



UNION INTERNATIONALE DES EDITEURS
INTERNATIONALE VERLEGER - UNION

INTERNATIONAL PUBLISHERS ASSOCIATION
UNION INTERNACIONAL DE EDITORES

Mr Wend Wendland
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Sent by email: wend.wendland@wipo.int

30 March 2007

Dear Wend Wendland,

**WIPO/GRTKF/IC/10/7 Prov., Annex I: TCE/EoF and TK – List of Issues
Comments of the International Publishers Association**

The International Publishers Association (IPA) welcomes the opportunity to comment on the list of Issues attached to the Initial Draft Report on the 10th meeting of GRTKF/IC, and respectfully submits its responses as attachment to this letter. Our responses do not supersede, but compliment our position with regard to the work of the WIPO/GRTKF/IC as set out in our previous submissions and interventions.

Publishers come into contact with traditional cultural expressions/expressions of folklore (TCE/EoF) or traditional knowledge (TK) in many different ways:

- Local publishers of children's books and school textbooks make reference in their works to the cultural context and environment of their readers. The retelling of folk tales or the depiction of the culture forming part of their readers' daily lives is part of the editorial content.
- Similarly, many writers of fiction are inspired by their local customs, traditions and the social environment in which they were raised. They may refer in their works to some specific experiences important to their local culture.
- Academic publishers publish works of scientists describing ethnological observations; others may publish medical research which is based on discoveries by indigenous peoples. In this area, there is a heightened awareness of the ethical implications of this kind of research and a series of codes of conduct have been established, or are being debated.

Our position is guided by the following primary concerns and goals:

- Support for the work of local and international publishers in preserving and disseminating TCEs/EoF and TK;
- Support for the role of educational publishers in their passing on of TCEs/EoF or TK;
- The importance of freedom of expression and freedom of access to information for the development of cultures;
- The value of a rich public domain for the development of society generally, including creators and publishers in particular;
- The pre-eminent value of copyright and other existing intellectual property rights for the protection of the economic and moral interests of all creators, including indigenous people;
- Respect for the principle of subsidiarity, according to which only those tasks should be performed at international level which cannot be performed effectively at a more immediate or local level;
- The need for consensus on Policy Objectives and Core Principles prior to discussing the creation of a more detailed framework for the protection of TCEs/EoF or TK at international level.

To help advance the process of consensus-building, we have chosen to reply to those of the Issues put up for consultation that affect the perspective of the publishing industry, in particular of local writers and publishers and those publishers collaborating closely with indigenous communities.

With our responses we hope that we can ultimately contribute to the development of a framework that incentivises indigenous communities as well as professional publishers to enhance the possibilities for the preservation and dissemination of indigenous content for the benefit of all.

We would be delighted to further explain our position to the WIPO Secretariat or WIPO Delegates at an appropriate time.

We wish you all the success with the work of this important committee, and look forward to participating in TRTKF/IC/11.

Yours sincerely,



Jens Bammel
Secretary General

**Traditional Cultural Expressions/Expressions of Folklore – Issues
Responses of the International Publishers Association**

1. Definition of traditional cultural expressions (TCEs)/expressions of folklore (EoF) that should be protected.

For publishers to be able to publish works related to TCEs/EoF with economic and legal certainty, a clear and concise definition of the protected subject-matter is required, leaving no room for ambiguity. In particular, any framework for the protection of TCEs should not afford protection simply to a mere idea or concept, but should be tied to a particular manifestation or expression. Otherwise, the right to freedom of expression could be infringed (see e.g. Article 19, Universal Declaration of Human Rights).

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

For publishers to be able to publish works related to TCEs/EoF with economic and legal certainty, a clear and concise definition of who could be potential beneficiaries is required, leaving no room for ambiguity. Only the originators or custodians of TCEs should benefit from protection, and they must be clearly identifiable through the application of transparent and agreed principles.

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

IPA believes that with respect to TCEs/EoF, the primary focus should be put on the protection of moral rights. Overall, publishing TCEs/EoF is not a highly profitable business, despite the anecdotal evidence that points to the exceptional cases, rather than the typical publishing enterprise.

The focus of any policy in this area must be to incentivise more publishing, not to add costs or commercial uncertainty to an already risky publishing venture. Prescribed economic rights would add to such risks, and disincentivise publishers further from publishing in this area.

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

IPA is concerned by the introduction of the notion of “unacceptability” in the ongoing discussions. “Unacceptability” is not a legal term and means different things to different people. IPA recommends the use of clear and unambiguous terms throughout the ongoing discussions.

