

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF ANTIGUA AND BARBUDA

In a letter dated November 12, 2001, to the Secretariat of the World Intellectual Property Organization (WIPO), the Ministry of Justice and Legal Affairs, Office of the Attorney General advised as follows:

“We acknowledge receipt of your correspondence dated July 9, 2001. With reference to the subject, Antigua and Barbuda is currently without a system in place that gives legal protection to Expressions of Folklore. Presently, there is work being carried out in the field of Intellectual Property, in order to provide adequate and modern Legislation.

Folklore is also a question that is being examined at this time since our only system of recognizing Folklore, lies in a database system at the National Museum. The Ministry of Education and Culture are in the process of examining a suitable system under which they can provide protection for Folklore, since as was indicated in your Commentary, Copyright Law would prove inadequate.

As a result, this office is presently unable to complete this questionnaire at this time.”

[End of response of Antigua and Barbuda]

CUESTIONARIO SOBRE EXPERIENCIAS NACIONALES EN LA PROTECCIÓN  
JURÍDICA DE LAS EXPRESIONES DEL FOLCLORE

RESPUESTA DE LA ARGENTINA

*Información de contacto*

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*II. Aplicación de las disposiciones principales de las Disposiciones Tipo*

Pregunta II. 2: ¿Tiene alguna observación con respecto a los principios tenidos en cuenta en la elaboración de las Disposiciones Tipo? ¿Cree que los principios siguen siendo viables? ¿Existen otros principios adicionales que deberían tomarse en cuenta en cualquier modificación de las Disposiciones Tipo?

Respuesta:

Se considera que los principios que justifican la protección del folklore son “atemporales”, por tal motivo, los principios tenidos en cuenta para la protección del folklore en la elaboración de las Disposiciones Tipo continúan siendo viables.

Se sugiere incluir dentro de los perjuicios que acarrea el abuso de tipo comercial u otro o toda desnaturalización de las expresiones del folklore de una nación, el perjuicio a los intereses ecológicos de ésta.

Pregunta II. 7: ¿Existen “expresiones del folklore” u otros ejemplos o formas de cultura y conocimientos tradicionales que no queden protegidos por las Disposiciones Tipo, y que considere que deberían estarlo?

Respuesta:

Se sugiere proteger los procedimientos y métodos por los cuales se obtienen los productos folklóricos tangibles (ejemplo: procedimiento para la obtención de un instrumento musical realizado con madera proveniente de un pino “x”). El producto folklórico tangible es el resultado de un procedimiento también folklórico, motivo por el cual, éste último también debe ser protegido junto con los materiales empleados.

Las Disposiciones Tipo deberían contemplar la protección de:

- a) los medicamentos tradicionales, la asistencia sanitaria tradicional, la medicina tradicional y las prácticas medicinales.
- b) la protección de los sitios históricos y arqueológicos, el alfabeto, las ceremonias y los juegos.

Pregunta II. 26: ¿Considera que es necesario establecer un acuerdo internacional para la protección de las expresiones del folclore?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Se considera que la protección a las expresiones del folclore a través de un sistema jurídico internacional debería limitarse a aquellas cuestiones que tienen relación con la Propiedad Intelectual, actuando de manera complementaria y sinérgica con otros instrumentos y procesos internacionales donde se han venido tratando los temas relacionados, evitándose abordar cuestiones que van más allá del patrimonio exclusivo de las comunidades indígenas.

El INPI considera que se debe evaluar que el mencionado Tratado Internacional no reglamente temas que son contemplados y regulados por otros Tratados Internacionales, ya que esto podría originar soluciones divergentes. Los motivos por los cuales sería necesario que un Tratado Internacional proteja las expresiones folklóricas se proceden a exponer a continuación:

- a) Para delimitar la protección de los conocimientos desarrollados en el seno de las comunidades indígenas.
- b) Para que se beneficie y se proteja a todos los titulares de las expresiones folklóricas por igual y que no se hagan discriminaciones.
- c) Para proteger y preservar integralmente a las comunidades indígenas.
- d) Para combatir los abusos y aprovechamiento por parte de terceros de manifestaciones del folclore.
- e) Para que se adopten las medidas necesarias a fin que las autoridades aduaneras impidan el ingreso ilegal de productos desarrollados a partir de conocimientos indígenas.
- f) Para evitar la exhibición y comercialización arbitraria de las artes y artesanías tradicionales.

Pregunta II. 27: En caso de respuesta afirmativa, ¿opina que las Disposiciones Tipo podrían ser un punto de partida adecuado para el desarrollo de ese acuerdo?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Se considera que las Provisiones Tipo son un buen punto de partida para el desarrollo de un futuro Tratado Internacional porque son flexibles y pueden adaptarse a las necesidades de los diferentes países.

### *III. Modificaciones o adaptaciones de las Disposiciones Tipo*

Pregunta III. 1: Proponga modificaciones o adaptaciones que puedan hacer las Disposiciones Tipo más útiles como modelo para las legislaciones nacionales, regionales o internacionales.

Respuesta:

Se considera que:

- Se deben definir los vocablos empleados para delimitar claramente el alcance y contenido de la protección que se desea otorgar
- Se debe contemplar el caso de la diferencia de idiomas existente entre la comunidad indígena y los nacionales del país. Ambos deben comprender claramente los derechos y obligaciones de los cuales son titulares como así también el alcance y consecuencias que implica otorgar una determinada autorización.
- Pueden existir otras formas por medio de las cuales se les retribuya a los nacionales la autorización conferida.
- Las tarifas que se deban abonar por la autorización conferida, deben ser variables.
- Se debe contemplar el supuesto en el cual dos o más comunidades posean la misma expresión folklórica.

[Fin de la respuesta de la Argentina]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF AUSTRALIA

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*I. Application of the Model Provisions as a Whole*

For all Member States

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Attorney-General's Department (Copyright)
- Department of Communications, Information Technology and the Arts (Copyright)
- IP Australia (Designs)
- Department of Foreign Affairs and Trade
- Department of Reconciliation, Aboriginal and Torres Strait Islander Affairs
- Environment Australia
- Aboriginal and Torres Strait Islander Commission

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Not applicable

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

Response:

- Not applicable

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- Not applicable

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Australian expressions of folklore are likely to be adequately protected by conventional IP systems such as copyright and designs law. Australia's copyright system includes moral rights (rights of attribution and integrity). The right of integrity in particular gives Indigenous artists and creators greater control over the use of their works and consequently assists them in protecting the cultural integrity of their work.
- Australian Courts have in some instances provided a flexible interpretation of such conventional IP systems and common law principles, to provide further protection to folklore. For example, the use of the common law doctrine of confidential information to prevent the publication of a book containing culturally sensitive information (*Foster v Mountford* (1976) 29 FLR 233).
- A further example is a Court's finding that an indigenous person had a fiduciary duty to his community that he was not to exploit a cultural painting in a manner contrary to his community's customary law, and that in the event of infringement of copyright by a third party, he had a fiduciary duty to his community to take reasonable steps and appropriate action to restrain and remedy the infringement (*Bulun Bulun & Milpurrurru v R & T Textiles Pty Ltd* (1998) 41 IPR 513).
- Australia is undertaking further consideration of this issue to determine whether further protection of folklore is required. If needed, greater protection may be achieved through encouraging public education relating to folklore, codes of conduct, assistance to Indigenous peoples in accessing and understanding formal IP systems, and appropriate modifications of existing regimes to be more culturally sensitive.
- Some Indigenous arts and cultural expressions may also be protected by cultural heritage law. Certain indigenous arts and cultural expressions specified by the Protection of Moveable Cultural Heritage Act 1986 are protected. Further, legislation was introduced in Parliament in December 2000 to provide a new system of heritage protection for Australian places of national heritage significance. Under the new heritage laws, a place's national heritage values may comprise a number of tangible and intangible elements. All listed values for a national heritage place will be managed and protected once these laws are passed.
- The current direction of domestic policy development therefore is to protect Indigenous arts and cultural expression within existing legal frameworks rather than the implementation of *sui generis* laws.



(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

Response:

Basic Principles

- Paragraph 4 of the preamble may be interpreted to mean that protection must be granted in a *sui generis* form “inspired by the protection provided for intellectual productions.” Although Australia has no established position on folklore, the current direction of domestic policy development is to protect Indigenous and cultural expression within existing legal frameworks, such as copyright and designs.

The scope of “expressions of folklore”

- The Model Provisions provide a scope that extends beyond what Australia would normally protect under its IP system. Australia would prefer a definition that focuses on the expression of folklore as an artistic, literary, dramatic, musical work, or a performance, rather than protection of the actual idea itself comprising the folklore, which is not protected under systems such as copyright.

The acts against which expressions of folklore are protected.

- The limitation described in Section 3 of the Model Provisions which requires specific authorisation by the competent authority or community concerned for the utilisation of expressions of folklore which are “outside their traditional or customary context” may be problematic. Such a limitation could be inconsistent with current Australian IP systems which do not normally provide a general limitation relating to the “context” of the use of intellectual property .

The provisions dealing with authorization of utilisations of expressions of folklore

- Section 10 of the Model Provisions may be problematic as it could require the payment of an additional royalty for the utilisation of an expression of folklore in addition to the normal royalty payment under a traditional IP system. Further, the specific limitation that the “fees collected shall be used for the purpose of promoting or safeguarding national culture/folklore” may be problematic as Australian IP systems do not normally provide such limitations.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- Nil

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Not applicable

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- See response to basic principles at page 6.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- Nil

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- Not applicable

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- Not applicable

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- (i) Whilst Australia has no settled policy position on this terminology, recent domestic preference is for use of the term “arts and cultural expression,” as being more consistent with the types of materials eligible for protection under IP systems such as copyright.
- (ii) This term focuses on expressions of artistic, literary, dramatic, and musical works, and related performances.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Further analysis is needed before a conclusive answer can be provided.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- Nil

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

-Not applicable

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Not applicable

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

- Not applicable

Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- Not applicable

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response:

- Not applicable

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- Not applicable

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Those types of actions and uses defined by the Copyright Act and Designs Act. These include both economic rights such, as the right of reproduction, publication, public performance, communication to the public, and moral rights, such as the right of integrity and the right of attribution.
- In the Bulun Bulun case (1989) EIPR Vol 10, pp.346-355, the plaintiff, Mr Bulun Bulun an Aboriginal artist, brought a copyright infringement action against a t-shirt design company. The action was brought in relation to the unauthorised reproduction of Mr Bulun Bulun's artistic works on t-shirts by the company. This was a clear cut case of copyright infringement and the case was settled out of court.
- In Milpurrurru and Others v Indofurn Pty Ltd and Others (1994) 54 FCR 240, the respondents imported carpets manufactured in Vietnam which reproduced artworks by the applicants who were aboriginal artists. The applicants did not give permission for their artworks to be reproduced or imported into Australia. The applicants successfully claimed infringement of copyright by reason of the unauthorised importation. The court made an award of exemplary damages for cultural harm which took into account the calculated and flagrant nature of the infringement.



Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- As stated above (see page 4), the Courts have in some instances applied a flexible interpretation of Australia's IP systems and common law principles to provide greater protection to folklore. For example, the use of the doctrine of confidential information and finding of fiduciary obligations.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The "property" of the country as a whole (as part of the national cultural heritage)?      | <input type="checkbox"/>            |
| (ii) As the "property" of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the "property" of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Response:

- The Copyright Act 1968 does not recognise communal ownership of copyright works other than by virtue of more than one person having contributed skill and labour to the production of a work ('joint authorship'). As such, expressions of folklore are the property of individual artists.

- However in the case of *Bulun Bulun & Milpurrurru v R & T Textiles Pty Ltd* (1998) 41 IPR 513, the Court held that on the evidence of the customary law of the Ganalbingu people, a member of an Indigenous community owed a fiduciary obligation to his community that in the event of infringement by a third party he was to take reasonable and appropriate action to restrain and remedy infringement of the copyright in the painting. The finding of this fiduciary duty could be seen as extending some form of communal ownership, as it requires the owner of the copyright in the work to enforce his rights so as to protect his community from cultural harm.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- Nil

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Response:

Not applicable

Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

- Not applicable

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Not applicable

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- Not applicable

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Under the Australian Copyright Act 1968 the performance of a dramatic work, musical work, reading, recitation or delivery of a literary work, and the performance of a dance, are protected. Such protection can therefore be used to control certain uses of performances of expressions of folklore.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- Not applicable

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:

- Not applicable

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Not applicable

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- It would be premature at this stage to endorse an international agreement for the protection of expressions of folklore. As is indicated in Australia's responses in other parts of the questionnaire, there exist different legal approaches for addressing this issue at the national level. Care would need to be taken in the drafting of an international agreement to accommodate these different approaches. Further consideration needs to be made of the salient national and international issues in this area, including by WIPO's Intergovernmental Committee on Intellectual Property, and Genetic Resources, Traditional Knowledge and Folklore, before any decision is made as to whether there is a need for an international agreement, and what form such an agreement, if one is decided to be desirable, should take.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response:

- Not applicable

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- Nil

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- Nil

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- Please see answer to Question I.3(ii) (p.4) above.

[End of response of Australia]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF BARBADOS

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Folklore in Barbados is administered on behalf of the Crown by the Attorney General as prescribed by section 22 of the Barbados Copyright Act, 1998.
- The responsibility for public education in relation to questions of folklore is vested in the Copyright Unit of the Corporate Affairs and Intellectual Property Office.



Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes (English).

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- The protection of folklore in Barbados is contained in section 22 of the Copyright Act, 1998. This Act came into force on August 14<sup>th</sup>, 1998, and is administered by the Corporate Affairs and Intellectual Property Office.
- The text of the Act is available on WIPO's CLEA sub-site.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

Response:

*This aspect of the  
Model Provisions  
has not been followed  
in our national laws  
and regulations*

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- The protection of folklore in Barbados is bound up within the wider scope of the Copyright Act whose purpose is to provide for general copyright protection. There is no preamble specifically providing for folklore. In addition, there are no specific provisions dealing solely with Government authorization of the use of folklore by third parties.
- Reciprocity of protection of foreign copyright material is dealt with in general terms by section 142 of the Copyright Act.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- At present, the Copyright Act governs any commercial and non-commercial use of copyright materials, including folklore. It is also possible that the Act itself pre-dated the Model Provisions.
- In due course, the Model Provisions may be incorporated into municipal law, either *sui generis* or as part of existing copyright legislation.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- The principles applicable to Barbados are akin to those in the Model Provisions. However, this has not been specifically articulated in the existing legislation.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- It may be considered that folklore is not to be confined to the concepts of national identity and cultural expression, but also as a tool for national development, both culturally and economically. The underlying principles are both visible and relevant. Barbados is in agreement with the principles as contained in the Model Provisions as shown in municipal laws relating to copyright and related rights.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- ‘Folklore’ is defined in the Copyright Act as “all literary and artistic works that:

- (a) constitute a basic element of the traditional and cultural heritage of Barbados;
- (b) were created in Barbados by various groups in the community, and
- (c) survive from generation to generation.”

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- The National Archive, the Barbados Library Service, the National Cultural Foundation and the Barbados Museum all maintain inventories, archives and databases with respect to folklore.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- See Question II.4.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- See Question II.4.

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- In accordance with other provisions of the Copyright Act, the creators of folklore are granted all economic and moral rights deriving from copyright. Use of folklore for cultural or 'fair use' purposes will be permitted for persons and the community at large with restrictions; use of folklore for economic exploitation would be conducted only with the permission of the Attorney General. As with general copyright law, these rights are exclusive.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Principal considerations in the authorization for the use of folklore will be the use to which the material will be put to. In the event that the material is used for purely economic gain, authorization must be sought.
- Use of folklore for educational or cultural purposes would not require such express authorization.

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

- The prime exploitation of traditional knowledge to be regulated strictly relates to indigenous medicines. For example, noni juice is derived from a plant found in Barbados, yet this medicinal plant has been commercially exploited in America and Europe without reference to its origins.
- At this juncture, no litigation has been implemented with respect to folklore in Barbados.



Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- The Copyright Act does not currently provide for indications of source for folklore.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

- No

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- There are no express exceptions.

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- In practical terms, the primary exploitation of traditional knowledge would be the duplication and subsequent adaptation of medicinal knowledge, i.e. traditional remedies.
  
  - The duplication of local works of art for re-use on garments is also common in Barbados. It is anticipated that musical works will be exploited by non-Barbadians as well.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- At this point there have been no actions relating to the abuse or infringement of local folklore.

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

- While the National Cultural Foundation, the Barbados Museum and the National Archive are all tasked to collect and collate works of folklore, there is no single ‘authority’ in relation to supervising the use of folklore. Funding for the Archive and the NCF are via government spending; the Museum is funded by private subscription and entrance fees.

- There is no process for the authorization of use of folklore at this time. This applies to fees and restrictions of use.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- In line with general copyright law, the Copyright Act provides in section 46 that unauthorized infringement is punishable by a term of imprisonment of up to 5 years, or fine of BDS\$ 250 000.00, or both.
- Additionally, any item used to infringement of copyright may be seized.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response:    Yes       

                  No       

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- The Copyright Act, as presently drafted, does not contemplate the application of related rights to folklore issues.

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

If yes:

(i) Please provide details of these cases.

Response:

- Local art has been reproduced on garments sold in overseas markets.
- Also, traditional medicines have been reproduced and marketed in the EU and the USA without attributions to its Barbadian source.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

- No.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- It is vital, both in terms of economic benefits and in terms of national importance, for folklore to be protected in a reciprocal manner. In this way, no indigenous group or community will have its cultural heritage used or exploited in a detrimental way.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- The Model Provisions are clear and form a foundation for a common standard of treatment of traditional knowledge.
- In addition, this text will form a viable basis for legal protection of folklore in a local context.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- Both aspects require a proper analysis in a technical forum, since any standard or solution must be capable of universal application. It is suggested that a WIPO Standing Committee would be a useful forum to deal with both issues.



Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- The Copyright Act provides for reciprocal application of protection by way of agreement with other countries.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- The Model Provisions appear to be adequate and compliant with the provisions of existing Barbadian law.

[End of response of Barbados]

QUESTIONNAIRE RELATIF A L'EXPERIENCE ACQUISE AU NIVEAU  
NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DE LA BELGIQUE

*Coordonnées*

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*I. Application des dispositions types dans leur ensemble*

Question I. 1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Il n'existe pas de législation sur la protection des expressions du folklore en Belgique. Etant donné que la Belgique est un Etat fédéral, l'autorité fédérale est seule compétente pour la propriété industrielle et intellectuelle (article 39 de la Constitution, article 6, § 1<sup>er</sup>, VI, 5<sup>ème</sup> alinéa, 7<sup>o</sup> de la loi spéciale du 8 août 1980 de réformes institutionnelles telle que modifiée par la loi spéciale du 8 août 1988), tandis que les Communautés sont compétentes en ce qui concerne les matières culturelles (art. 127, § 1<sup>er</sup>, 1<sup>o</sup> de la Constitution).

Question I. 2 : Les dispositions types sont elles disponibles dans la (une des) langue(s) officielle(s) de votre pays?

