laudable goal. Certain technical hurdles would need to be overcome, to establish systems that work e.g. for *verbatim* reproduction of folklore (and some countries have done this). In the case of “pastiche”, however, countries must understand the *risk* of linking the borrowing of a “style” or “idiom” to the payment of money. Lawyers within “dominant cultures” could immediately argue that since their clients “export more cultural idioms” to “threatened minorities” than they import, the balance of payments should favour the dominant cultures at the expense of the minorities. No one has yet offered legal wording that is so subtle that it would avoid this counterproductive prospect.

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