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WORLD INTELLECTUAL
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WIPO-UNESCO REGIONAL CONSULTATION ON THE PROTECTION OF EXPRESSIONS OF FOLKLORE FOR COUNTRIES OF ASIA AND THE PACIFIC

organized by
the World Intellectual Property Organization (WIPO)
in cooperation with
the United Nations Educational, Scientific and Cultural Organization (UNESCO)
with the assistance of
the Government of Viet Nam
Hanoi, 21 to 23 April 1999

RECOMMENDATIONS

The WIPO-UNESCO Regional Consultation on the Protection of Expressions of Folklore for Countries of Asia and the Pacific was organized in Hanoi from April 21 to 23, 1999 with the cooperation of the Government of Vietnam. Representatives from 15 countries, namely Bangladesh, Brunei Darussalam, China, Fiji, India, Indonesia, Japan, Mongolia, Nepal, Pakistan, Philippines, Singapore, Sri Lanka, Thailand, and Vietnam were present at the consultation meeting. In addition facilitators from six countries as well as four non-governmental organizations from the Region were present at the Consultation.

The Opening Session was addressed by the Deputy Minister of Culture and Information, Government of Vietnam, Mr. Nguyen Trung Kien. Mr. Salah Abada, Chief, Creativity and Copyright Section of UNESCO, and Mr. Richard Owens, Director, Global Intellectual Property Issues Division of WIPO addressed the audience and spoke about the relevance of folklore and its protection for the countries of the region.

The subsequent sessions were devoted to topics like Practical Perspectives on the Preservation, Conservation, and Protection of Folklore; Options for the Legal Protection of Expressions of Folklore at National, Regional and International Levels; National Experiences with the Protection of Expressions of Folklore; The 1982 Model Provisions on the Protection of Expressions of Folklore; International Developments Towards the Protection of Traditional Knowledge; Use of the Existing Intellectual Property System to Protect Folklore; Initiatives for the Identification, Documentation, Protection and Use of Folklore in Australia and the Philippines.

The discussions were very stimulating and the interactions intensive. During the deliberations the consultation meeting noted the following points:

1. The countries of Asia and the Pacific region are very rich in their cultural heritage, including, but not limited to, folk-literature, folk arts and crafts, music, visual arts, ceremonies, folk-beliefs, folk-architecture associated with particular sites, as well as forms of traditional knowledge related to folk-medicines and folk-medical practices, agriculture, and conservation and sustainable use of biological diversity.
2. There is widespread unfair exploitation of the cultural heritage of these nations for commercial and business interests.
3. Important elements of traditional knowledge and folklore are being lost and will continue to be lost in the absence of a proper legal protection mechanism at national and international levels.
4. The existing IPR regimes are inadequate to address all of the issues involved in protection of traditional knowledge and folklore.
5. The initiative taken by the Republic of the Philippines in enacting the Indigenous Peoples Rights Act of 1997 RAA 8371 is commendable and provides useful guidance for further work in addressing the protection of traditional knowledge and folklore.
6. The leading role played by WIPO and UNESCO in offering a set of the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (1982) for the purpose of protecting expressions of folklore, has been commendable.
7. Effective protection of traditional knowledge and folklore at national and international levels requires *sui generis* legislation. The 1982 UNESCO-WIPO Model Provisions provide an appropriate starting point, but further work is required to take into account the technological, legal, social, cultural and commercial developments which have taken place since the Model Provisions were concluded, and to examine the scope of subject matter coverage of folklore. Such work should take into account the common elements and distinct characteristics of traditional knowledge and folklore, in order to evaluate whether protection for both forms of cultural heritage can effectively be provided under a single legislative framework, or whether work on each should proceed separately but with equal urgency and commitment.

8. It is imperative for governments to devote greater attention and resources to the aspects of preservation, conservation, documentation, development and legal protection of traditional knowledge and folklore, and also for ensuring the safety and security of the materials and documents so collected to prevent unfair exploitation.
9. It is imperative for governments to devote greater attention and resources to support communities who are responsible for the creation, maintenance, custodianship and development of traditional knowledge and folklore.
10. There is a need to raise the level of awareness about the desirability of having a legal mechanism at the national level through dissemination of information to the public through mass media, debates, discussions, studies with experts and all interested groups. This is necessary for the benefit of policy makers, government functionaries and judiciary, social activists, academics and experts, and the general public, to ensure their active and meaningful participation in the process of national consensus building.
11. Institutional consultation and cooperation are essential for the nations in the region to develop a regional approach to the protection of traditional knowledge and folklore.
12. There is a need for vigorous consultation through formal consultative processes at international level to bridge the gaps in the perceptions of traditional knowledge and folklore and their protection, as viewed by the developing and developed countries.

In view of the above, the consultation meeting made the following recommendations:

TO THE GOVERNMENTS OF ASIA AND THE PACIFIC REGION:

1. The nations of the Asia-Pacific region need to devote greater attention and resources to the issues of legal protection of traditional knowledge and folklore.
2. There is a need to initiate wide-ranging discussions with various experts on traditional knowledge and folklore, societies responsible for creating resources of traditional knowledge and folklore, academics, social activists and other interested groups to identify essential aspects of an action plan, aiming, ultimately, at the formulation of a legal mechanism for protection of traditional knowledge and folklore at national and international levels.
3. Nations of the region should cooperate to find solutions to problems of common concern and also to develop strategies, at regional level, for exercise and management of rights in traditional knowledge and folklore, and to support communities which are responsible for the creation, maintenance, custodianship and development of such traditional knowledge and folklore.

TO WIPO/UNESCO

1. Extend cooperation and support for national initiatives for awareness-building including through discussion, debates, seminars.

2. Institute studies and projects for in-depth study of these issues relating to protection of folklore and traditional knowledge.
3. Initiate steps for development of a *sui generis* form of binding legal protection at national and international levels for the protection of traditional knowledge and folklore, taking into account the technological, legal, social, cultural and commercial developments which have taken place since the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (1982) were concluded.
4. Establish a Standing Committee on Traditional Knowledge and Folklore within both WIPO and UNESCO to facilitate the process of establishing legal protection of folklore and traditional knowledge. The Standing Committee will, *inter alia*, implement Recommendation 3 above, and facilitate and fund intra- and inter-regional consultation on the protection of traditional knowledge and folklore.
5. Increase WIPO-UNESCO cooperation in providing assistance to developing countries in the form of:
 - legal and technical assistance,
 - specialized training in identification, documentation and conservation of folklore and traditional knowledge
 - provision of necessary equipment and other financial resources.

All the participants wholeheartedly expressed their sincere appreciation to the Government of Vietnam, in particular the Copyright Office of Vietnam within the Ministry of Culture and Information, for extending their cooperation for the successful organization of the Consultation Meeting. The delegates and other participants thanked the Chairman of the Meeting, Dr. S. Samarasinghe (of Sri Lanka) for his excellent guidance and leadership during the proceedings. In addition, the delegates and other participants expressed their sincere gratitude to the WIPO and UNESCO profusely for organizing this meeting and also for the assistance they offered to the countries of Asia and the Pacific on various issues.

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