Réponse :

Oui, en français. Il n'existe par contre pas de version néerlandaise (autre langue officielle en Belgique) des dispositions-types.

Question I. 3 : Les “expressions du folklore”, soit telles qu’elles sont décrites dans les dispositions types, soit telles qu’on les entend dans votre pays, bénéficient-elles d’une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (que les dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Oui

Non

ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les dispositions types?

Oui

Non

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\* Le questionnaire porte sur l’expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle. Il est donc question d’une protection juridique spécifique de l’ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d’une législation *sui generis* (particulière) ou des dispositions d’une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d’auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l’identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle.

**Cet aspect des  
dispositions types  
ne figure pas dans  
notre cadre législatif  
et réglementaire national**

- |                                                                                                                               |                                     |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Les principes fondamentaux sur lesquels reposent les dispositions types (voir le préambule)                                   | <input checked="" type="checkbox"/> |
| L'étendue des "expressions du folklore" protégées par les dispositions types (article 2)                                      | <input checked="" type="checkbox"/> |
| Les actes contre lesquels les expressions du folklore sont protégées et les exceptions en la matière (articles 3, 4, 5 et 6)  | <input checked="" type="checkbox"/> |
| Les dispositions relatives à l'autorisation des utilisations des expressions du folklore (articles 9 et 10)                   | <input checked="" type="checkbox"/> |
| Les sanctions et recours prévus (articles 7 et 8)                                                                             | <input checked="" type="checkbox"/> |
| Les solutions proposées par les dispositions types en matière de protection des expressions du folklore étranger (article 14) | <input checked="" type="checkbox"/> |

Si vous avez coché l'une des cases ci-dessus, veuillez préciser votre réponse.

Réponse :

Aucun groupe d'intérêt ou organisme représentatif n'a jamais manifesté son souhait de voir protéger les expressions du folklore.

Dans la négative,

- i) Veuillez indiquer, si possible, les raisons pour lesquelles cette protection n'a pas été établie.

Réponse :

Les pouvoirs publics n'ont jamais été approchés par des groupes d'intérêt pour la mise en oeuvre de ces dispositions-types.

- iii) Veuillez indiquer toute autre raison pour laquelle les dispositions types ne sont pas appliquées dans votre pays.

Réponse :

Aucun organisme représentatif ou groupe quelconque n'a manifesté son intérêt pour la transposition de ces dispositions-types.

*II. Application des principaux aspects des dispositions types*

a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II. 2 : Avez-vous des observations à formuler sur les principes pris en considération dans l'élaboration des dispositions types? Pensez-vous que ces principes sont toujours applicables? Faudrait-il prendre d'autres principes en considération en cas d'adaptation des dispositions types?

Réponse :

Pas de commentaire particulier.

Question II. 3 : Veuillez fournir toute information, observation ou donnée d'expérience supplémentaire sur les principes fondamentaux pris en considération pour l'élaboration des dispositions types.

Réponse :

Pas de commentaire particulier.

b) Expressions du folklore protégées

Question II. 6 : Existe-t-il dans la législation ou la réglementation de votre pays un autre terme que les "expressions du folklore" pour désigner l'objet des dispositions types visé à l'article 2? Dans l'affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?

Réponse :

Il n'existe pas dans la législation belge, d'autre terme, qui désignerait les expressions du folklore telles que définie à l'article 2 des dispositions-types.

Question II. 7 : Existe-t-il des "expressions du folklore" ou d'autres formes de cultures et de savoirs traditionnels qui ne sont pas protégées par les dispositions types et qui, selon vous, devraient l'être?

Réponse :

Aucun groupe d'intérêt ou organisme représentatif n'a jamais exprimé son souhait de voir protéger les expressions du folklore.

c) Actes contre lesquels les expressions du folklore sont protégées

Question II. 15 : Compte tenu des expressions du folklore qui existent dans votre pays, contre quelles formes d'exploitation, d'utilisation et d'action faudrait-il protéger les expressions du folklore? Veuillez donner des exemples concrets.

Réponse :

Aucun groupe d'intérêt ou organisme représentatif n'a jamais fait état d'exploitation ou d'utilisation abusive d'expressions du folklore.

d) Autorisation d'utilisation des expressions du folklore

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la "propriété" du pays dans son ensemble (en tant que partie du patrimoine culturel national)?

ii) la "propriété" de communautés autochtones ou locales vivant dans votre pays?

iii) la "propriété" des différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

Réponse :

En droit belge, les expressions du folklore sont par essence du domaine public. La doctrine estime cependant que des œuvres folkloriques peuvent faire l'objet d'une exécution protégée par le droit voisin de l'artiste-interprète ou exécutant, même si les œuvres elles-mêmes ne sont plus protégées (F. DE VISSCHER et B. MICHAUX, "Précis du droit d'auteur et des droits voisins", Bruxelles, Bruylant, 2000, o. 263, n° 306).

f) Relations avec d'autres formes de protection

Question II. 23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d'une protection indirecte, par exemple au titre des droits voisins?

Oui

Non

Veillez fournir des renseignements supplémentaires et, si possible, des exemples concrets afin d'illustrer votre réponse.

Réponse :

S'il n'y a pas encore de cas en Belgique où des expressions du folklore ont bénéficié d'une protection au titre des droits voisins, la doctrine estime cependant que des œuvres folkloriques peuvent faire l'objet d'une exécution protégée par le droit voisin de l'artiste-interprète ou exécutant, même si les œuvres elles-mêmes ne sont plus protégées (F. DE VISSCHER et B. MICHAUX, "Précis du droit d'auteur et des droits voisins", Bruxelles, Bruylant, 2000, p. 263, n°306).



g) Protection des expressions du folklore étranger

Question II. 26 : Pensez-vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Oui

Non

Veillez préciser votre réponse.

Réponse :

Au niveau interne, aucun groupe d'intérêt ou organisme représentatif n'a exprimé son souhait de voir négocier au niveau international un instrument de protection des expressions du folklore.

Question II. 28 : Quelles propositions concrètes souhaiteriez-vous faire concernant les deux principaux problèmes ayant entravé l'élaboration d'un traité international en 1984, à savoir i) l'insuffisance des sources qui permettraient l'identification des expressions du folklore à protéger et ii) l'absence de mécanisme approprié pour régler la question des expressions du folklore présentes non pas dans un seul pays mais dans plusieurs pays d'une région?

Réponse :

Il serait sans doute souhaitable d'établir un inventaire, sous forme d'une base de données, des expressions du folklore qui devraient bénéficier d'une protection adéquate.

[Fin de la réponse de la Belgique]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF BHUTAN

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*I. Application of the Model Provisions as a Whole*

For all Member States

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- None so far. I think the Intellectual Property Division will have to play a leading role though the approach will have to be inter-disciplinary with the involvement of the Department of Education, the Special Commission for Cultural and Religious Affairs, the local communities etc.

- One of the burning issues for us has been a system of adequate protection for our traditional textile designs and indigenous medicinal practices. The awareness of the importance and the need for finding appropriate means of protection for such local "cultural properties" is being increasingly felt.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- The Intellectual Property Division has the English version of the Model Provisions.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- The concept of proprietary rights and exclusive ownership of intellectual properties is a fairly new concept in Bhutan. The reasons for the absence or need for such a system of protection regime could well be the following:

- The influence of Buddhism on all our creative expressions such as literature, art, painting, dance, music and wood carving. This being so it was commonly held that such creative work of art should be used and shared with the community and the general public for maximum benefit. In a sense, the whole populace was treated as custodians of works of such creativity.

- The policy isolation adopted by the country till the early 60's meant that we were a relatively homogenous society, contained within our own physical boundaries with little or no contacts and influence from the outside world. In a situation like this, nobody felt that ones culture could be appropriated or misused by others for wrongful and gainful purposes.

- (The views expressed are my own.)

*II. Application of the Principal Provisions of the Model Provisions*

(b) Protected expressions of folklore

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- i) “Mimangi Dhungtam.”
- ii) Both oral and written stories.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Traditional medicines, medicinal practices and methods of healing appears to be an important area of traditional knowledge which needs attention.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- The copying and use of our traditional textile designs and patterns on machine made fabrics has been of growing concern to us. This not only dilutes the intrinsic value of our textile designs but is inevitably stifling the local weaving practice which is mostly prevalent among the women folk in our villages.
  
- The tradition of hand woven, beautifully crafted textile designs could be overwhelmed by the onslaught of factory made fabrics.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

(f) Relation to other forms of protection

Question II. 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- It would only be possible through an international agreement that such traditional cultural properties can be adequately and effectively protected.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- I think the Model Provisions provide an excellent basis on which further improvement can be made through constructive discussions with the stakeholders and the member countries concerned.

### *III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- Inclusion of provisions on traditional medicinal practices and methods of healing and textile designs.

[End of response of Bhutan]



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF BOSNIA AND HERZEGOVINA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Institute for Standards, Metrology and Intellectual Property of Bosnia and Herzegovina.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No, they are not.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Not applicable.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Yes

Not relevant.

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the Model Provisions has not been followed in our national laws and regulations*

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- Not applicable.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- Not applicable.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- The dissolution of the former Yugoslavia into five independent countries during mid 1991 resulted in the formation of intellectual property offices in each of those States.

- Some of them have passed new laws regarding industrial property matters which have now replaced the former Yugoslav law on the protection of inventions, technical improvements and distinctive sign (passed in 1989 and amended in 1990).

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- The industrial property protection sector has prepared new law on industrial property protection, which is harmonized with European Legislation and TRIPs requirement. The new law should enter into force in year 2001.

- Activities concerning the agreement have been already initiated.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Not applicable.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- No, we have not.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- We do not have any.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- Not applicable.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- Not applicable.

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- No, it is not.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No, there are not.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- We do not have any.

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- Not applicable.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Not applicable.

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

- Not applicable.



Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- Not applicable.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

- Not applicable.

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- Not applicable.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- We do not have any.

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

- Not applicable.

Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

- Not applicable.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Not applicable.

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- Not applicable.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Not applicable.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- Not applicable.

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

If yes:

- (i) Please provide details of these cases.

Response:

- Not applicable.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Not applicable.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- Not applicable.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- We do not have any.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- We do not have any.

[End of response of Bosnia and Herzegovina]



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF BRUNEI DARUSSALAM

In a letter dated September 10, 2001, to the Secretariat of the World Intellectual Property Organization (WIPO), the Attorney General's Chambers in Brunei Darussalam advised as follows:

“With reference to the above matter, we regret to inform you that we are not able to respond to your questionnaire. This is owing to the fact that Brunei Darussalam does not provide any kind of legal protection on expressions of folklore in our national laws or regulations at the present time.

Nevertheless, we thank your organization for the continuing efforts in forwarding us information and news on matters relating to “Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore,” which we sincerely hope would achieve international consensus in the very near future.”

[End of response of Brunei Darussalam]

QUESTIONNAIRE RELATIF A L'EXPERIENCE ACQUISE AU NIVEAU  
NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DU BURKINA FASO

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*I. Application des dispositions types dans leur ensemble*

Question I. 1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

- 1) Ministère des arts et de la culture
- 2) Bureau burkinabé du droit d'auteur
- 3) Direction du patrimoine culturel
- 4) Musée national

Question I. 3 : Les “expressions du folklore”, soit telles qu’elles sont décrites dans les dispositions types, soit telles qu’on les entend dans votre pays, bénéficient-elles d’une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (que les dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Réponse :

Oui

Non

Dans l’affirmative :

i) Veuillez fournir des renseignements sur les instruments législatifs et réglementaires pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d’entrée en vigueur et le nom et les coordonnées du ministère, du département, de l’organisme ou de l’office chargé de leur administration.

Réponse :

i) La Loi No 032/99/AN du 22 décembre 1999 portant protection de la propriété littéraire et artistique : articles 88 à 94. Cette loi est entrée en vigueur le 21 février 2000.

a. L’arrêté N° 01-53/MAC/SG/BBDA du 20 mars 2001 portant règlement de perception des droits

b. L’arrêté N° 01-52/MAC/SG/BBDA du 20 mars 2001 portant tarification des droits d’exploitation publique des œuvres littéraires et artistiques protégées au Burkina Faso

c. L’arrêté N° 01-054/MAC/SG/BBDA du 20 mars 2001 portant règlement de répartition des droits

L’organisme chargé de l’administration de ces textes est le Bureau burkinabé du droit d’auteur (B.B.D.A.) Cette administration concerne essentiellement la gestion collective des droits d’auteur.

Par ailleurs, il faut également signaler d’autres structures qui administrent d’autres secteurs du folklore. Il s’agit de la Direction du Patrimoine Culturel et du Musée National.

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\* Le questionnaire porte sur l’expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle. Il est donc question d’une protection juridique spécifique de l’ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d’une législation *sui generis* (particulière) ou des dispositions d’une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d’auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l’identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle.

ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les dispositions types?

Réponse :

Oui

Non

## *II. Application des principaux aspects des dispositions types*

### a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II. 2 : Avez-vous des observations à formuler sur les principes pris en considération dans l'élaboration des dispositions types? Pensez-vous que ces principes sont toujours applicables? Faudrait-il prendre d'autres principes en considération en cas d'adaptation des dispositions types?

Réponse :

Bien que les principes pris en considération dans l'élaboration des dispositions types et repris dans notre loi de 1999 n'ont pas encore eu une application effective, il est important de noter que les communautés autochtones ont besoin d'être sensibilisées sur la nécessité de protéger leur folklore.

Question II. 3 : Veuillez fournir toute information, observation ou donnée d'expérience supplémentaire sur les principes fondamentaux pris en considération pour l'élaboration des dispositions types.

Réponse :

La protection du folklore établie dans la loi du 22 décembre 1999 est fondée sur les principes suivants :

- a. le principe de l'autorisation préalable pour l'exploitation des expressions du folklore appartenant au patrimoine national;
- b. le principe de paiement des redevances.

La loi du 22 décembre 1999 prévoit une protection des expressions du folklore contre les exploitations illicites et autres actions dommageables.

Question II. 4 : Existe-t-il dans la législation ou la réglementation de votre pays un autre terme que les “expressions du folklore” pour désigner l’objet des dispositions types visé à l’article 2? Dans l’affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?
- iii) Pourquoi ce terme a-t-il été retenu?
- iv) Quel objet désignerait dans votre pays le terme “expressions du folklore”?

Réponse :

- i) « Expressions du patrimoine culturel traditionnel »
- ii) Le folklore
- iii) Le législateur a estimé que le terme folklore pourrait avoir une connotation péjorative.
- iv) Le terme « expressions du patrimoine culturel traditionnel » désigne les objets prévus par l’article 2 des dispositions types.

Question II. 5 : Dans l’application concrète de la législation et de la réglementation de votre pays, l’identification des expressions du folklore à protéger a-t-elle soulevé des difficultés?

Réponse :

Oui

Non

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées en tant que telles? Existe-t-il des répertoires, des archives et des bases de données sur le folklore)?

Réponse :

L’identification des expressions du folklore a soulevé des difficultés relatives à la collecte des données sur le folklore. La collecte des données sur le folklore est faite de façon disparate par des structures spécialisées. Il s’agit du Centre national de recherche scientifique et technologique, des Radios rurales publiques et privées, du Secrétariat permanent de la Semaine nationale de la culture et de la Direction de la cinématographie nationale.

Question II. 7 : Existe-t-il des “expressions du folklore” ou d’autres formes de cultures et de savoirs traditionnels qui ne sont pas protégées par les dispositions types et qui, selon vous, devraient l’être?

Réponse :

Oui. Il existe des “expressions du folklore” et d’autres formes de cultures et des savoirs traditionnels qui ne sont pas protégés à cause de leurs caractères sacrés. On ne les transmet pas à toute la communauté. Les détenteurs de ces savoirs meurent avec leur secret.  
Ex. la pharmacopée traditionnelle, la médecine traditionnelle et d’autres sciences traditionnelles.

Question II. 8 : Veuillez fournir toute information, observation ou donnée d’expérience supplémentaire concernant l’étendue des expressions du folklore protégées.

Réponse :

Chez nous dans la sous-région (Burkina, Côte d’Ivoire, Mali, Sénégal, Bénin, Togo, Ghana) nous avons souvent les mêmes communautés ethniques, mêmes cultures. Mais avec la colonisation ces communautés ethniques se sont retrouvées divisées par des frontières artificielles. De part et d’autre de ces frontières la protection n’est pas évidente.

Question II. 9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou la réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation? Les droits accordés sont-ils exclusifs?

Réponse :

Au terme de l’article 91 de la loi du 22 décembre 1999, les actes d’exploitation des expressions du patrimoine culturel traditionnel ci-après sont soumis à autorisation : la publication, la reproduction, la distribution, la communication au public des expressions du patrimoine culturel traditionnel appartenant au patrimoine national.  
Lorsque les auteurs des expressions du patrimoine culturel traditionnel sont connus, les droits accordés sont exclusifs.

Question II. 10 : Quels principes sont utilisés dans la législation et la réglementation de votre pays pour déterminer les utilisations soumises à autorisation (par exemple, les principes énoncés à l'article 3 reposent sur l'intention de lucre et l'utilisation ou non de l'expression du folklore en dehors de son contexte traditionnel ou coutumier).

Réponse :

Le principe utilisé dans la loi du 22 décembre 1999 pour déterminer les utilisations soumises à autorisation est celui de l'utilisation des expressions du patrimoine culturel traditionnel dans une intention de lucre et en dehors de leur contexte traditionnel et coutumier (Article 91 de la loi).

Question II. 12 : Si la législation ou la réglementation de votre pays prévoit des droits en matière de mention de la source (tels que ceux envisagés à l'article 5 des dispositions types), veuillez indiquer, en citant des exemples concrets lorsque c'est possible, si ces droits se sont révélés utiles, efficaces et concrètement applicables.

Par exemple, comment l'exigence selon laquelle l'expression du folklore doit être "identifiable" (c'est-à-dire issue d'une communauté ou d'un lieu connu) est-elle appliquée dans votre pays? Comment cette exigence est-elle appliquée s'il existe dans votre pays différentes communautés partageant des expressions du folklore similaires? Se pourrait-il également que des communautés de votre pays vivent aussi dans des pays limitrophes ou qu'elles aient adopté et développé une expression du folklore issue d'un autre pays?

Réponse :

Au terme de l'Article 90 alinéa 2 de la loi du 22 décembre 1999, la publication et la communication au public d'une expressions du folklore appartenant au patrimoine national doit être accompagnée de l'indication de sa source de façon appropriée, soit par la mention du nom de l'auteur, soit par la communauté et/ou du lieu géographique dont elle est issue.

Question II. 14 : Veuillez fournir des renseignements sur les exceptions aux droits susvisés éventuellement prévues dans la législation ou la réglementation de votre pays. Sont-elles considérées appropriées du point de vue tant des détenteurs que des utilisateurs du folklore dans votre pays?

