

## **Opinions on the Issues of WIPO-IGC Traditional Cultural Expressions/Expressions of Folklore (TCEs/EoF)**

National Copyright Administration of China  
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### **1. What do you think of the definition of TCEs/EoF that should be protected?**

We think that the definition of TCEs/EoF in the current draft is a feasible one but suggest that TCEs/EoF and traditional knowledge (TK) should be more clearly differentiated in the following discussions of the Intergovernmental Committee of WIPO.

### **2. Who should benefit from any such protection or who hold the rights to protectable TCEs/EoF?**

We hold that beneficiaries should be limited to traditional communities in which TCEs/EoF originated, or which maintain, manage or develop TCEs/EoF or make TCEs/EoF their unique cultural and social characteristics.

### **3. What objective is sought to be achieved through according intellectual property protection (economic rights, moral rights)?**

We think it is the objective of intellectual property protection to realize moral rights and economic rights in TCEs/EoF of the traditional communities.

### **4. What forms of behavior in relation to the protectable TCEs/EoF should be considered unacceptable/illegal?**

We think the following forms of behavior are unacceptable/illegal: (1) unauthorized reproduction, adaptation, broadcasting, public performance, distribution, rental, or communication to the public, of TCEs/EoF or their derivative forms; (2) use of TCEs/EoF or their derivative forms without indicating their source; and (3) distortion, mutilation or other modification of, or other derogatory action in relation to, TCEs/EoF.

### **5. Should there be any exceptions or limitations to rights attaching to protectable TCEs/EoF?**

We think that, first, the protection of TCEs/EoF should not affect the use of TCEs/EoF by members of the communities according to their customary laws or norms; second, the use of TCEs/EoF without permission should be allowed, provided that the source is indicated, in the following cases: (1) use for scientific research or education purpose; (2) use for personal study, research or appreciation; (3) use for reporting news or current events; (4) use by governmental organs for carrying out their duties; (5) use for archive or inventory purpose; (6) use for national security; third, non-voluntary licences may be applied to the use of TCEs/EoF in the form of adaptation or broadcast.

### **6. For how long should protection be accorded?**

We think that there should be no limit to the protection period of TCEs/EoF.

**7. To what extent do existing IPRs already afford protection? What gaps need to be filled?**

We think that the current intellectual property system only provides partial protection to TCEs/EoF. In addition to the intellectual property law, the thorough protection of TCEs/EoF requires the protection provided by other laws, e.g. sui generis, the administrative law, and even the criminal law.

**8. What sanctions or penalties should apply to behavior or acts considered to be unacceptable/illegal?**

We think that civil, administrative and even criminal sanctions or penalties should apply to behavior or acts considered to be unacceptable/illegal.

**9. Which issues should be dealt with internationally and which nationally, or what division should be made between international and national regulations?**

We think that at the international level the cross-border protection of TCEs/EoF should be coordinated.

**10. How shall foreign rights holders/beneficiaries be treated?**

We hold that the principles of national treatment and reciprocity should be applied.