IPA could envisage a requirement that the publication or other use of TCEs/EoF should be done only with appropriate acknowledgement of the source.

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

IPA opposes a hasty and premature protection of TCEs/EoF through an IP related framework and therefore does not at this stage want to comment on limitations and exceptions to balance a possible framework of TCE protection.

6. For how long should protection be accorded?

IPA supports the limitation in time of copyright in literary and artistic works. Any term of protection, with the exception of very important core moral rights, must be limited in time so as to

ensure that works can re-enter the creative cycle after a certain period. Otherwise, the public domain as a source of inspiration would be unduly restricted. The same principle should apply to any framework for the protection of TCEs/EoF.

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

Copyright and trademarks and the protections for designs provide ample protection of economic rights. Moreover, other areas of law may equally afford protection (geographic indications; confidentiality/trade secrets). IPA is not aware of any acute gaps in the area of publishing of TCEs/EoF.

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

IPA is concerned by the introduction of the notion of “unacceptability” in the ongoing discussions. “Unacceptability” is not a legal term and means different things to different people. IPA recommends the use of clear and unambiguous terms throughout the ongoing discussions.

IPA opposes a hasty protection of TCEs/EoF and therefore does not at this stage want to comment on the question of sanctions or penalties.

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

The principle of subsidiarity requires that only those tasks should be performed at international level which cannot be performed effectively at a more immediate or local level. Respect for the same principle also requires that international harmonisation should be the conclusion, not the precursor of the development of national regulation.

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

All beneficiaries should be treated equally.

**Traditional Knowledge – Issues
Responses of the International Publishers Association**

1. Definition of traditional knowledge that should be protected.

For publishers to be able to publish works related to TK with economic and legal certainty, a clear and concise definition of the protected subject-matter is required, leaving no room for ambiguity.

Given the severe impact that such protection may have, IPA suggests the narrowest possible definition, protection only very important ritual or religious matters.

2. Who should benefit from any such protection or who hold the rights to protectable traditional knowledge?

For publishers to be able to publish works related to TK with economic and legal certainty, a clear and concise definition of who could be potential beneficiaries is required, leaving no room for ambiguity. Only the originators or custodians of TK should benefit from protection, and they must be clearly identifiable through the application of transparent and agreed principles.

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

IPA believes that with respect to TK, the primary focus should be put on the protection of moral rights. Overall publishing TK is not a highly profitable business, despite the anecdotal evidence that points to the exceptional cases, rather than the typical publishing enterprise.

The focus of any policy in this area must be to incentivise more publishing, not to add costs or commercial uncertainty to an already risky publishing venture. Prescribed economic rights would add to such risks and disincentivise publishers further from publishing in this area.

4. What forms of behavior in relation to the protectable traditional knowledge should be considered unacceptable/illegal?

IPA is concerned by the introduction of the notion of “unacceptability” in the ongoing discussions. “Unacceptability” is not a legal term and means different things to different people. IPA recommends the use of clear and unambiguous terms throughout the ongoing discussions.

IPA could envisage a requirement that the publication or other use of TK should be done only with appropriate acknowledgement of the source.

5. Should there be any exceptions or limitations to rights attaching to protectable traditional knowledge?

IPA opposes a hasty and premature protection of TK through an IP related framework and therefore does not at this stage want to comment on limitations and exceptions to balance a possible framework of TK protection.

6. For how long should protection be accorded?

IPA supports the limitation in time of intellectual property or certain other rights. Any term of protection, with the exception of very important core moral rights, must be limited in time so as to ensure that works can re-enter the creative cycle after a certain period. Otherwise, the public

domain as a source of inspiration would be unduly restricted. The same principle should apply to any framework for the protection of TK.

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

Patent, trademarks, copyright and the protections for designs provide ample protection of economic rights. Moreover, other areas of law may equally afford protection (geographic indications; confidentiality/trade secrets). IPA is not aware of any acute gaps in the area of publishing of TK.

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

IPA is concerned by the introduction of the notion of “unacceptability” in the ongoing discussions. “Unacceptability” is not a legal term and means different things to different people. IPA recommends the use of clear and unambiguous terms throughout the ongoing discussions.

IPA opposes a hasty protection of TK and therefore does not at this stage want to comment on the question of sanctions or penalties.

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

The principle of subsidiarity requires that only those tasks should be performed at international level which cannot be performed effectively at a more immediate or local level. Respect for the same principle also requires that international harmonisation should be the conclusion, not the precursor of the development of national regulation.

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

All beneficiaries should be treated equally.