Réponse :

Les exceptions aux droits relatifs aux expressions du folklore sont celles qui sont traditionnellement prévues au titre du droit d'auteur à savoir les représentations privées et gratuites effectuées exclusivement dans un cercle de famille, les copies ou reproductions strictement réservées à l'usage du copiste et non destinées à une utilisation collective, etc. (Article 21 à 25 de la loi de 1999). Elles sont appropriées dans certaines mesures, mais nécessitent cependant un contrôle pour les exploitations faites par les étrangers. Par ailleurs, la création d'œuvres dérivées à partir d'expressions du patrimoine culturel traditionnel appartenant au patrimoine national telles que les adaptations, traductions, transcriptions, collectes avec ou sans arrangement et autres transformations est libre pour les burkinabé. Elle est soumise à l'autorisation de l'organisme professionnel de gestion collective pour les étrangers. Elle doit être déclarée, après réalisation, à l'organisme professionnel de gestion collective.

Question II. 16 : Veuillez faire part de toute autre observation ou donnée d'expérience concernant la nature de la protection accordée aux expressions du folklore dans votre pays.

Réponse :

Les redevances dues par les usagers à l'occasion de l'exploitation d'œuvres dérivées d'expressions du patrimoine culturel seront réparties entre les titulaires de droits et l'organisme professionnel de gestion collective selon les dispositions à prévoir dans le règlement de répartition de ce dossier qui est souvent dérisoire.



d) Autorisation d'utilisation des expressions du folklore

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la "propriété" du pays dans son ensemble (en tant que partie du patrimoine culturel national)?

ii) la "propriété" de communautés autochtones ou locales vivant dans votre pays?

iii) la "propriété" des différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

Réponse :

i) Oui, pour les expressions du patrimoine culturel traditionnel dont les auteurs sont inconnus. Il a été créé un Fonds national de promotion culturelle qui sera en partie alimenté par l'exploitation du folklore national.

iv) Les expressions du folklore sont la propriété de leurs auteurs lorsque ces derniers sont connus.

Question II. 18 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant l'autorisation d'utilisation des expressions du folklore dans votre pays.

Réponse :

Au Burkina Faso l'État autorise l'utilisation des expressions du folklore pour les médias d'État et verse une somme forfaitaire au Bureau du droit d'auteur.

Question II. 19 : Votre législation établit-elle une "autorité compétente" ou une "autorité de surveillance" du type visé dans les articles 9 et 10 des dispositions types?

Réponse :

Bureau burkinabé du droit d'auteur (BBDA).

Veillez fournir des informations sur les compétences, le financement, les missions, la composition, les responsabilités, les fonctions et les activités de ces organismes dans votre pays.

Réponse :

Organisme professionnel de gestion collective des droits.

Veillez décrire la procédure d'obtention des autorisations d'utilisation des expressions du folklore.

Réponse :

Autorisation du BBDA après accord du Ministre de la culture.

Les utilisations des expressions du folklore sont-elles soumises à redevance et, dans l'affirmative, comment celles-ci sont-elles déterminées et à quelles fins sont-elles perçues (par exemple, pour promouvoir la culture nationale)?

Réponse :

Oui, paiement de redevances. Les redevances sont déterminées par le règlement portant tarification des droits. Elles sont réparties selon le règlement de répartition des droits et servent à alimenter le Fonds national de promotion culturelle.

Question II. 21 : Quelles voies de recours et sanctions prévoient la législation et la réglementation de votre pays?

Réponse :

Les voies de recours et de sanctions sont dérogatoires du droit commun. En effet, la loi du 22 décembre 1999 prévoit en son article 99 une procédure simplifiée et diligente contre toutes les formes d'atteinte aux droits qu'elle a prévus. En plus, les sanctions qu'elle prescrit sont plus dissuasives et vont du délit de contrefaçon au délit de piraterie (articles 106 à 109).

f) Relations avec d'autres formes de protection

Question II. 23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d'une protection indirecte, par exemple au titre des droits voisins?

Réponse :

Oui

Non

Question II. 24 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant les autres formes de protection dont peuvent bénéficier les expressions du folklore dans votre pays.

Réponse :

Il faut une très grande sensibilisation sur ces droits d'auteur.

g) Protection des expressions du folklore étranger

Question II. 25 : Avez-vous connaissance de cas dans lesquels des expressions du folklore issues de votre pays ont été exploitées ou utilisées d'une autre manière à l'étranger?

Réponse :

Oui

Non

Dans l'affirmative :

i) Veuillez fournir des précisions sur ces situations.

Réponse :

Les cas les plus fréquents d'exploitation des expressions du folklore national à l'étranger sont les marques, les danses et musiques traditionnelles et les œuvres d'art traditionnel.

ii) Les autorités compétentes ou les personnes lésées dans votre pays ont-elles été à même de prendre des mesures juridiques pour prévenir ou réparer cette exploitation ou utilisation? Dans l'affirmative, veuillez préciser, en indiquant la base juridique sur laquelle se fondait cette action (par exemple, sur la base de la réciprocité établie dans la législation ou la réglementation de votre pays).

Réponse :

Non, vu l'éloignement et le manque d'accord. Les autorités compétentes ont été informées par les personnes lésées.

*III. Modification ou adaptation des dispositions types*

Question III. 1 : Veuillez indiquer toute suggestion de modification ou d'adaptation à apporter aux dispositions types afin d'accroître leur utilité en tant que modèle de dispositions normatives nationales, régionales ou internationales.

Réponse :

Mettre les dispositions types à la portée de tous les États.

[Fin de la réponse du Burkina Faso]

QUESTIONNAIRE RELATIF À L'EXPERIENCE ACQUISE A UN NIVEAU NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES EXPRESSIONS DU FOLKLORE

RÉPONSE DU BURUNDI

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*I. Application des dispositions types dans l'ensemble*

Question I.1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Le Ministère de la jeunesse, des sports et de la culture. Aussitôt qu'une nouvelle loi sur la protection du droit d'auteur et des droits voisins aura été promulguée et le bureau de gestion du droit d'auteur mis sur pied, ce dernier prendra en charge la protection des expressions du folklore sous la forme que le loi aura réservé à cette protection mais sous la tutelle du Ministère ayant la culture dans ses attributions.

Question I.2 : Les dispositions types sont-elles disponibles dans la (une) langue(s) officielle(s) de votre pays?

Réponse :

Les dispositions types sont disponibles en français, une des langues utilisées dans le pays.

Question I.3 : Les « expressions du folklore », soit celles qu'elles sont décrites dans les dispositions types, soit celles qu'on les entend dans votre pays, bénéficient -elles d'une protection juridique spécifique au titre de la propriété intellectuelle \* aux termes de votre législation ou réglementation nationale (quelles dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Oui

Non

Dans l'affirmative :

i) Veuillez fournir des renseignements sur les instruments législatif et réglementaires pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d'entrée en vigueur et le nom et les coordonnées du ministère, du département, de l'organisme ou de l'office chargé de leur administration.

Réponse :

Quand la protection des expressions du folklore sera abordée, nous envisageons une protection juridique spécifique au titre de la propriété intellectuelle. Ils' agira en réalité d'une protection « *suigeneris* ».

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\* Le questionnaire porte sur l'expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle. Il est donc question d'une protection juridique spécifique de l'ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d'une législation *suigeneris* (particulière) ou des dispositions d'une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d'auteur et les droits connexes ou des lois de propriété industrielle. Il ne rapporte pas non plus à l'identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle.

ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les dispositions types?

Réponse :

Bien que ces instruments législatifs ou réglementaires n'existent pas encore dans notre pays, nous comptons nous inspirer des dispositions types pour leur élaboration.

## II. Application des principaux aspects des dispositions types

### a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II.1 : Sur quels principes repose la protection du folklore établie dans la législation ou la réglementation de votre pays?

Réponse :

Le folklore n'étant pas encore réellement protégé dans notre pays, les principes qui guideront cette protection seront étudiés au moment opportun. On peut d'ores et déjà préciser que cette protection ne sera pas de nature à entraver l'exploitation du folklore, mais son utilisation devra être contrôlée pour éviter une dénaturation de notre folklore comme cela a déjà été le cas pour certains des aspects.

Question II.2 : Avez-vous des observations à formuler sur les principes pris en considération dans l'élaboration des dispositions types? Pensez-vous que ces principes sont toujours applicables? Faudrait-il prendre en compte d'autres principes en considération en cas d'adaptation des dispositions types?

Réponse :

À notre avis, les dispositions types sont de nature à permettre une protection efficace du folklore. Cependant, la liberté et la promotion du développement et la diffusion des expressions du folklore ne doivent pas constituer des prétextes pouvant conduire à une exploitation abusive du folklore. L'autorité habilitée doit vérifier si la diffusion est conforme à l'expression concernée. Il faut préciser que des œuvres inspirées du folklore peuvent avoir un caractère d'originalité, d'où une possibilité de les protéger au même titre que les œuvres protégées par le droit d'auteur.

b) Expressions du folklore protégées

Question II.4 : Existe-t-il dans la législation ou la réglementation de votre pays un autre terme que les "expressions du folklore" pour désigner l'objet des dispositions visées à l'article 2? Dans l'affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?
- iii) Pourquoi ce terme a-t-il été retenu?
- iv) Quel objet désignerait dans votre pays le terme "expressions du folklore"?

Réponse :

Nous comptons utiliser le même terme auquel il est d'ailleurs fait allusion dans notre projet de loi sur le droit d'auteur.

Question II.5 : Dans l'application concrète de la législation et de la réglementation de votre pays, l'identification des expressions du folklore à protéger a-t-elle soulevé des difficultés?

Oui

Non

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées tant qu'elles existent-t-ils des répertoires, des archives et des bases de données sur le folklore)?

Réponse :

Il n'existe pas encore d'application concrète de la législation et de la réglementation dans notre pays, mais l'identification ne devrait pas soulever de difficultés.

Notre pays ayant évolué dans un système de véritable tradition orale, il n'existe ni archives ni bases de données sur le folklore. Cependant, la plupart des éléments de notre folklore sont connus et il suffirait d'entreprendre des enquêtes pour relever l'une ou l'autre expression encore quelque peu dans l'ombre.



Question II.7 : Existe-t-il des "expressions du folklore" ou d'autres formes de cultures et des savoirs traditionnels qui ne sont pas protégés par les dispositions types et qui, selon vous, devraient l'être?

Réponse :

Les expressions protégées du folklore telles que mentionnées à l'article 2 des dispositions types sont suffisantes. Cependant, nous nous posons la question de savoir à quelle catégorie reviendraient certains genres tels que les jeux traditionnels et autres activités coutumières accompagnées ou non de musique traditionnelle. Est-ce seulement la musique qui serait protégée ou les deux ? C'est une question qui pourrait être étudiée au cas où un instrument international devait voir le jour, à moins que chaque pays garde la latitude de procéder à des aménagements dans sa propre législation.

Question II.9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou la réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation ? Les droits accordés sont-ils exclusifs ?

Réponse :

Bien qu'il n'y ait pas encore de législation ou de réglementation proprement dite dans notre pays, nous comptons nous conformer aux dispositions des articles 3 et 4 des dispositions types.

Nous voudrions cependant apporter les commentaires suivants :

Concernant l'article 3, nous pensons que, même sans intention de lucre, une autorisation reste nécessaire pour permettre à l'autorité compétente de superviser toutes les utilisations des expressions du folklore et contrôler la façon dont elles sont utilisées.

Quant à l'article 4 en son point iii, nous nous demandons si l'emprunt des expressions du folklore pour la création d'une œuvre cinématographique ou plus généralement audiovisuelle par exemple ne peut pas poser de problèmes si ces expressions sont utilisées dans n'importe quel contexte et sans paiement de redevances.

Ils s'agit d'une situation qui mérite une attention particulière pour préciser le genre d'œuvres auxquelles peut s'appliquer l'emprunt et les conditions de leur utilisation.

Enfin, nous pensons que l'utilisation des expressions du folklore à l'occasion des fêtes populaires dans le pays même auquel appartiennent ces expressions doit être libre.

Pour ce qui est de l'exclusivité, il y aurait risqué de limiter la circulation des expressions du folklore alors que les pays en développement ont besoin d'une ouverture de leur folklore vers un plus grand nombre d'utilisateurs, étant entendu que le folklore peut contribuer à faire connaître d'avantage le pays concerné moyennant un bon suivi des utilisations conditionnées par les différentes autorisations.

Question II.10 : Quels principes sont utilisés dans la législation et la réglementation de votre pays pour déterminer les utilisations soumises à autorisation (par exemple, les principes énoncés à l'article 3 reposent sur l'intention de l'auteur et l'utilisation ou non de l'expression du folklore en dehors de son contexte traditionnel ou coutumier).

Réponse :

Voir réponse question II.9.

Question II.12 : Si la législation ou la réglementation de votre pays prévoit des droits en matière de mention de la source (tels que ceux envisagés à l'article 5 des dispositions types), veuillez indiquer, en citant des exemples concrets lorsque c'est possible, si ces droits sont révélés utiles, efficaces et concrètement applicables.

Par exemple, comment l'exigence selon laquelle l'expression du folklore doit être "identifiable" (c'est-à-dire issue d'une communauté ou d'un lieu connu) est-elle appliquée dans votre pays? Comment cette exigence est-elle appliquée s'il existe dans votre pays différentes communautés partageant des expressions du folklore similaires? Se pourrait-il également que des communautés de votre pays vivent aussi dans des pays limitrophes ou qu'elles aient adopté et développé une expression du folklore issue d'un autre pays?

Réponse :

L'identification d'une expression du folklore dans notre pays s'appuie sur son appartenance à la nation. Même si des similitudes peuvent être observées d'une région à une autre dans certains aspects du folklore, une mention de la source faisant référence au pays serait suffisante.

Question II.13 : La protection prévue par la législation ou l'arrêté réglementaire de votre pays est-elle limitée dans le temps?

Oui

Non

Dans l'affirmative, combien de temps est-elle applicable? Comment détermine-t-on le point de départ de la protection? Qu'advient-il de l'expression à l'expiration de la période de protection (tombe-t-elle par exemple dans le domaine public de sorte qu'elle peut être librement copiée et utilisée par chacun sans restriction)?

Dans la négative, disposez-vous dans ce domaine de données d'expérience qui pourraient être utiles à un plus large public?

Réponse :

Compte tenu de la difficulté, voire de l'impossibilité de situer une expression du folklore dans le temps, toute expression du folklore relèvera du domaine public. Cependant son utilisation restera soumise à autorisation et sera faite moyennant acquittement d'une redevance pour la promotion du patrimoine culturel national si l'autorisation et la redevance sont requises.

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la "propriété" du pays dans son ensemble (en tant que patrimoine culturel national)?

ii) la "propriété" de communautés autochtones ou locales vivant dans votre pays?

iii) la "propriété" de différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

Réponse :

Les expressions du folklore sont considérées dans mon pays comme étant la propriété du pays dans son ensemble en tant que patrimoine culturel national.

Question II.19 : Votre législation établit-elle une « autorité compétente » ou une « autorité de surveillance » du type visé dans les articles 9 et 10 des dispositions types ?

Veillez fournir des informations sur les compétences, le financement, les missions, la composition, les responsabilités, les fonctions et les activités de ces organismes dans votre pays.

Veillez décrire la procédure d'obtention des autorisations d'utilisation des expressions du folklore.

Les utilisations des expressions du folklore sont-elles soumises à redevance et, dans l'affirmative, comment celles-ci sont-elles déterminées et à quelles fins sont-elles perçues (par exemple, pour promouvoir la culture nationale) ?

D'une manière générale, quels enseignements et exemples concrets pourraient être utiles à un plus large public ?

Réponse :

La législation de mon pays établit une « autorité compétente », en l'occurrence le Ministre ayant la culture dans ses attributions, mais ce dernier pourra déléguer à l'organisme de gestion collective le pouvoir de délivrer des autorisations et de percevoir les redevances destinées à promouvoir la culture nationale.

Question II.21 : Quelles voies de recours et sanctions prévoient la législation et la réglementation de votre pays ?

Réponse :

Les mesures envisageables comprendront des sanctions d'ordre civil et pénal, y compris la saisie du matériel utilisé, à l'instar des mesures prévues dans le cadre de la protection du droit d'auteur. A un moment opportun, les spécialistes du droit se pencheront sur la question pour déterminer les mesures concrètes à prendre en cas de violation de la loi.

g) Protection des expressions du folklore étranger

Question II.25 : Avez-vous connaissance de cas dans lesquels des expressions du folklore issues de votre pays ont été exploitées ou utilisées d'une autre manière à l'étranger?

Oui

Non

Dans l'affirmative :

i) Veuillez fournir des précisions sur ces situations.

Réponse :

Depuis longtemps, les expressions du folklore burundais ont été enregistrées et exploitées à l'étranger. C'est le cas des chansons folkloriques avec ou sans instruments (traditionnels) qui ont été mises en vente dans des pays étrangers. Dans la plupart des cas, on n'était même pas au courant des circonstances de ces enregistrements qui étaient faits par des ressortissants étrangers qui, lors de leur séjour ou passage dans notre pays, s'arrangeaient pour effectuer ce « pillage » à l'insu des responsables chargés de la culture lorsque ce n'était pas fait pour une prétendue promotion de la culture burundaise.

C'est ainsi que l'on entend par exemple de courts extraits de la musique des salutations de femmes (AKAZEHE) comme indicatif des émissions de stations étrangères tout à fait en dehors de leur cadre traditionnel.

ii) Les autorités compétentes ou les personnes lésées dans votre pays ont-elles été à même de prendre des mesures juridiques pour prévenir ou réparer cette exploitation ou utilisation? Dans l'affirmative, veuillez préciser, en indiquant la base juridique sur laquelle se fonde cette action (par exemple, sur la base de la réciprocité établie dans la législation ou la réglementation de votre pays).

Réponse :

Aucune mesure juridique n'a été prise pour réparer cette exploitation du fait que nous ne disposons pas encore de cadre juridique approprié. Quant à la prévention, elle était aussi difficile du fait que ce n'était pas au cœur du projet d'enregistrement et d'exportation vers l'étranger.

Question II.26 : Pensez -vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Oui

Non

Veillez préciser votre réponse.

Réponse :

Un arrangement international sur la protection des expressions du folklore est nécessaire parce qu'il constituerait un système de protection efficace et facilement contrôlable, en particulier pour le folklore des pays en développement depuis longtemps utilisé à l'insu des pays ou des communautés concernés.

Il convient de signaler que même les arrangements bilatéraux n'empêcheraient pas un utilisateur d'un pays autre que celui avec lequel l'accord a été conclu d'exploiter dans la quietude des expressions du folklore de l'un des deux pays. Au moins que chaque pays conclut des accords avec tous les pays, ce qui ne serait pas plus efficace qu'un arrangement international.

Question II.27 : Dans l'affirmative, pensez -vous que les dispositions pourraient constituer un bon point de départ pour l'élaboration d'un tel arrangement?

Oui

Non

Veillez préciser votre réponse.

Réponse :

Le contenu des dispositions est de nature à permettre l'existence d'un arrangement international sur la protection des expressions du folklore, moyennant éventuellement quelques retouches.

Il faudrait de nouveau mettre sur pied un comité chargé de procéder à quelques modifications pour que ce texte soit élaboré de façon à y faire figurer toute clause susceptible de rassurer tous les pays, spécialement les pays en développement.

Question II.28 : Quelles propositions concrètes souhaiteriez-vous faire concernant les deux principaux problèmes ayant trait à l'élaboration d'un traité international en 1984, à savoir i) l'insuffisance des ressources qui permettraient l'identification des expressions du folklore à protéger et ii) l'absence de mécanisme approprié pour régler la question des expressions du folklore présentes non pas dans un seul pays mais dans plusieurs pays d'une région?

Réponse :

Concernant l'insuffisance des ressources qui permettraient l'identification des expressions du folklore à protéger, il y a lieu de penser que chaque pays concerné constituerait déjà une source d'identification. Les expressions du folklore existent bel et bien et elles ont pris naissance quelque part même s'il est difficile de déterminer l'individu qui, le premier, en a justifié l'existence.

En faisant prévaloir l'insuffisance des ressources qui permettraient l'identification des expressions du folklore à protéger, c'est comme si on sous-estimait les capacités d'un pays à reconnaître son folklore, autrement dit une partie de sa culture.

L'arrangement international devrait comprendre des clauses qui recommandent aux pays de bien identifier les éléments à protéger en référence aux définitions des expressions du folklore.

Pour ce qui est de l'absence de mécanisme approprié pour régler la question des expressions du folklore présentes non pas dans un seul pays mais dans plusieurs pays d'une région, une concertation entre les pays concernés pourrait aboutir à une solution. En effet, à défaut de déceler la différence entre une expression du folklore d'un pays et celle d'un autre par un établissement des éléments distinctifs, les pays de la région concernée étudieraient ensemble les mécanismes à mettre en place pour partager les redevances provenant de l'exploitation de "leurs folklores".

Question II.29 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant la protection des expressions du folklore étranger.

Réponse :

L'existence d'un arrangement international auquel chaque pays intéressé serait partie contribuerait grandement à la protection des expressions du folklore étranger même si des accords bilatéraux pourraient également intervenir, spécialement entre des pays voulant échanger leur folklore.

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF CANADA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- The Canadian Intellectual Property Office, an agency of the Federal Department of Industry, administers the intellectual property system of patents, trademarks, copyrights, industrial designs and integrated circuit topographies. As such, the Canadian Intellectual Property Office fosters the use of the intellectual property systems and the exploitation of intellectual property information.
- The Federal Department of Industry is responsible for policy directions, and for legislative and regulatory initiatives, relating to patents, trademarks, industrial designs and integrated circuit topographies, and it shares responsibility with the Federal Department of Canadian Heritage for directions and initiatives relating to copyright.
- Parks Canada, an agency of the Federal Department of Canadian Heritage, has the responsibility of protecting and preserving nationally significant examples of Canada's cultural heritage, and of protecting the commemorative integrity of national historic sites throughout Canada.
- The Canadian Museum of Civilization, a federal Crown corporation, serves as Canada's national museum of human history, and is committed to fostering in all Canadians a sense of their common identity and their shared past, at the same time promoting understanding between the various cultural groups that are part of Canadian society. Its collections preserve both works of tangible art and tapes of songs, languages, oral histories and personal narratives.



Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes, in both English and French, the two official languages of Canada.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If no,

- (i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- While “expressions of folklore” as described in the Model Provisions are not accorded specific legal protection as intellectual property through *sui generis* protection or through separate provisions in the intellectual property statutes, the intellectual property framework in Canada serves to protect many aspects of folkloric expressions, especially through the protection afforded by copyright, trademarks and industrial design legislation. Other aspects of folkloric expressions, which are in the public domain, are available without restrictions and thus serve to enrich the fabric of Canada’s multicultural society.

*II. Application of the Principal Provisions of the Model Provisions*

(b) Protected expressions of folklore

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?  
(ii) What subject matter does it cover?

Response:

- Although the term “expressions of folklore” is not used to describe the referenced subject matter, some aspects of folkloric expressions are covered in other, broader definitions contained within Canada’s intellectual property legislation; for example, “artistic work”, “choreographic work”, “dramatic work” and “collective work” are all defined in the *Copyright Act* of Canada, and all have evident applicability to the protection of aspects of folkloric expressions.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- Not applicable

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- The development of intellectual property policy in Canada is an on-going process in which public consultations play an important role. In respect of the issues raised herein, the Government of Canada continues to consult with interested stakeholders in advance of the second session of this WIPO Intergovernmental Committee, and to compile case studies which might serve to illustrate the ambit of, and any possible difficulties with, the extant system of intellectual property protection in Canada.

- One such case study could concern the amauti, an Inuit woman's parka that is designed with a large hood and a pouch in which a child can be carried while allowing the woman's hands to remain free. A child can be nursed and tended without leaving the warmth of the amauti. The amauti reflects the practical and functional adaptations of the Inuit to their environment, and is intrinsically linked to Inuit culture. The designs reflect regional differences as well as differences between communities, and the amauti itself represents a link to the traditions of the past.

Today Inuit women are attempting to promote commercial sales of handmade amautis in order to conserve traditional skills and knowledge while providing a source of income and a measure of financial independence. Inuit women, however, are concerned about the misappropriation and loss of cultural heritage. They fear that if they lack effective legal tools to protect their works, they will be denied appropriate credit and compensation, they will lose control over traditional designs and motifs, and their market will be usurped by mass-produced articles.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- Canada's experience as a multicultural society demonstrates that cultural diversity is strengthened and promoted when the folkloric expressions of many different cultures are shared among all Canadians, in a manner that protects various aspects of the folkloric expressions without unduly restricting or limiting the dissemination thereof.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The "property" of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the "property" of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the "property" of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information                            | <input checked="" type="checkbox"/> |

Response:

- In one sense, expressions of folklore may be regarded as the "property" of the country as a whole. However, among Aboriginal peoples in Canada, a sense of "ownership" of traditional artistic heritage often exists in the concerned communities. Under the Canadian legal system, there are mechanisms available for collectivities (both Aboriginal and non-Aboriginal) to assert legal "property" rights in expressions of folklore (for example, contracts relating to trade secrets, corporations holding copyrights and patents). Canada wishes to explore, in this WIPO forum, mechanisms to further address these issues.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- Canadian federal institutions have sought practical approaches to address the various concerns relating to authorizations involving expressions of folklore. One such example, herein described, concerns the Canadian Museum of Civilization, a federal Crown corporation which serves as the national museum of human history. The Museum's Cultural Studies program collects tangible folkloric art as well as tapes of songs, languages, oral histories and personal narratives. To reflect the wishes of members of some Aboriginal groups regarding authorization of access to their expressions of folklore, the Museum's Ethnology section restricts access to some collections of sacred Aboriginal materials to members of culturally affiliated groups, and does not make them available to members of the general public.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

The *Copyright Act* of Canada protects the “neighbouring rights” of performers, sound recording producers and broadcasters, the former two of which are particularly important in the context of this Questionnaire. In Canadian law, a performance, for the purpose of neighbouring rights, means any of the following when done by a performer: a performance of an artistic, dramatic or musical work, whether or not the work was previously fixed in any material form, and whether or not the work’s term of copyright protection under the *Copyright Act* has expired; a recitation or reading of a literary work, whether or not the work’s term of copyright protection under the *Copyright Act* has expired; and an improvisation of a dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work.

Performers are entitled to several types of neighbouring rights, whether or not the performance is fixed or recorded. These rights are of particular importance for those performers, such as dancers, singers and musicians, who perform traditional works no longer protected by copyright, because they enable the artists to seek and obtain compensation for their performances. These rights include the right to fix under certain conditions (that is, the right to make an audio recording of a live or broadcast performance); the right to prevent unauthorized recordings or “bootleg” copies of a performance (and the right to subsequently consent to any such unauthorized recording being reproduced); the right to communicate the performance to the public by radio or television at the same time as the performer’s performance; and the right to authorize any of the above rights.

Sound recording producers enjoy the right to authorize the first publication of their sound recordings, and the right to reproduce their sound recordings directly or indirectly and to rent them out. They are also entitled to equitable compensation if their sound recordings are performed in public or broadcast, a right they share with performers. The producers therefore enjoy protection for their sound recordings of traditional works, even when, as is usually the case for traditional works, the works themselves are no longer protected under the *Copyright Act*.

Aboriginal First Nations in Canada can also make use of the provisions of the *Trade-marks Act* to protect images having special significance to their members. A First Nation can thereby prevent the commercial use of those images, or other images so nearly resembling as to be likely to be mistaken for them, without the permission of that First Nation (see the example in Question II. 24 below).

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

One practical example of how existing intellectual property laws can safeguard expressions of folklore involves the Snuneymuxw First Nation of Canada, which in 1999 used the *Trade-marks Act* to protect ten petroglyph (ancient rock painting) images. Because the petroglyphs have special religious significance to the members of the First Nation, the unauthorized reproduction and commodification of the images was considered to be contrary to the cultural interests of the community, and the petroglyph images were registered in order to stop the sale of commercial items, such as T-shirts, jewelry and postcards, which bore those images. Members of the Snuneymuxw First Nation subsequently indicated that local merchants and commercial artisans had indeed stopped using the petroglyph images, and that the use of trade-mark protection, accompanied by an education campaign to make others aware of the significance of the petroglyphs to the Snuneymuxw First Nation, had been very successful.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Please provide further information on your answer.

Response:

- The Canadian Government is soliciting the views of concerned parties and is continuing to study which domestic and international mechanisms might be most appropriate to balancing the different considerations involved.



Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- With respect to the two problems identified above, Canada would be open to discussing, for instance, the establishment and use of databases regarding the lack of appropriate sources, as well as the possible implementation of possible alternative dispute resolution means, such as arbitration and mediation, as workable mechanisms for the resolution of folklore claims involving two or more countries in a region. Given the experience of WIPO in both these areas, Canada would welcome further discussions as to how these suggestions might prove useful or helpful. We cannot, however, conclude at this time that these practical suggestions would, in and of themselves, necessarily facilitate the development of an international treaty in this area.

*III. Modifications or Adaptations to the Model Provisions*

For all Member States

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

- The Canadian Federal government is in the process of soliciting observations about the Model Provisions from various interested persons. The responses to this Questionnaire from other countries, regarding practical aspects of folklore protection, will be very helpful.

[End of response of Canada]

QUESTIONNAIRE RELATIF À L'EXPERIENCE ACQUISE A UN NIVEAU  
NATIONAL ENCE QU'IL CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DU TCHAD

*Coordonnées*

Nom : Monsieur Oumar Nene Tassy  
Qualité : Directeur  
Office/organisation : Bureau Tchadi endroit d'auteur (BUTDRA)  
État membre : République du Tchad  
Tél. : (235) 524594/526535  
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*I. Application des dispositions types dans l'ensemble*

Question I.1 : Quel(s) ministère(s), département(s), organisme(s) et offic e(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Le Ministère de la culture, de la jeunesse et des sports.

Question I.2 : Les dispositions types sont-elles disponibles dans la (une des) langue(s) officielle(s) de votre pays?

Réponse :

Oui elles sont disponibles en français dans le projet de loi sur le droit d'auteur, droits voisins et des expressions du folklore.

Question I.3 : Les "expressions du folklore", soit telles qu'elles sont décrites dans les dispositions types, soit telles qu'on les entend dans votre pays, bénéficient-elles d'une protection juridique spécifique au titre de la propriété intellectuelle <sup>elle\*</sup> aux termes de votre législation ou réglementation nationale (quelles dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Réponse:

Oui

(Ils'agit d'un projet de loi)

Non

Dans l'affirmative :

i) Veuillez fournir des renseignements sur les instruments législatifs et réglementaires pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d'entrée en vigueur et le nom et les coordonnées du ministre, du département, de l'organisme ou de l'office chargé de leur administration.

Réponse :

Ils'agit d'un projet de loi adopté en Conseil des Ministres en séance du 10 juin 1999 et déposé au Parlement pour adoption. La protection des expressions du folklore est insérée dans la loi sur le droit d'auteur et porte le titre suivant: « loi portant protection du droit d'auteur, des droits voisins et des expressions du folklore ».

Chapitre 4 - de la protection des « expressions du folklore », Article 82 à 90.

L'office chargé de leur administration est le Bureau tchadien du droit d'auteur, B.P. 638 ;  
téléphone : (235) 524594 ; télécopie : (235) 525538 ; N° Djamena, Tchad.

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\* Le questionnaire porte sur l'expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle. Il est donc question d'une protection juridique spécifique de l'ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d'une législation *suigeneris* (particulière) ou des dispositions d'une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d'auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l'identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle.

ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les disposition types?

Réponse:

Oui

Non

## II. Application des principaux aspects des disposition types

### a) Principes fondamentaux pris en considération dans l'élaboration des disposition types \_\_\_\_\_

Question II.1 : Sur quels principes repose la protection du folklore établie dans la législation ou la réglementation de votre pays?

Réponse :

La protection du folklore du Tchad repose sur le principe de l'exploitation illicite et autres actions dommageables. Il est cependant à noter que toute utilisation des expressions du folklore est soumise à autorisation si celle-ci est faite dans une intention de lucre.

Question II.2 : Avez-vous des observations à formuler sur les principes pris en considération dans l'élaboration des disposition types? Pensez-vous que ces principes sont toujours applicables? Faudrait-il prendre d'autres principes en considération en cas d'adaptation des disposition types?

Réponse :

Nous pensons que dans un premier temps les principes pris en considération sont suffisamment édifiants pour sensibiliser l'opinion nationale et internationale sur l'importance que revêt la protection du patrimoine culturel.

b) Expressions du folklore protégées

Question II.5 : Dans l'application concrète de la législation et de la réglementation de votre pays, l'identification des expressions du folklore à protéger a-t-elle soulevé des difficultés?

Réponse :

Oui

Non

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées tant qu'elles? Existe-t-il des répertoires, des archives et des bases de données sur le folklore)?

Réponse :

Les expressions du folklore sont identifiées à partir de recherches historiques, sociologiques et scientifiques. Certains domaines ont été répertoriés tels que les instruments de musique traditionnelles, les danses traditionnelles et rituelles, les sites et architectures, les contes et légendes et d'autres objets historiques et préhistoriques.

Question II.7 : Existe-t-il des "expressions du folklore" ou d'autres formes de cultures et de savoirs traditionnels qui ne sont pas protégés par les dispositions existantes, selon vous, devraient-ils l'être?

Réponse :

L'étendue de la protection des expressions du folklore est suffisante pour lui assurer une certaine efficacité.

Question II.8 : Veuillez fournir toute information, observation ou donnée d'expérience supplémentaire concernant l'étendue des expressions du folklore protégées.

Réponse :

Au Tchad nous disposons à présent de deux projets de loi : l'un sur le droit d'auteur et des droits voisins et des "expressions du folklore", l'autre sur la protection du patrimoine culturel. Ces deux textes se complètent et prennent en compte tous les aspects de la protection du patrimoine culturel national.

c) Actes contre lesquels les expressions du folklore sont protégées

Question II.9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou la réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation? Les droits accordés sont-ils exclusifs?

Réponse :

Les expressions du folklore sont protégées par la loi contre l'exploitation illicite et autres actions dommageables (art. 83).  
- la création d'œuvres dérivées à partir des expressions du folklore doit être déclarée au BUTDRA  
- sont soumises à l'autorisation du BUTDRA toute publication, reproduction ou distribution d'exemplaires, toute récitation, représentation, exécution publique, transmission par fil ou sans fil et toute autre forme de communication lorsqu'elles sont faites à la fois dans une intention de lucre et en dehors de leur contexte traditionnel ou coutumier.  
Les droits accordés ne sont pas exclusifs.

Question II.10 : Quels principes sont utilisés dans la législation et la réglementation de votre pays pour déterminer les utilisations soumises à autorisation (par exemple, les principes énoncés à l'article 3 reposent sur l'intention de lucre et l'utilisation ou non de l'expression du folklore en dehors de son contexte traditionnel ou coutumier).

Réponse :

Dans notre loi, les utilisations soumises à autorisation sont effectivement celles qui reposent sur l'intention de lucre et en dehors du contexte traditionnel ou coutumier des expressions du folklore.

Question II.11 : D'après votre expérience en matière d'application de la législation et de la réglementation de votre pays, contre quelles formes d'exploitation, d'utilisation et d'action faut-il protéger les expressions du folklore? Veuillez donner des exemples concrets. Disposez-vous de données d'expérience dans l'application des dispositions pertinentes de votre législation et réglementation qui pourraient être utiles à un plus large public?

Réponse :

Nous avons eu à constater des cas d'exploitation audiovisuelle des danses populaires et rituelles par des étrangers et également des Tchadiens travaillant à la télévision tchadienne qui vendaient les images dans les pays du Moyen-Orient.

Question II.12 : Si la législation ou le règlementation de votre pays prévoit des droits en matière de mention de la source (tels que ceux envisagés à l'article 5 des dispositions types), veuillez indiquer, en citant des exemples concrets lorsque c'est possible, si ces droits sont révélés utiles, efficaces et concrètement applicables.

Par exemple, comment l'exigence selon laquelle l'expression du folklore doit être "identifiable" (c'est-à-dire issue d'une communauté ou d'un lieu connu) est-elle appliquée dans votre pays? Comment cette exigence est-elle appliquée? Il existe dans votre pays différentes communautés partageant des expressions du folklore similaires? Se pourrait-il légalement que des communautés de votre pays vivent aussi dans des pays limitrophes ou qu'elles aient adopté et développé une expression du folklore issue d'un autre pays?

Réponse :

S'il s'agit d'œuvres originales ou de productions originales, la source n'est pas un problème même si elle est partagée par deux communautés frontalières. L'auteur de l'œuvre ou l'exploitant doit tout indiquer pour donner les informations sur la source de la production par rapport à l'aire géographique ou par rapport aux références scientifiques des recherches historiques ou archéologiques. Toutefois, la référence est exigée si la source est identifiable.

Question II.13 : La protection prévue par la législation ou le règlementation de votre pays est-elle limitée dans le temps?

Réponse :

Oui

Non

Question II.14 : Veuillez fournir des renseignements sur les exceptions aux droits susvisés éventuellement prévues dans la législation ou le règlementation de votre pays. Sont-elles considérées appropriées du point de vue tant des détenteurs que des utilisateurs du folklore dans votre pays?

Réponse :

Les exceptions aux droits sur les expressions du folklore sont les mêmes que celles prévues pour les droits d'auteurs dans la législation tchadienne.



d) Autorisation d'utilisation des expressions du folklore

Question II.19 : Votre législation établit-elle une "autorité compétente" ou une "autorité de surveillance" du type visé dans les articles 9 et 10 des dispositions types ?

Veillez fournir des informations sur les compétences, le financement, les missions, la composition, les responsabilités, les fonctions et les activités de ces organismes dans votre pays.

Veillez décrire la procédure d'obtention des autorisations d'utilisation des expressions du folklore.

Les utilisations des expressions du folklore sont-elles soumises à redevance et, dans l'affirmative, comment celles-ci sont-elles déterminées et à quelles fins sont-elles perçues (par exemple, pour promouvoir la culture nationale) ?

D'une manière générale, quels enseignements et exemples concrets pourraient être utiles à un plus large public ?

Réponse :

Le Bureau tchadien du droit d'auteur (BUTDRA) est chargé de délivrer des autorisations pour l'exploitation des expressions du folklore au Tchad. La personne qui demande remplit une fiche à partir de laquelle une autorisation lui sera délivrée par le BUTDRA. Le montant de la redevance sera fixé en fonction des conditions d'usage pour les œuvres protégées de même catégorie. Les produits de cette redevance seront gérés par le BUTDRA et affectés à des fins culturelles ou sociales en faveur des communautés d'origine ou artistes.

e) Sanctions, recours et compétence

Question II.21 : Quelles voies de recours et sanctions prévoient la législation et la réglementation de votre pays ?

Réponse :

Les expressions du folklore bénéficient au même titre que le droit d'auteur de la protection juridique. Toutefois, l'exploitant d'une expression du folklore qui veut demander l'autorisation exigée ou d'en faire la déclaration au BUTDRA est passible d'une amende s'élevant au double du montant des redevances dues avec un minimum de 5000 francs CFA.

Question II.22 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant les recours, les sanctions et la compétence.

La législation nationale prévoit la saisie des objets fabriqués en violation des droits. Elle prévoit également la suspension de toute fabrication en cours tendant à la reproduction illicite des expressions du folklore.

f) Relations avec d'autres formes de protection

Question II.23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d'une protection indirecte, par exemple au titre des droits voisins?

Réponse :

Oui

Non

Veuillez fournir des renseignements supplémentaires et, si possible, des exemples concrets afin d'illustrer votre réponse.

Réponse :

La création d'œuvres dérivées à partir des expressions du folklore, adaptation, traduction, arrangement, exécution publique, reproduction, sont protégés par les droits voisins.

g) Protection des expressions du folklore étranger

Question II.25 : Avez-vous connaissance de cas dans lesquels des expressions du folklore issues de votre pays ont été exploitées au titre d'une autre manière à l'étranger?

Réponse :

Oui

Non

Dans l'affirmative :

- i) Veuillez fournir des précisions sur ces situations.

Réponse :

Des étrangers sont venus exploiter les différentes danses du Ballet National en faisant des enregistrements vidéo. Cela s'était passé entre d' un groupe chorégraphique et les exploitants.

Question II.26 : Pensez -vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Réponse :

Oui

Non

Veuillez préciser votre réponse.

Réponse :

Jepense que les éléments tels que soulevés dans les dispositions pourraient être appliqués par les États sans trop de difficultés.  
Un arrangement international est mieux pour l' Afrique qu' un arrangement régional parce que le problème se pose au niveau de l' exploitation du patrimoine culturel par l' occident.

Question II.27 : Dans l'affirmative, pensez -vous que les dispositions pourraient constituer un bon point de départ pour l' élaboration d' un tel arrangement?

Oui

Non

Veuillez préciser votre réponse.

Réponse :

Jepense que à travers le commentaire fait sur les dispositions, tous les contours de la question ont été élaborés et il n'est que l' adaptation et la pratique sur le terrain.

Question II.28 : Quelles propositions concrètes souhaiteriez-vous faire concernant les deux principaux problèmes ayant entraîné l'élaboration d'un traité international en 1984, à savoir i) l'insuffisance des sources qui permettraient l'identification des expressions du folklore à protéger et ii) l'absence de mécanisme approprié pour régler la question des expressions du folklore présentes non pas dans un seul pays mais dans plusieurs pays d'une région?

Réponse :

Parrapport à la première question, il faudrait s'entendre sur la définition du terme "expressions du folklore". Pour le reste, chaque État doit répertorier et codifier et mettre à la disposition les expressions du folklore en question.

Parrapport à la deuxième question, le problème sur le plan pratique ne se pose pas à partir du moment où la source est connue. En Afrique, l'interpénétration culturelle n'a jamais été un handicap. Il y a des cérémonies rituelles qui sont transfrontalières.

[Fin de la réponse du Tchad]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF CHINA

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- The National Copyright Administration of China (NCAC)

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes. The Model Provisions are available in Chinese.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- The Full title is “Regulations on the Protection of Works of Folklore of China (Draft Soliciting Opinion) (January 3 1997).” The Regulations have 24 articles in all, and has not come into force. NCAC should be responsible for administering the Regulations.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

## II. *Application of the Principal Provisions of the Model Provisions*

### (a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

There are three principles underlying the protection of folklore in our national regulations:

- for the purpose of developing and protecting the creation and dissemination of the folklore of China;
- for the purpose of preventing the illicit exploitation and other prejudicial actions described;
- for necessity of maintaining a proper balance between protection against abuses of folklore and encouragement of further development and dissemination of folklore.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- We think the principles of the Model Provision are practicable, workable and still viable. We don't have any additional principles that should be taken into account in the Model Provisions.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

(i) The term is “works of folklore.”

(ii) According to the Regulations of Article 2, the subject matter refers to as “works of folklore”, regardless of whether the works have been fixed in tangible form, cover the following literary, artistic and scientific works where the author is unknown, but where there is every ground to presume that he or she is a national of China:

(1) verbal expressions, such as folk tales, legends, folk poetry, common proverbs and the librettos or scripts of ballad singers, etc.

(2) musical expressions, such as folk songs and national instrumental music, etc.;

(3) expressions by action, such as folk dance, folk operas, folk quyi (folk art forms including ballad singing, story telling, comic dialogues, clapper talks, cross talks, etc.), folk customs and rituals;

(4) tangible expressions, such as

a) production of folk art, especially drawings, paintings, murals (frescos), carvings, sculptures, pottery, mosaic, metalware, weavings and knittings, embroidery, ornaments and decorations, costume ornaments and designs, moulds of traditional arts and crafts and musical instruments;

b) artistic forms of folk architecture.



Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- We don't have any additional information, comments or practical experiences on that.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- We provide that two utilizations require authorization. One is any reproduction and distribution of a work of folklore; another is any public performance and broadcast of a work of folklore. The rights are granted exclusive rights.  
- We provide that other acts don't require authorization, but one must pay remuneration. Firstly, broadcast of a work by wireless or cable means; secondly, distribution of a published work of that has been produced in the form of phonogram.  
-The rights are exclusive rights.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- When a work of folklore is utilized with gainful intent and outside its traditional or customary context, the authorization is required.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- In the regulations, exceptions are regulated as following:
- Article 5 In the following cases, a work of folklore may be utilized without permission from, but with payment of remuneration to, in accordance with Article 10, the copyright owner, provided that the origin and the provider of the work utilized are clearly indicated in an appropriate manner:
- (i) broadcast of a work of folklore by wireless or cable means:
  - (ii) distribution of a published work of folklore that has been produced in the form of phonogram.
- Article 6 In the following cases, a work of folklore may be utilized without permission from, and without payment of remuneration to the copyright owner, provided that the origin and the provider if the work utilized are indicated in an appropriate manner:
- (i) use of a work of folklore for teaching and academic purposes, provided that the use shall not exceed the normal scope of teaching and academic activities;
  - (ii) appropriate quotation from a work of folklore in one's own work for purposes of introduction to, or comments on, a work;
  - (iii) borrowing of a work of folklore for creating an original work;
  - (iv) the unavoidable inclusion of work of folklore in new items in newspapers, periodicals, radio and television broadcasting;
  - (v) reproduction of a work of folklore in its collection by a library archive, art gallery of similar institution, for the purposes of the display, or preservation of a copy, of the work;
  - (vi) use of a work of folklore by the community which has created the work within the traditional or customary context with commercial or non-commercial intent;
  - (vii) copying drawing, photographing or video recording of a work of folklore located or on display in an outdoor public place;
  - (viii) use of work of folklore specifically for the invalids with non-commercial intent
- Yes. We think that they are regarded as adequate from the view point of both the custodians of folklore and users in our country.

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

Response:

- We establish a competent authority and supervisory authority.
- The Ministry of Culture and the culture administration department of the local People’s Government are competent authority. Their main function is to give authorization, which includes to receive applications for authorization of the utilization and to decide on the scope of the utilization to be authorized.
- National Copyright Administration of China is the supervisory department for the protection of works of works of folklore. Its main functions shall be to approve the tariffs payable for the authorization of utilization of works of works of folklore and to supervise the distribution and exploitation of the fees collected.
- Anyone who utilized a work of folklore shall pay a fee to the competent cultural authority. The fee shall be no less than 7% of the profit made from the utilization of a work of folklore, and shall be used mainly for the following purposes: first, to support and assist the work of national folklore organizations, folklore artists, folklore research institutions, folklore museums, exhibition halls and archives; second, to subsidize the community creating and spreading folklore to carry out meaningful activities on traditional folklore; third, to protect and disseminate Chinese folklore works.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

Anyone who violates the provisions of the Regulations, shall be subjected by the competent cultural authority to such administrative sanctions as warning, imposition of a fine, or confiscation of unlawful income from the violation.

Question II. 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

[End of response of China]

CUESTIONARIOSOBREEXPERIENCIASNACIONA LESENLA PROTECCIÓN  
JURÍDICADELASEXPRESIONESDELFOLCLORE

RESPUESTA DE COLOMBIA

*Información de contacto*

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*I. Aplicación del conjunto de Disposiciones Tipo*

Pregunta I.1 : ¿Qué ministerio(s), departamento(s), organismo(s) y oficina(s) gubernamental(es) de su país se ocupa(n) de las cuestiones relativas a la protección jurídica de las expresiones del folclore?

Respuesta:

-Dirección Nacional de Derecho de Autor  
-Dirección de Asuntos Indígenas -Ministerio del Interior  
-Ministerio de Cultura  
-Artesanías de Colombia

Pregunta I.2 : ¿Disponen de las Disposiciones Tipo en (un) de los idiomas oficiales de su país?

Respuesta:

Si

Pregunta I.3 : ¿Reciben las “expresiones del folclore”, y se acoman a definir en las Disposiciones Tipo, o como se entienden a ser término en su país, una protección jurídica específica como propiedad intelectual \* en su legislación nacional (esté dicha legislación relacionada con la propiedad intelectual o no)?

Respuesta:

Sí

No



Encasonegativo .

i) Sírvase indicar, si es posible, las razones por las que no se ha establecido este tipo de protección.

Respuesta:

No conocemos las razones por las cuales el Gobierno Nacional o el Congreso de la República no han implementado una protección legal a las expresiones del folclore, a pesar de existir en la Ley General de Cultura (Ley 397 de 1997), una disposición que hace obligatoria esta protección. En efecto, el Artículo 13 de la citada norma establece:

*"Artículo 13. Derechos de Grupos Étnicos. Los grupos étnicos asentados en territorios de riqueza arqueológica conservarán los derechos que efectivamente estuvieren ejerciendo sobre el patrimonio arqueológico que se aparta de su identidad cultural, para lo cual contarán con la asesoría de la asistencia técnica del Ministerio de Cultura."*

*"Con el fin de proteger lenguas, tradiciones, usos y costumbres y saberes, el Estado garantizará los derechos de autoría colectiva de los grupos étnicos, apoyará los procesos de etnoeducación, y estimulará la difusión de su patrimonio a través de los medios de comunicación."*

ii) En relación con las Disposiciones Tipo específicamente, sírvase indicar a continuación qué aspecto(s) de ésta ha(n) impedido su aplicación en su país:

*Sí, este aspecto puede haber impedido la aplicación de las Disposiciones Tipo*

Respuesta:

Los principios básicos en los que se basan las Disposiciones Tipo (véase el Preámbulo)

El alcance de las "expresiones del folclore" protegidas por las Disposiciones Tipo (Artículo 2)

Los actos contra los cuales están protegidas las expresiones del folclore y las excepciones (Artículos 3, 4, 6 y 6)

Las disposiciones que se ocupan de la autorización del uso de las expresiones del folclore (Artículos 9 y 10)

Las sanciones y los recursos previstos (Artículos 7 y 8)

Las soluciones que ofrecen las Disposiciones Tipo para la protección de las expresiones del folclore de países extranjeros (Artículos 14)

iii) Sírvase indicar otra(s) razón(es) por la(s) cual(es) las Disposiciones Tipo no se ha(n) aplicado en su país.

Respuesta:

Existe un impedimento de carácter legal, en virtud del Artículo 187 Numeral 2 de la Ley 23 de 1982, que considera como de dominio público o "las obras folclóricas y tradiciones de autores desconocidos". El texto de esta norma es el siguiente:

*"Artículo 187 Pertenecen al dominio público:"*

*"1) Las obras cuyo período de protección esté agotado;"*

*"2) Las obras folclóricas y tradicionales de autores desconocidos;"*

*"3) Las obras cuyos autores hayan renunciado a sus derechos; y"*

*"4) Las obras extranjeras que no gocen de protección en la República."*

Por su parte, el Artículo 189 de la Ley 23 de 1982, establece:

*"Artículo 189. El arte indígena, en toda sus manifestaciones, inclusive, danzas, canto, artesanías, dibujos y esculturas, pertenece al patrimonio cultural."*

## II. Aplicación de las disposiciones principales de las Disposiciones Tipo

Pregunta II.2 : ¿Tiene alguna observación con respecto a los principios tenidos en cuenta en la elaboración de las Disposiciones Tipo? ¿Cree que los principios siguen siendo viables? ¿Existen otros principios adicionales que deberían tomarse en cuenta en cualquier modificación de las Disposiciones Tipo?

Respuesta:

No se tienen comentarios al respecto.

Pregunta II.3 : Sírvase facilitar información, observaciones o experiencias prácticas nuevas sobre los principios básicos tomados en consideración para la elaboración de las Disposiciones Tipo.

Respuesta:

No se tienen comentarios al respecto.

Pregunta II.6 : ¿Se utiliza en su país normalmente un término distinto de “expresiones del folclore” para describir el objeto al que se hace referencia en el Artículo 2 de las Disposiciones Tipo? Encaso afirmativo:

- i) ¿Cuál es ese término?
- ii) ¿Cuál es el objeto que abarca?

Respuesta:

- (i) "Obras folclóricas y tradicionales de autores desconocidos."  
"Arte indígena"
- (ii) Ley de derecho de autor y derechos conexos (Ley 23 de 1982).

Pregunta II.7 : ¿Existen “expresiones de folclore” u otros ejemplos o formas de cultura y conocimiento tradicionales que no queden protegidos por las Disposiciones Tipo, y que considere que deberían estarlo?

Respuesta:

Consideramos que el alcance de la sección 2 de las disposiciones tipo, respecto a cuáles son las expresiones del folclore protegidas, abarca satisfactoriamente las diversas creaciones que ameritarían protección.

Pregunta II.8 : ¿Sirva facilitar información, hacer observaciones o explicar su experiencia práctica acerca del alcance de las expresiones del folclore protegidas.

Respuesta:

No se tienen comentarios al respecto.

Pregunta II.15 : Teniendo en cuenta las expresiones del folclore que existen en su país, ¿contra qué formas de explotación, utilización y acciones podría ser necesario proteger las expresiones del folclore? Proporcione ejemplos prácticos.

Respuesta:

En este aspecto compartimos el alcance de la sección 3 del texto de las disposiciones tipo, en cuanto a la utilización sujeta a autorización, y de la sección 6 del mismo texto, en cuanto a las conductas que se debieran considerar ofensivas de los derechos sobre las expresiones del folclore.

PreguntaII.16 :Facilitecualquieroinformaciónoexperienciaprácticarelacionadasconla naturalezade laprotecciónque se concede alas expresionesdelfolcloreensuspaís.

Respuesta:

En Colombia, la protección del folclore y sus expresiones, en cuanto a su integridad, y la promoción y difusión de las mismas son objetivos de las políticas de preservación del patrimonio cultural de la nación. Esta protección corresponde a las autoridades encargadas de llevar a efecto tales políticas. De esta forma, en Colombia, no se ha buscado brindar tal protección por vía de la propiedad intelectual.

PreguntaII.17 :Ensupaís,¿seconsideraque las expresionesdelfolcloreson:

Respuesta:

i)“Propiedad” del paísensusconjunto(formanpartedel patrimoniocultural nacional)?

ii)“¿Propiedad” delascomunidadesindígenasuotrascomunidadeslocalesdesupaís?

iii)¿“Propiedad” deartistasindividualescuyasobrassebasanentradiciones folclóricas?

iv)Ningunadelastres.Proporcioneinformaciónadicional.

Respuesta:

Sí, en Colombia las expresiones del folclore son consideradas como parte del patrimonio cultural de la nación (Artículo 189 de la Ley 23 de 1982).

PreguntaII.18: Facilitecualquieroinformaciónoexperienciaprácticarelacionadaconla autorizacióndeutilizacióndeexpresionesdelfolcloreensuspaís.

Respuesta:

No se tienen comentarios al respecto.

PreguntaII.23: ¿Existealgúnjemploensuspaísdeexpresionesdelfolclorequehayan obtenidoprotecciónpormediosindirectostalcomolosderechosconexos?

Respuesta:

Sí

No

Facilite información adicional y, si es posible, ejemplos prácticos para ilustrar su respuesta.

Respuesta:

Notenemos conocimiento de que en Colombia, existan casos en que las expresiones del folclore hayan recibido protección por vía de los derechos conexos, o por cualquier otra vía que pudiera considerarse "indirecta".

Pregunta II.24: Proporcione cualquier otra información o experiencia práctica relacionada con otras formas de protección otorgada a las expresiones del folclore en su país.

Respuesta:

Notenemos comentarios al respecto.

Pregunta II.26: ¿Considera que es necesario establecer un acuerdo internacional para la protección de las expresiones del folclore?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Consideramos que una protección de carácter nacional no es suficiente para satisfacer un adecuado nivel de protección de las expresiones del folclore, haciéndose necesaria la adopción de un instrumento de derecho internacional que les dé exigibilidad, principalmente en aquellos países en que se utiliza comercialmente las expresiones del folclore de otras naciones.

Pregunta II.27: En caso de respuesta afirmativa, ¿opina que las Disposiciones Tipo podrían ser un punto de partida adecuado para el desarrollo de ese acuerdo?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Creemos que las disposiciones tipo OMPI -UNESCO para la Protección de las Expresiones del Folclore, son un adecuado marco de referencia a partir del cual puede establecerse una protección de estas expresiones en un eventual instrumento internacional.

No obstante, consideramos que dicha protección no debe brindarse en el marco del derecho de autor y los derechos conexos, sino en el marco de un régimen *suigeneris* de protección, que bien podría inspirarse en algunas instituciones propias de la legislación autoral.

Pregunta II.28 : ¿ Tiene alguna práctica en relación con los dos principales problemas que impidieron la conclusión de un tratado internacional en 1984 (a saber, i) la falta de fuentes adecuadas para identificar las expresiones del folclore que debían ser protegidas y ii) la falta de mecanismos viables para determinar las expresiones del folclore que se podían encontrar no sólo en un país sino en varios países de una región)?

Respuesta:

i) La documentación de las expresiones del folclore que serían objeto de protección, debiera constituir un sistema de información de uso universal, en el cual podrían seguirse los parámetros de la documentación mundial de las obras protegidas por el derecho de autor, a efecto de su gestión colectiva.

La labor de identificación y documentación de las expresiones del folclore en los países en desarrollo debería ameritar el apoyo de la cooperación internacional a través de organismos como la OMPI y la UNESCO.

ii) Los casos en que una expresión de folclore pueda ser común a varios países, o propia de comunidades étnicas que tienen asiento en el territorio de varios Estados, pueden ser entendidos como una dificultad si se considera que son los gobiernos quienes ejercen los derechos sobre las expresiones del folclore.

Por el contrario, si se considera que son los pueblos o comunidades étnicas los titulares de los derechos sobre las expresiones del folclore, y no los gobiernos, la dificultad planteada se obvia, puesto que el reconocimiento y ejercicio de esos derechos en cabeza de tales comunidades no estaría condicionada a una determinada procedencia de un o varios países.

Pregunta II.29 : Proporcione cualquier otra información o experiencia práctica relativa a la protección de las expresiones del folclore de países extranjeros.

Respuesta:

No tienen comentarios al respecto.

*III. Modificaciones o adaptaciones de las Disposiciones Tipo*

Pregunta III.1 : Propongamos modificaciones o adaptaciones que puedan hacer las Disposiciones Tipo más útiles como modelo para las legislaciones nacionales, regionales o internacionales.

Respuesta:

Consideramos que el efecto de brindar protección a las expresiones del folclore que se utilizan en el entorno digital, es decir, que la red global de una información, el concepto de reproducción y el concepto de comunicación al público, contenidos en la Sección 3 del texto de las disposiciones tipo, deben ser actualizados de manera análoga al definido a través del Tratado OMPI sobre el Derecho de Autor y el Tratado OMPI sobre Interpretación o Ejecución y Fonogramas.

[Fin de la respuesta de Colombia]

CUESTIONARIOSOBREEXPERIENCIASNACIONALESENLA PROTECCIÓN  
JURÍDICA DE LA EXPRESIONES DEL FOLCLORE

RESPUESTA DE COSTA RICA

*Información de contacto*

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MEDIANTE EL TELEFAX DE FECHA 24 DE OCTUBRE DE 2001, LA OFICINA DE  
REGISTRO DE PROPIEDAD INDUSTRIAL DE COSTA RICA ENTREGÓ LA  
INFORMACIÓN SIGUIENTE EN RESPUESTA AL CUESTIONARIO:

El cuestionario relativo a las expresiones nacionales en la protección jurídica de las expresiones del folclore, no es posible contestarlo, ya que Costa Rica cuenta en este momento con legislación específica para la protección de este tipo de derechos, ni se ha determinado a qué institución gubernamental le corresponde realizar el registro; creo que en la parte de Propiedad Industrial, es poco probable su protección, pero hay que realizar un análisis exhaustivo para dar posibles soluciones a estos temas, mediante una legislación *sui generis*, especializada en estas materias, ya que es resultado de gran importancia tanto a nivel nacional como internacional el resguardo de estas expresiones del folclore.

En Costa Rica el tema no ha sido desarrollado ni ha sido foco de interés en los distintos grupos especializados en materia de Propiedad Intelectual, y mucho menos en el ámbito legislativo. Todo esto a pesar de que el desarrollo económico, político y social que ha sufrido nuestro país en los últimos años ha provocado la pérdida gradual de nuestra nacionalidad folklórica, así como la enajenación del conocimiento tradicional que pertenecen a los grupos indígenas.

Al respecto, varios aspectos deben ser considerados. Por un lado, existen posiciones encontradas por parte de los expertos en la materia respecto a la formulación de una definición universal del folclore; sobre si conviene o no la protección a nivel internacional y/o debe ser cada país el que dicta las normas nacionales que el asunto requiere. Por otro lado, no existe aún una posición oficial por parte de la OMPI, lo cual tiene el proceso de adopción de leyes al respecto o la inclusión de variantes a las ya existentes figuras que se protegen bajo la propiedad intelectual.



La discusión sobre la protección de las expresiones del folclore tiene como objetivo lo siguiente:

1. El mantenimiento y fortalecimiento de dichas expresiones dentro de su grupo originario como un fin al que deben aspirar todos los ciudadanos.
2. El reconocimiento económico y principalmente moral para aquellos creadores y en algunos casos, portadores de estas expresiones, es decir, el pueblo.

Costa Rica no puede demostrar una actitud de indiferencia ante lo anterior. Aún cuando en nuestro país los casos de pérdida de la identidad cultural y de las manifestaciones folklóricas se refieren a objetos, danzas, artesanías y/o música, entre otras, nos están extremos como en el resto de Centroamérica, el punto medular radica precisamente en crear instrumentos legales y el ambiente propicio para un tema de discusión sobre tan importante tema antes de que el daño sea evidente y se agrave.

Debe ser prioridad en la elaboración de las políticas sociales y culturales del país el desarrollo de una campaña de educación y concienciación sobre el folclore en cada una de las comunidades.

Solamente de esta forma cada uno de los miembros de la comunidad podrá identificar cuáles expresiones forman parte de su folclore, el significado de éstas y su función.

Proteger las expresiones del folclore no significa bajar ningún punto de vista conservarlas fuera del alcance de su propia comunidad ni de todo el país. Proteger las expresiones del folclore significa que estas no deben ser presas fáciles de usos indebidos e inescrupulosos, ni de apropiación por otras personas. Proteger las expresiones del folclore significa respetarlas y respetar al grupo social que las creó y al cual pertenecen.

El sistema de propiedad intelectual vigente, aún cuando sus normas no se refieren precisamente a las expresiones del folclore ni de los conocimientos indígenas, contiene parámetros generales que se deben utilizar.

Para ello se hace necesaria la creación de un tratado internacional en el cual se definan los rasgos básicos que definen al folclore, y la caracterización de las distintas figuras que lo componen. De este modo, cada uno de los países podrá modificar sus leyes internas sobre derechos de autor para que estas incluyan a las obras folklóricas.

Analizada la situación costarricense parece que la salvaguarda del folclore se puede llevar a cabo mediante la reglamentación a nivel registral de un procedimiento de inscripción de dichas obras. Se debe crear algún tipo de instancia privada o pública dedicada a recolectar estas expresiones, documentarlas, inscribir las y actuar como representante legal de las comunidades.

Las municipalidades constituyen una opción para llevar a cabo el trabajo puesto que éstas cuentan con personería jurídica estatal y jurisdicción en el territorio de su propio cantón. De esta manera, ellas podrán actuar en beneficio de sus pobladores y de las creaciones folklóricas de éstos. Precisamente uno de sus objetivos consiste en promover y administrar los intereses, y de coadyuvar en el desarrollo integral de su cantón.

Una de las soluciones propuestas en esta investigación consiste en la creación de un departamento de protección del folklóreo y de los conocimientos indígenas, en cada una de las municipalidades. Este departamento estará integrado por personas conocedoras del tema quienes se encargarán de recopilar, investigar, archivar, documentar e inscribir las obras folklóricas.

A nivel registral, la municipalidad actuará como representante de la comunidad para efectos de inscripción. Sin embargo, los derechos de autor pertenecerán únicamente y exclusivamente a la comunidad. La municipalidad captará los recursos económicos derivados de los derechos patrimoniales y los utilizará en campañas de prevención, promoción y protección de las expresiones folklóricas de su comunidad.

Debe subrayarse que si bien los conocimientos indígenas deben ser protegidos bajo la figura del autor, y no de los derechos de autor, todos los pasos y políticas señalados anteriormente deben implementarse de igual forma en estos casos, pero utilizando dicha figura.

Otra forma de organización comunal que puede idearse para salvaguardar el folklóreo y los conocimientos tradicionales indígenas lo constituyen las asociaciones para el desarrollo de las comunidades, amparadas legalmente bajo la Ley No. 3859 de 7 de abril de 1967. Estas llevarán a cabo exactamente las mismas funciones que se detallaron para las municipalidades, y funcionarán una por cada cantón del país.

Estas asociaciones presentan la ventaja de que deben ajustar sus políticas y actuaciones a la fiscalización de la Dirección Nacional de Desarrollo de la Comunidad, conocida como DINADECO. Esta institución velará por el establecimiento de bases para el planeamiento, programación, ejecución, supervisión y ejecución de proyectos relacionados con el folklóreo y los conocimientos tradicionales indígenas.

Además, éstas contarán con una parte del presupuesto ordinario de la República, el cual se gira al Consejo Nacional de Desarrollo de la Comunidad. Este Consejo contará de esta forma con un fondo para financiar y facilitar el desarrollo de proyectos que presenten en las mismas asociaciones, de acuerdo a la reglamentación que se promueva.

Cualquiera de las dos propuestas anteriores constituye una solución para solventar la falta de protección que cuenta el folklóreo y los conocimientos tradicionales indígenas. Debe apuntarse que la figura de organización que se desea crear debe ser subordinada al cumplimiento exclusivo de sus fines, esto es de la tutela real y efectiva de las obras folklóricas y de los conocimientos tradicionales indígenas.

Así las cosas, no hay duda alguna de que el folklóreo y los conocimientos tradicionales indígenas, como resultado del ingenio humano, constituyen propiedad intelectual de sus creadores. No hay duda alguna de que tanto el folklóreo como los conocimientos tradicionales indígenas son objeto de apropiación de personas ajenas a la comunidad creadora, que las reproducen, venden e inscriben como propiedad intelectual propia. No hay duda alguna de que es urgente modificar los sistemas de propiedad intelectual vigentes con el fin de incluir el folklóreo y los conocimientos tradicionales indígenas.

La creación de una figura *suigeneris* de protección dentro de la propiedad intelectual significa el desarrollo de políticas, modificaciones o adaptaciones dentro de éstas que mencionen específicamente al folclore y los conocimientos indígenas. Una figura *suigeneris* constituye una forma de protección especial con respecto a la ya existente, pero no necesariamente diferente.

No se puede olvidar que en el caso del folclore y de los conocimientos indígenas, el interés primordial de sus creadores no radica en la obtención de algún beneficio económico de ellos, sino en el reconocimiento de sus creaciones como parte de su comunidad, de su cultura, de su identidad. Por ello no se pueden establecer derechos de propiedad intelectual en la elaboración de políticas legales de defensa.

Los pueblos tradicionales e indígenas tienen el derecho colectivo de mantener estas expresiones bajo su control. Solo ellos conocen el significado de las mismas y la función que desempeñan en sus vidas. Brindando la protección que ofrece la propiedad intelectual se podrá evitar la comercialización de estas expresiones y la tergiversación de las mismas.

En este sentido, debe tenerse en cuenta que los derechos de propiedad intelectual si bien son una función política y económica de los Estados, también consisten en una función individual por ponerlos en práctica. Esto es, los Estados se encuentran en la obligación de establecer los mecanismos necesarios para proteger estos derechos, pero ellos solo constituyen un marco legal. Son los interesados en recibir dicha protección quienes deben encontrarse en la posición de entender cuáles son esos derechos que los amparan, cuáles son las situaciones de infracción y cómo reaccionar ante ello. Para ello, la educación, la prevención y difusión son básicas.

El tema aún no se ha terminado. La discusión es amplia y difícil. La solución debe buscarse a través de la participación conjunta de representantes de las comunidades, de especialistas en las áreas de la Sociología, la Antropología y el Derecho, entre otros, y por supuesto del sector político del país para que éstos, especialmente los diputados, dirijan su atención a esta problemática.

La promoción de la diversidad cultural es esencial para preservar la historia y herencia de las naciones. Esto debe ser considerado como un derecho social fundamental y un deber de la humanidad.

Más, sin una efectiva regulación nacional, como primera instancia, la consecución de estos objetivos no podría ser posible. Debe existir disponibilidad de factores tanto intelectuales como económicos y sociales para llevar a cabo el trabajo. Los países no pueden cerrar sus ojos a esto, y ciertamente Costa Rica tampoco.

[Fin de la respuesta de Costa Rica]

QUESTIONNAIRE RELATIF À L'EXPÉRIENCE ACQUISE AU NIVEAU NATIONAL  
EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES EXPRESSIONS DU  
FOLKLORE

RÉPONSE DE LA CÔTE D'IVOIRE

*Coordonnées*

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*I. Application des dispositions types dans leur ensemble*

Question I. 1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Ministère de la culture

Question I. 2 : Les dispositions types sont elles disponibles dans la (une des) langue(s) officielle(s) de votre pays?

Réponse :

Non

Question I. 3 : Les “expressions du folklore”, soit telles qu’elles sont décrites dans les dispositions types, soit telles qu’on les entend dans votre pays, bénéficient-elles d’une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (que les dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Réponse :        Oui          
                          Non       

Dans la négative,

- i)      Veuillez indiquer, si possible, les raisons pour lesquelles cette protection n’a pas été établie.

Réponse :

- Le législateur ivoirien n’a pas encore pris de dispositions légales spécifiques de protection des expressions du folklore.

- La loi actuelle sur les droits d’auteur et les droits voisins cite néanmoins les «œuvres du folklore» au chapitre des œuvres protégées (Article 6, 12°). Par ailleurs, l’Article 7 prévoit la protection des «œuvres inspirées du folklore» comme des œuvres originales.

- Enfin, l’Article 8 donne des définitions et confie l’exploitation du folklore à la société d’auteurs. Une protection plus détaillée est en projet et pourrait s’inspirer de la loi-type suggérée dans ce document.

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\* Le questionnaire porte sur l’expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle. Il est donc question d’une protection juridique spécifique de l’ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d’une législation *sui generis* (particulière) ou des dispositions d’une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d’auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l’identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle.

II. Application des principaux aspects des dispositions types

Question II. 6 : Existe-t-il dans la législation ou la réglementation de votre pays un autre terme que les “expressions du folklore” pour désigner l’objet des dispositions types visé à l’article 2?

Dans l’affirmative : i) Quel est ce terme?  
ii) Quel objet désigne-t-il?

Réponse :

Non

Question II. 16 : Veuillez faire part de toute autre observation ou donnée d’expérience concernant la nature de la protection accordée aux expressions du folklore dans votre pays.

Réponse :

Voir question I.2.

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

Réponse:

i) la “propriété” du pays dans son ensemble (en tant que partie du patrimoine culturel national)?

ii) la “propriété” de communautés autochtones ou locales vivant dans votre pays?

iii) la “propriété” des différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

Question II. 23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d’une protection indirecte, par exemple au titre des droits voisins?

Réponse:

Oui

Non

Question II. 26 : Pensez-vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Réponse :      Oui     

                         Non     

Question II. 27 : Dans l'affirmative, pensez-vous que les dispositions types pourraient constituer un bon point de départ pour l'élaboration d'un tel arrangement?

Réponse :      Oui     

                         Non     

Veillez préciser votre réponse.

- Parce que, bien que préoccupés par la prise en compte d'une protection au niveau international, les pays intéressés ne sont pas organisés pour disposer ou mettre au point un instrument tenant compte du plus grand nombre possible de leurs préoccupations communes.

Information complémentaire mise à disposition par le pays

La protection légale des expressions du folklore ne fait pas l'objet de dispositions spécifiques en Côte d'Ivoire. Toutefois, la loi générale de protection du droit d'auteur et des droits voisins pose le principe de la protection des «œuvres du folklore».

En effet, traitant des œuvres protégées, le chapitre premier dispose en son *article 6*: «La protection des droits des auteurs s'exerce sur toutes œuvres originales, quels qu'en soient le genre, la valeur, la destination, le mode ou la forme d'expression, notamment : .....; 12° «Les œuvres du folklore» ».

À l'*article 7*, «sont protégées comme des œuvres originales, sans préjudice des droits de l'auteur de l'œuvre originale : .....; 3° «Les œuvres inspirées du folklore» ».

Après avoir précisé que «le folklore appartient à un titre originaire au patrimoine national, ...», l'*article 8* donne les définitions du folklore, de l'œuvre inspirée du folklore, et décrit les conditions d'exploitation du folklore.

La Côte d'Ivoire est cependant soucieuse d'une protection plus large et plus complète tant au niveau national qu'au plan international. C'est pourquoi elle milite pour les thèses défendues par l'Afrique lors des consultations régionales consacrées au sujet.

Les conclusions de ces consultations sont attendues comme hypothèse de travail au débat futur qu'elle ouvrira sur une protection juridique plus large des expressions du folklore et les savoirs traditionnels.

Yao Norbert Etranny  
Directeur du Centre national des arts et de la culture  
Ex Directeur général du Bureau ivoirien du droit d'auteur  
Ex Directeur général de la culture

[Fin de la réponse de la Côte d'Ivoire]



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE REPUBLIC OF CROATIA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Ministry of Culture.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Law on the Protection and Preservation of Cultural Goods.

II: Types of cultural goods.

3. Non-material cultural goods.

- Article 9: A non-material cultural good comprises various forms and phenomena of spiritual creativity transmitted traditionally or in another way, especially;

- folklore creativity, in the field of music, dance, tradition, games, rituals, customs, and other traditional national values.

- This law came into force in 1999 number (01-081-99-1280/2).

- The Ministry of Culture is responsible for administering this Law, keeping the register of the cultural goods, and performing other activities.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the  
Model Provisions  
has not been followed  
in our national laws  
and regulations*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Because the Model Provisions don't offer any specific definition of the notion of “folklore.”
- The legal “terms” are not specified.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- “Expressions of folklore,” as it is adopted in the Model Provisions, does not speak of the “cultural heritage,” of the nation. It is rather focused on “artistic heritage,” which is too restrictive.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- The legal terms are not specified, like for example “characteristic elements” of expressions of folklore or “what belongs to the folklore of a community”?

*II. Application of the Principal Provisions of the Model Provisions*

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- The Model Provisions should be more specific about their purpose.
- I think that the principles are still viable.

(b) Protected expressions of folklore

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- (i) Creations of folklore, traditional customs.
- (ii) The protection and preservation of cultural goods.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- In my opinion, there exist also practical traditions in a country which are not of “artistic heritage” and therefore should be protected. For example, scientific views in fields as medicine, physics, molecular-biology, etc.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- They should be protected against improper and illicit use and distortion. For example: folk dances and games belonging to a certain region.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- There is no effective way of protecting it. (In our laws the term “expressions of folklore” is not even defined).

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input type="checkbox"/>            |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |



(iv) Neither (i), (ii) or (iii). Please provide further information.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- The "Copyright Law" speaks of "works" originated from "expressions of folklore."

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- An international agreement could define important principles for the protection of “expressions of folklore.”
- Furthermore, an international institute could be founded where its Member States would have the possibility of asking certain questions concerning the protection of “expressions of folklore.”

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- The Model Provisions have already worked out some basic principles concerning the protection of “expressions of folklore.”

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- An international institute could be constituted which would consist of many members and appropriate specialists who could be authorized to do research-work for the identification of the sources and at the same time they would be competent to answer questions concerning expressions of folklore.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- In my opinion, it would be useful to determine more precisely what kind of protection could be effective concerning “expressions of folklore.”
- Is the intellectual-property-type protection sufficient when one is considering the purpose of the Model Provisions?
- Maybe the term “artistic heritage” is too restrictive. But the Preamble speaks clearly of the “cultural heritage of the nation.”
- I suggest therefore to extend the protection of “expressions of folklore” to other forms of cultural heritage, like for example scientific views or practical traditions.

[End of response of the Republic of Croatia]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE CZECH REPUBLIC

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Ministry of Culture.
- The Folk Culture Institute in Straznice

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?"

Response:

- Yes

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response:

- In the Czech Republic expressions of folklore are generally considered to belong to the public domain.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

partly

Yes

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

No

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

Yes

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

Yes

The sanctions and remedies provided for (sections 7 and 8)

Yes

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

Yes

If you have marked any of the boxes, please provide further information.

Response:

- The above mentioned aspects of the Model Provisions may have prevented implementation of the Model Provisions as expressions of folklore are public domain.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- There is no other reason besides that one mentioned above.

*Application of the Principal Provisions of the Model Provisions*

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- We have no comments on the principles of the Model Provisions as the Czech Republic is the country in which expressions of folklore are considered to belong to the public domain.

- We believe that expressions of folklore may be protected by indirect protection, e.g. by industrial property laws.

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- The term “creations of traditional folk culture” is used in the Law No. 121/2000 Coll. on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws (Copyright Act). It covers works with the meaning of copyright only.
- In the document on Cultural Policy in the Czech Republic the used term is “traditional folk culture” as a part of cultural heritage. It covers all phenomena of traditional folk culture including traditional folk crafts.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Generally speaking yes, e.g. architectural forms, traditional knowledge etc.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- A short time ago the Industrial Property Office has provided for the protection of the appellation of origin of very specific regional pastry.



Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- According to Article 3 of the Czech Copyright Law creations of traditional folk culture may be used only in a manner which does not depreciate their value.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- Expressions of folklore may be protected by related rights according to the Copyright Law.  
- In the Czech Republic the protection under industrial property right, Culture Heritage Conservation Act and the Law No. 122/2000 Coll. on the Protection of Collections of Museum Nature is also available.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |

(iv) Neither (i), (ii) or (iii). Please provide further information.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- Utilization of expressions of folklore is not in the Czech Republic subject to the authorization except for the authorization according to the industrial property laws.

(f) Relation to other forms of protection

Question II. 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- A person who acts, sings, recites, presents or otherwise performs work including creations of traditional folk culture shall be protected by the neighboring rights of performers, producers of phonograms, producers of audiovisual fixations and broadcasters.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- We have no practical proposals. We suppose that Member States need to discuss both main problems indicated above.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- We have no experiences regarding the protection of expressions of folklore of foreign countries and we have no other comments.

[End of Response of Czech Republic]

CUESTIONARIOSOBREEXPERIENCIASNACIONALESENLA PROTECCIÓN  
JURÍDICADELASEXPRESIONESDELFOLCLORE

RESPUESTADEECUADOR

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*I. AplicacióndelconjuntodeDisposicionesTipo*

PreguntaI.2:¿DisponendelasDisposicionesTipoen(unode)losidiomasoficialesdesu país?

Respuesta:

Si.

PreguntaI.3:¿Reciben las“expresionesdelfolclore”,yaseacomosedefinenenlas DisposicionesTipo,ocomoseentiendaeseterminoensupaís,unaprotecciónjurídica específicacomopropiedadintelectual \*ensulegislaciónnacional(estédichalegislación relacionadacon lapropiedadintelectualono)?

Respuesta:

Sí

No

Encaso afirmativo:

i) Sírvase facilitar información sobre la legislación pertinente, por ejemplo los nombres completos, los artículos o párrafos pertinentes, las fechas de entrada en vigor y el nombre y las señas del ministerio, departamento, organismo u oficina encargada de la administración de la(s) ley(es) de que se trate. *Sírvase enviar a la Secretaría de la OMPI copias de dicha(s) leyes.*

Respuesta:

El Art. 9 de la ley de propiedad intelectual ecuatoriana establece que: “Las creaciones o adaptaciones, esto es, basadas en la tradición, expresadas en un grupo de individuos que reflejan las expresiones de la comunidad, su identidad, sus valores transmitidos oralmente, por imitación o por otros medios, y sea que utilicen lenguaje literario, música, juegos, mitología, rituales, costumbres, artesanías, arquitectura u otras artes, deberán respetar los derechos de las comunidades de conformidad con la Convención que previene la exportación, importación, transferencia de la propiedad cultural y los instrumentos acordados bajo los auspicios de la OMPI para la protección de las expresiones en contras de su explotación ilícita”.

\* Esta es la disposición que consta en el inciso final del Art. 9 de la ley antes citada, es la única norma relacionada con las expresiones del folclore.

ii) ¿Se basa la legislación pertinente, al menos en cierta medida, en las Disposiciones Tipo?

Respuesta:

Sí

No

*II. Aplicación de las disposiciones principales de las Disposiciones Tipo*

Pregunta II.1: ¿En qué principios se basa la protección del folclore en su legislación nacional?

Respuesta:

No existe una protección jurídica específica para la expresión del folclore.

Pregunta II.2 :¿ Tiene alguna observación con respecto a los principios tenidos en cuenta en la elaboración de las Disposiciones Tipo? ¿ Cree que los principios siguen siendo viables? ¿ Existen otros principios adicionales que deberían tomarse en cuenta en cualquier modificación de las Disposiciones Tipo?

Respuesta:

Los principios que se han tenido en cuenta en la elaboración de las disposiciones tipo, una vez que sean actualizados conforme al desarrollo tecnológico, siguen siendo viables.

Pregunta II.4 :¿ Se utiliza un término distinto de “expresiones del folclore” en su legislación nacional para describir el objeto a que se hace referencia en el Artículo 2 de las Disposiciones Tipo? Encaso afirmativo :

- i) ¿ Cuáles es el término?
- ii) ¿ Cuáles es el objeto que abarca?
- iii) ¿ Por qué fue elegido el término?
- iv) ¿ Qué objeto abarcaría el término “expresiones del folclore” en su país?

Respuesta:

El Art. 7 de la ley de propiedad intelectual ecuatoriana, utiliza el término expresiones del folclore, definiéndolas de la manera siguiente: “Producciones de elementos característicos del patrimonio cultural tradicional, constituidas por el conjunto de obras literarias y artísticas, creadas en el territorio nacional, por autores no conocidos o que no se identifiquen, que se presumen nacionales del país, de sus comunidades étnicas y se transmitan de generación en generación, de manera que reflejen las expectativas artísticas literarias tradicionales de la comunidad.”

Pregunta II.15 : Teniendo en cuenta las expresiones del folclore que existen en su país, ¿ contra qué formas de explotación, utilización y acciones podría ser necesario proteger las expresiones del folclore? Proporcione ejemplos prácticos.

Respuesta:

Las expresiones del folclore deberían protegerse contra todas las formas de explotación no autorizadas por las etnias o comunidades locales, tales como reproducción, comunicación pública, transformación u otras modalidades de explotación de tales expresiones.

Pregunta II.23: ¿Existe algún ejemplo en su país de expresiones del folclore que hayan obtenido protección por medios indirectos tal como los derechos conexos?

Respuesta:

Sí

No

Pregunta II.26: ¿Considera que es necesario establecer un acuerdo internacional para la protección de las expresiones del folclore?

Respuesta:

Sí

No

Pregunta II.27: En caso de respuesta afirmativa, ¿opina que las Disposiciones Tipo podrían ser un punto de partida adecuado para el desarrollo de ese acuerdo?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Las disposiciones tipo, una vez que sean adecuadas a las nuevas realidades, pueden ser el referente adecuado para el Convenio Internacional.

[Fin de la respuesta de Ecuador]



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF EGYPT

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I.1: Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

Ministry of Culture

Question I.2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

No. Not available in Arabic

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response:    Yes      
                              No   

If yes :

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or officer responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

Under preparation

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response:    Yes      
                              No   

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *suigene ris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection of expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

Ifno,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

The IPLaw is still under discussion by legislators.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions s

Question II.2 : Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the an y further development of the Model Provisions?

Response:

Still viable.

Question II.3 : Please provide any additional information, comments or practical experiences on the basic principle taken into account for the elaboration of the Model Provisions.

Response:

Folklore includes “ALL” aspects of the “collective living traditional culture” and is not only an important part of the living cultural heritage.

(b) Protected expressions of folklore

Question II.4 : Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

The law which is under discussion uses:

- (i) Folklore
- (ii) It is not defined
- (iii) Because of its international usage
- (iv) This term is not used

Question II.6 : Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- (i) The term in Arabic: Al -Maathurat Al -Shaabeyah
- (ii) It covers all “Section 2” plus: traditional knowledge, the world outlook, beliefs and customs.

Question II.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

All aspects of living collective traditional culture.

Question II.8 : Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

Traditional culture in Egypt refers to “all” aspects of the culture that prevailed in Egypt prior to the 19<sup>th</sup> Century, i.e., prior to the modernization of Egypt by Mohammad Ali. Everything related to that period and still persisting, and all contemporary creations that follow the traditional line are aspects of the traditional culture and should be protected.

(c) Acts against which expressions of folklore are protected

Question II.15 : Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

Against illicit exploitation and other prejudicial actions, i.e.

1. Using folklore without mentioning its source.
2. Using folklore outside its natural context.
3. Changing its nature to gain benefits.
4. Destruction of productions of folk arts and crafts.

(d) Authorization of utilization of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response :

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The "property" of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the "property" of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the "property" of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II.18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

Authorizations should be through the Ministry of Culture.

(e) Sanctions, remedies and jurisdiction

(f) Relation to other forms of protection

Question II.23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as unde rrelated rights?

- Response:
- |     |                                     |
|-----|-------------------------------------|
| Yes | <input type="checkbox"/>            |
| No  | <input checked="" type="checkbox"/> |

(g) Protection of expressions of folklore of foreign countries

Question II.26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Question II.27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Question II.28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- (i) Encouraging the establishment of folklore archives everywhere.
- (ii) Academic conventions.

[End of response of Egypt]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF ETHIOPIA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-Ministry of Information and Culture.



Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- The reason relates to lack of awareness on the need for protection of intellectual property in general, and expressions of folklore in particular.
- It has been neglected for so long. It is very recently that laws are being developed to protect various elements of intellectual property.
- There is ongoing development of a draft model copyright law that will also help to protect expressions of folklore.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

-Since the model law is not yet familiar to us and the attempt to develop a legislation that will help to protect expressions of folklore is in the process, we do not have comment on the above question.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- A binding international agreement will enable to secure protection of expressions of folklore and ensure sharing of benefits.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Yes

No

Please provide further information on your answer.

Response:

- Since we are not adequately familiar with the model law it is very difficult to respond to the above question.

[End of response of Ethiopia]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE GAMBIA

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*I. Application of the Model Provisions as a Whole*

For all Member States

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Department of State for Justice
- Department of State for Tourism and Culture
- National Council for Arts and Culture

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- English is our official language.
- Yes, they are available in English.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response:      Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Not applicable.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

Response:

- Not applicable

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- Not applicable.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- National Council for Arts and Culture is the institution mandated to make rules under the National Council for Arts and Culture Act 1989. It is a young institution and needs to develop its capacity to implement international treaties and resolutions in the field of arts and culture.

- The Model Provisions came into being before this institution was established.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

Response:

- Not applicable.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- There is lack of awareness and serious national clamour for folklore protection by interest groups.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Not applicable.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- The principles should specifically take digital use and digital dissemination of folklore into account as a more urgent reason for providing international protection of expressions of folklore.  
- I think the principles are still viable.



Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- None

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

-Not applicable.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- There are folklore inventories and archives at the National Council for Arts and Culture.

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Reponse:

- No

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

-None

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- Not applicable

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Not applicable

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

-Not applicable

Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- Not applicable

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response:

- Not applicable

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- Not applicable

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Performances for commercial purposes at hotels, bars and restaurants should be protected.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- No Comment

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- None

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Response:

- Not applicable

Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

- Not applicable

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Not applicable

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- Not applicable

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Expressions of folklore in musical and artistic works are protected as related rights under the Copyright Act of 1911. Current folklore performances on the national television are examples.



Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- At common law

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:

- Not applicable

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Not applicable

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- To provide global protection for local expressions or manifestations of indigenous folklore.
- To provide incentives to communities to commercially exploit their folklore thus paving the way for its progressive development.
- To effectively combat unfair and unreasonable use of expressions of folklore in this sophisticated modern digital environment.
- To harmonise national and international approaches on the protection and authorization of use of expressions of folklore.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- It serves as a major reference point for the development and harmonisation of national laws for the protection and systematic exploitation of expressions of folklore. It is a standard for norm setting in the field of folklore protection in that it attempts to delimit its scope for states.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- (i) In my opinion a combined national and international effort should be geared towards defining appropriate sources for the identification of the expressions of folklore to be protected. Agencies that are responsible for the promotion and development of culture in various member states should be involved in research and documentation of sources. In my opinion, many countries have since 1984 given some attention to developing local repertoires on expressions of folklore which could be of great assistance in this regard.
- (ii) In the case of expressions of folklore that can be found in several countries of a region, I am of the opinion a regional approach to settling such issues is the best way out. A system of unified registration and notification by all those countries interested in exploiting the benefits of common folklore would go a long way in solving this problem. An equitable system of sharing the benefits could be established. Notification of one country's intent to register and protect a common folklore should be communicated to other countries in the region where the folklore spreads.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- In the Copyright Act, 1997 (Act No. 8 of 1997) of Trinidad and Tobago, it was sought for the first time in their legislation to protect expressions of their folklore i.e. "works of mas." Elements of mas include costumes, words, music, dance etc. This is an instance where provision is made for the protection of a 'piece of culture'.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- In the area of term of protection, it is my suggestion that given the nature of folklore i.e. its historical and communal character protection be eternal. However, in those areas where expressions of folklore form the basis of a creation that enjoys one of the forms of intellectual property protection envisaged under section 12, I would suggest that a kind of *droit de suite* accrue to the community or society that originally protected the expressions of that particular folklore.

[End of response of The Gambia]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF GERMANY

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- There is no specific legislation on the protection of folklore in Germany.
- Given the nature of Germany as a federal state, and the distribution of competencies between federal and state level, matters of culture in general, according to the German constitution (Basic Law) fall within the competence of the states (Länder). Depending on the specific content of any possible future act in this field, legislative powers might lie with the respective ministry of culture and other ministries which might be concerned.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Not applicable

If you have marked any of the boxes, please provide further information.

Response:

- Not applicable

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- From the files existing on the Model Provisions it becomes clear that no interest group or other body in Germany has ever expressed a wish to implement these provisions into national law.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- See above.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Not applicable



Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- No comment.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- No comment

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- No specific term

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- No comment.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- No need for any such kind of protection has been expressed, yet.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- No comment

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

- No specific dogmatic discussion has taken place in the intellectual property context, yet. However, probably (i) and, if the work is also a work which is entitled to copyright protection, (iii) seem to be most pertinent.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- No comment.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Under sec. 71 of the German Copyright Act, a person who publishes or performs a work which was never protected in Germany, and which has never been published or performed in public before, enjoys a neighboring right which entitles to exclusive exploitation. This may apply to publication of folk tales, folk dances and folk songs, in particular, if they qualify as “works” (i.e. if they represent a sufficient level of creativity; lacking only the identification of an individual author).

- Performing artists performing or interpreting a work of the said kind equally enjoy a neighboring right under sec. 73 of the German Copyright Act.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- No comment

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Yes

No

Please provide further information on your answer.

Response:

- Internally, such need has not yet been expressed in Germany. Whether an instrument might be necessary on an international scale remains to be seen; depending *inter alia* on the outcome of this survey and the ongoing discussions in the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore within WIPO.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- No comment

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- No comment.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- No comment

[End of response of Germany]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF GHANA

*Contact Details*

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I. *Application of the Model Provisions as a Whole*

Question I.2 : Are the Model Provisions available in (one of) the official languages of your country?

Response:

- To some extent, yes.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.



If yes :

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or officer responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

-Copyright Law, PNDCL 110 of 1985.

-Section 5 provides protection for works of Ghanaian folklore. PNDCL 110 came into force in 1985. The new Copyright Bill, presently before Parliament and which is expected to be passed into law before the end of the year provides enhanced protection for works of folklore under sections 38 to 43, and under sections 4 and 59. The Copyright office has the Statutory mandate under PNDCL 110 to implement the Copyright Law. Copyright protection in respect of folklore exists in perpetuity in the Republic of Ghana under Section 16 of PNDCL 110. Section 46 of PNDCL prescribes offences relating to folklore.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the  
Model Provisions  
has not been followed  
in your national laws  
and regulations*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of "expressions of folklore" protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exception thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilization of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

Currently, neither the Copyright Law of 1985, PNDCLaw 110 nor the Draft Copyright Bill before Parliament make provision for section 14 of the Model Law.

PNDCLaw 110 and the Draft Copyright Bill make provision expressly for the protection of Ghanaian folklore and thus does not provide protection for folklore of foreign countries.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principle taken into account for the elaboration of the Model Provisions

Question II.1 : What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

Such works belong to the cultural heritage of Ghana.

Question II.2 : Do you have any comments on the principle taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

The principles taken into account in the model provisions are still viable.

(b) Protected expressions of folklore

Question II.4 : Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- (i) Works of Ghanaian folklore
- (ii) It covers literary, artistic and scientific work belonging to the cultural heritage of Ghana, which were created, preserved, and developed by ethnic communities of Ghana or by unidentified Ghanaian authors and others such works designated under PNDCL 110 to be works of Ghanaian folklore.
- (iv) It covers:
- Verbal expressions such as folklore, folk poetry and riddles;
  - Musical expressions such as folk songs;
  - Expressions by actions such as folk dances, plays;
  - Tangible expressions such as production of folk art, basket weaving, Kente and “adinkra” designs.

Question II.5 : In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered and such? Are there folklore inventories, archives and databases?)

Response:

The National Folklore Board of Trustees keeps a National Register of all works of Ghanaian folklore. The Board is in the process of documenting all works of Ghanaian folklore.

(c) Acts against which expressions of folklore are protected

Question II.9 : Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

-The rights of authors in folklore works are vested in perpetuity in the Republic of Ghana as if the Republic were the original creator of the works.

-The use of folklore work beyond the permitted use requires prior authorization and is subject to the payment of fees. The right granted are non-exclusive.

Question II.10 : Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

-Commercial use.

Question II.11 : Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

Against reproduction, communication to the public by performance, broadcasting, distribution by cable or other means and adaptations, translations or other transformation.

Question II.12 :If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folk lore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

PNDCL 110 and the new Copyright Bill make no provisions in respect of acknowledgement of source.

Question II.13 :Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

Response:

Works of Ghanaian folklore exist in perpetuity in the Republic of Ghana. As such they do not fall into the public domain.

Question II.16 :Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

Works of Ghanaian folklore are protected by Copyright.

(d) Authorization of utilization of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Response:

Works of folklore form part of the cultural heritage of Ghana. PDNCL 110 recognizes the source of such works, that is works created, preserved and developed by ethnic communities. Individual artists whose works are based upon folklore also have copyright protection in respect of those works.

Question II.19 : Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, function and activities of such bodies in your country.

Please describe the procedure for obtaining authorization to use expressions of folklore.

Are any fees payable for utilization of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

Section 5 of PNDCL requires persons wishing to use folklore works other than for a use permitted under the law to apply to the Secretary responsible for culture and to pay the prescribed fee.

The new Copyright Bills requires persons wishing to use works of Ghanaian folklore for a commercial purpose to apply to the National Folklore Board of Trustees for permission in a prescribed form and to pay the requisite fees.

(e) Sanctions, remedies and jurisdiction

Question II.21 : Which remedies and sanctions are provided for in your national laws and regulations?

Response:

Fine/imprisonment or both.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as und errelated rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

The definition of folklore under PNDCL 110 covers literary, artistic and scientific work belonging to the cultural heritage which were created, preserved and developed by ethnic communities or by unidentified Ghana authors. Persons who therefore perform works of folklore are protected. Producers or works embodying folklore are also protected.



(g) Protection of expressions of folklore of foreign countries

Question II.25 : Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:    Yes   

                  No   

If yes :  
(i)    Please provide details of these cases.

Response:

Works of Ghanaian folks such as the “Kente” and the “adinkra” designs are illicitly exploited on commercial basis across the globe particularly in Asia and the United States.

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response:    Yes   

                  No   

Question II.27 : If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response:    Yes   

                  No

Question II.29 : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

National law should make express provision for the protection of expressions of folklore of foreign countries.

[End of response of Ghana]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF GREECE

*Contact Details*

Name: D. Kallinikou  
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Ministry of Culture  
Member State: Greece  
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In an e-mail dated October 30, 2001, addressed to the Secretariat of the World Intellectual Property Organization (WIPO), the Director of the Copyright Organization, Ministry of Culture of Greece contributed the following:

“Expressions of Folklore

Greek law on copyright and related rights has enacted provisions which relate to expressions of folklore. It expressly provided that expressions of folklore are excluded from the protection afforded by copyright law (art. 2 par. 5 of Greek law 2121/1993). Expressions of folklore can however obtain the protection of copyright as derivative works, such as translations, adaptations, arrangements and other alterations. Collections of expressions of folklore are also protected, provided the selection or the arrangement of their content is original (art. 2 par. 2 of Greek law 2121/1993). It should also be noted the provision concerning the preservation of moral rights. After the expiry of the term of copyright protection, the state, represented by the Minister of Culture, may exercise the rights relating to the acknowledgement of the author's paternity and the rights relating to the protection of the integrity of the work deriving from the moral rights (art. 29 par. 2 of Greek law 2121/1993). Expressions of folklore can be also protected by the Directive 96/9 on the legal protection of databases, implemented in Greece by specific legal provisions (art. 7 of Law 2819/2000).”

[End of response of Greece]

QUESTIONNAIRE RELATIF À L'EXPERIENCE ACQUISIE A UN NIVEAU  
NATIONAL ENCE QUIC CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DE LA GUINÉE

*Coordonnées*

Nom : Monsieur Challoub Riad  
Qualité : Directeur général  
Office/organisation : Bureau guinéen du droit d'auteur  
État membre : République de Guinée  
Mél : bgda@mirinet.com  
Tél. : (224)454948  
Tlcp. : (224)454948

*I. Application des dispositions types dans l'ensemble*

Question I.1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Le Ministère de la jeunesse, des sports et de la culture  
Le Bureau guinéen du droit d'auteur (BGDA)

Question I.2 : Les dispositions types sont-elles disponibles dans la (une) langue(s) officielle(s) de votre pays?

Réponse :

Oui, un exemplaire commenté des dispositions types est joint en annexe en français (langue officielle) au document OMPI/GRTKF/IC/2/7, objet du présent questionnaire.

Question I.3 : Les "expressions du folklore", soit celles qu'elles sont décrites dans les dispositions types, soit celles qu'on les entend dans votre pays, bénéficient-elles d'une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (quelles dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Oui

Non

Dans l'affirmative :

i) Veuillez fournir des renseignements sur les instruments législatifs et réglementaires pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d'entrée en vigueur et les coordonnées du ministère, du département, de l'organisme ou de l'officier chargé de leur administration ».

Réponse :

- Loi 043/APC/CP du 9 août 1980 sur le droit d'auteur et les droits voisins
- Article premier: Objet, étendue et bénéficiaires du droit d'auteur, définition (alinéa 13)
- Article 9: le folklore appartient à titre originaire au patrimoine national
- Bureau guinéen du droit d'auteur (BGDA)  
Code international 018
- Décret 445/PRG du 16 septembre 1980  
Adresse: Ministère de la jeunesse, des sports et de la culture  
BP 4904 Tel. et Fax (224) 454948e -mail: bgda@mirinet.com  
Siège Palais du Peuple 4<sup>e</sup> Étage « Côté Ouest » CONAKRY – République de Guinée

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\* Le questionnaire porte sur l'expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle. Il est donc question d'une protection juridique spécifique de l'ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d'une législation *suigeneris* (particulière) ou des dispositions d'un loi relative au patrimoine culturel national, par exemple. Le questionnaire traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d'auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l'identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle.

iii) Veuillez indiquer ci-dessous les aspects des dispositions qui, le cas échéant, ne sont pas pris en considération dans le cadre législatif et réglementaire de votre pays :

Cet aspect des  
dispositions  
ne figure pas dans  
notre cadre législatif  
et réglementaire national

Les principes fondamentaux sur lesquels reposent les dispositions  
(voir le préambule)

L'étendue des "expressions du folklore" protégées par les dispositions  
(article 2)

Les actes contre lesquels les expressions du folklore sont protégées  
et les exceptions en la matière (articles 3, 4, 5 et 6)

Les dispositions relatives à l'autorisation des utilisations des expressions  
du folklore (articles 9 et 10)

Les actions et recours prévus (articles 7 et 8)

Les solutions proposées par les dispositions en matière de protection  
des expressions du folklore étranger (article 14)

Si vous avez coché l'une des cases ci-dessus, veuillez préciser votre réponse.

Réponse :

1. S'agissant des expressions protégées, il n'est pas fait mention :
  - iii) des expressions corporelles telles que les danses et spectacles populaires ainsi que les expressions artistiques rituels ;
  - ix) les expressions tangibles telles indiquées aux alinéas a), b) etc) des dispositions types.
2. S'agissant de la protection des expressions du folklore étranger, trois cas sont à considérer :
  - Celui des États membres qui assimilent le folklore et les œuvres inspirées du folklore aux « œuvres de l'esprit », donc faisant partie des créations et productions littéraires et artistiques mentionnées aux articles 1<sup>er</sup> (a.1) et 15 (a.4a) de la Convention de Berne ;
  - Celui des États membres qui accordent une protection qu'aux expressions arrangées et/ou adaptées du folklore par destriers, et enfin ;
  - Celui des États membres qui ne prennent pas en compte la protection des expressions du folklore au titre des productions littéraires et artistiques.
  - Il est à noter que la législation guinéenne sur le droit d'auteur et les droits voisins, à l'alinéa 13 de l'article 1<sup>er</sup>, le folklore et les œuvres inspirées du folklore sont mentionnés dans la liste des œuvres de l'esprit bénéficiant d'un droit de propriété intellectuelle exclusif et opposable à tous.
  - End'autres termes, la législation guinéenne sur le droit d'auteur et les droits voisins prend en compte tous les aspects de la protection du folklore et des œuvres inspirées du folklore au même titre que ceux des créations et productions littéraires et artistiques protégées par les Conventions internationales en matière de propriété intellectuelle. (NB : voir également l'article 9 de la loi 043./APN/CP du 9 août 1980).

iv) Veuillez indiquer toute autre raison pour laquelle certains aspects des dispositions types ne seraient pas pris en considération dans votre pays.

Réponse :

- Omission de la mention de la protection des expressions du folklore dans les accords de réciprocité passés avec les États contractants ;
- Méconnaissance du répertoire des expressions du folklore desdits États.

## II. Application des principaux aspects des dispositions types

### a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II.1 : Sur quels principes repose la protection du folklore établie dans la législation ou la réglementation de votre pays ?

Réponse :

- a) L'auteur de toute œuvre originale de l'esprit (littéraire, scientifique ou artistique) jouit sur cette œuvre, du seul fait de sa création, d'un droit de propriété incorporelle exclusif et opposable à tous (voir l'alinéa 13 de l'article 1er)
- b) Le folklore s'entend de l'ensemble des productions littéraires ou artistiques créées par des auteurs présumés de nationalité guinéenne, transmises de génération en génération et constituant l'un des éléments fondamentaux du patrimoine culturel traditionnel guinéen (art. 9 de la loi guinéenne) et (art. 15 alinéa 4 de la Convention de Berne).

Question II.2 : Avez-vous des observations à formuler sur les principes pris en considération dans l'élaboration des dispositions types ? Pensez-vous que ces principes sont toujours applicables ? Faudrait-il prendre d'autres principes en considération en cas d'adaptation des dispositions types ?

Réponse :

- a) L'utilisation à titre d'illustration et l'emprunt d'expressions du folklore des alinéas ii) et iii) aboutissent à la création d'œuvres originales devant être protégées au bénéfice d'un ou plusieurs auteurs, donc « dans une intention de leur retirer de hors de leur contexte traditionnel ou coutumier ». Dans ces cas précis, l'utilisateur et l'emprunteur doivent demander l'autorisation et payer un rémunération à l'organisme de gestion collective du droit d'auteur.
  - b) De l'observation ci-dessus (a) découle la question de la « durée de protection » des œuvres ainsi créées, mais aussi celle des expressions du folklore dans sa globalité.
  - c) L'alinéa ii/a) de l'article 4 est en contradiction avec l'article 3 relatif à l'usage des exceptions et l'autre utilisation soumise à autorisation. En effet, l'utilisation qui consiste à faire apparaître des images d'expressions du folklore dans un film ou une photographie ou dans une émission télévisuelle est véritablement une reproduction des expressions du folklore et qu'il est indiqué aux alinéas ii) et iii) de l'article 3, c'est-à-dire « dans une intention de leur retirer de hors de leur contexte traditionnel ou coutumier ».
- Conclusion : Il y a lieu d'annuler purement et simplement les sous-alinéas ii) et iii) de l'article 4 des dispositions types.



b) Expressions du folklore protégées

Question II.4 : Existe-t-il dans la législation ou la réglementation de votre pays ou dans un autre pays une autre expression du folklore pour désigner l'objet des dispositions types visées à l'article 2? Dans l'affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?
- iii) Pourquoi ce terme a-t-il été retenu?
- iv) Quel objet désignerait dans votre pays le terme "expressions du folklore"?

Réponse :

Il existe un autre terme dans la législation guinéenne autre que « expressions du folklore »

- i) Ils'agit du terme « œuvres inspirées du folklore »
- ii) Ce terme désigne toute œuvre originale créée avec des emprunts d'éléments du folklore
- iii) Ce terme a été retenu pour marquer la différence entre les collectes d'éléments du folklore sans arrangement ni apport personnel d'avec les collectes d'éléments du folklore avec arrangement ou adaptation.
- iv) Le terme « expressions du folklore » désignerait tout ce qui, audio, visuel, audiovisuel, graphique, littéraire, scientifique, artistique, etc. . . . , représente un élément authentique et traditionnel de la culture nationale guinéenne.

Question II.5 : Dans l'application concrète de la législation et de la réglementation de votre pays, l'identification des expressions du folklore à protéger a-t-elle soulevé des difficultés?

Oui

Non

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées et quelles sont les bases de données sur le folklore)?

Réponse :

- La Guinée partage avec les pays voisins le même patrimoine culturel « Manding », ce qui explique que des éléments identiques de ce patrimoine se trouvent ici et là dans ces pays.
- En effet, on trouve de part et d'autre des frontières les mêmes communautés selon que vous êtes dans la zone des populations Manikan, Pular, Löghöma, Sosso, Kissié, etc.
- Il résulte qu'un même élément du folklore Manikan, Pular, Löghöma, Sosso, Kissié, etc. peut appartenir à chacune de ces communautés vivant de part et d'autre des frontières, d'où la difficulté d'attribuer la paternité de tel ou tel élément du folklore à tel ou tel autre pays.
- Il existe des archives « d'expressions du folklore » par zone linguistique.

Question II.7 : Existe-t-il des « expressions du folklore » ou d'autres formes de cultures et de savoirs traditionnels qui ne sont pas protégées par les dispositions types et qui, selon vous, devraient l'être?

Réponse :

Il existe d'autres formes de cultures et de savoirs traditionnels qui devraient être protégés par les dispositions types.

En effet, le patrimoine culturel national d'un peuple couvre l'ensemble des productions audio, visuelles et/ou audiovisuelles, les œuvres plastiques, graphiques, littéraires, scientifiques et artistiques, bref toutes les productions humaines matérielles ou immatérielles caractéristiques de ce peuple.

Question II.8 : Veuillez fournir toute information, observation ou donnée d'expérience supplémentaire concernant l'étendue des expressions du folklore protégées.

Réponse :

Information: L'Annexe VII de l'Accord de Bangui auquella République de Guinée est partie, prend en compte la protection et la promotion du patrimoine culturel africain en ses articles 72 (et suivant d'une part) et 95 (et suivant d'autre part).

En plus des expressions protégées du folklore contenues dans les dispositions types (art. 2.a.i, a.iii) l'Annexe de l'Accord de Bangui mentionne les écritures, les rites, les objets, les vêtements, les lieux de culte, les initiations, les sports, les jeux, les codes de bonne manière et savoir-vivre, etc.

S'agissant des connaissances et œuvres scientifiques, il y a :

- i) les pratiques et produits de la médecine et de la pharmacopée traditionnelle
- ii) les acquisitions théoriques et pratiques dans les domaines des sciences naturelles, physiques, mathématiques, astronomiques

Quant aux connaissances et aux productions de la technologie, il y a :

- i) les industries métallurgiques et textiles
- ii) les techniques et pratiques agricoles séculaires
- iii) les techniques de la chasse et de la pêche

c) Actes contre lesquels les expressions du folklore sont protégées \_\_\_\_\_

Question II.9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou l'réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation? Les droits accordés sont-ils exclusifs?

Réponse :

- a) Les « expressions du folklore » sont considérées à part entière comme des œuvres de l'esprit et de ce fait, bénéficient de la protection juridique accordée par la législation nationale sur le droit d'auteur et les droits voisins.
- b) Les actes soumis à autorisation sont les suivants : représentation, exécution publique, fixation directe ou indirecte, arrangement, adaptation, traduction, reproduction, radiodiffusion, etc.
- c) Les droits accordés ne sont pas exclusifs.

Question II.10 : Quels principes sont utilisés dans la législation et la réglementation de votre pays pour déterminer les utilisations soumises à autorisation (par exemple, les principes énoncés à l'article 3 reposent sur l'intention de l'auteur et l'utilisation ou non de l'expression du folklore en dehors de son contexte traditionnel ou coutumier).

Réponse :

Le principe énoncé dans notre législation nationale est celui de « l'absence d'exploitation lucrative » (à l'art. 9).

Question II.11 : D'après votre expérience en matière d'application de la législation et de la réglementation de votre pays, contre quelles formes d'exploitation, d'utilisation et d'action faut-il protéger les expressions du folklore? Veuillez donner des exemples concrets. Disposez-vous de données d'expérience dans l'application des dispositions pertinentes de votre législation et réglementation qui pourraient être utiles à un plus large public?

Réponse :

Il faut protéger les expressions du folklore contre :

- i) la falsification et le mauvais usage des expressions du folklore
- ii) le refus de mentionner la source de la collecte
- iii) l'attribution à soi-même de la paternité d'une expression collectée en vue d'une communauté autochtone
- iv) la reproduction, représentation, exécution, communication au public, traduction, adaptation, arrangement et transformation par quelque moyen et de quelque manière que ce soit sans autorisation préalable.

Question II.12 : Si la législation ou la réglementation de votre pays prévoit des droits en matière de mention de la source (tels que ceux envisagés à l'article 5 des dispositions types), veuillez indiquer, en citant des exemples concrets lorsque c'est possible, si ces droits sont révélés utiles, efficaces et concrètement applicables.

Par exemple, comment l'exigence selon laquelle l'expression du folklore doit être "identifiable" (c'est-à-dire issue d'une communauté ou d'un lieu connu) est-elle appliquée dans votre pays? Comment cette exigence est-elle appliquée s'il existe dans votre pays différentes communautés partageant des expressions du folklore similaires? Sepourrait-il également y avoir des communautés de votre pays qui vivent aussi dans des pays limitrophes ou qu'elles aient adopté et développé une expression du folklore issue d'un autre pays?

Réponse :

Ces droits sont révélés utiles :

- i) utiles parce qu'ils ont permis de constituer la source et l'évolution des expressions du folklore
- ii) efficaces parce qu'ils ont permis d'inciter les auteurs à l'effort de créativité intellectuelle
- iii) applicables parce que la répartition des droits prévue à l'alinéa 2 de l'article 9 s'en est trouvée simplifiée

La Guinée, nous l'avons dit plus haut, partage des expressions identiques du folklore dans sa diversité ethnique avec les pays limitrophes.

Question II.13 : La protection prévue par la législation ou la réglementation de votre pays est-elle limitée dans le temps ?

Oui

Non

Dans l'affirmative, combien de temps est-elle applicable ? Comment détermine-t-on le point de départ de la protection ? Qu'advient-il de l'expression à l'expiration de la période de protection (tombe-t-elle parexemple dans le domaine public dès lors qu'elle peut être librement copiée et utilisée par chacun sans restriction) ?

Dans la négative, disposez-vous dans ce domaine de données d'expérience qui pourraient être utiles à un plus large public ?

Réponse :

- a) dans l'affirmative : i) l'expression du folklore est arrangée ou adaptée avec un apport notable d'œuvres qui bénéficient en ce moment précis d'une durée de protection prévue par la législation, c'est-à-dire tout au long de la vie de l'auteur et 80 ans après son décès. ii) l'adate de déclaration de l'œuvre originale marque le point de départ de cette protection. iii) à la date d'expiration de la période de protection, l'œuvre tombe dans le « Domaine Public Payant » sous l'administration de l'organisme de gestion collective du droit d'auteur.
- b) dans la négative : L'expression du folklore sans arrangement ni apport personnel demeure la propriété exclusive du peuple guinéen, donc pour une durée de protection illimitée dans le temps.

Question II.14 : Veuillez fournir des renseignements sur les exceptions aux droits susvisés éventuellement prévues dans la législation ou l'arrélementation de votre pays. Sont-elles considérées appropriées du point de vue tant des détenteurs que des utilisateurs du folklore dans votre pays?

Réponse :

- a) Outre les exceptions : i), ii) de l'alinéa 1 et i) de l'alinéa 2 de l'article 4 des dispositions types, la législation nationale guinéenne autorise l'utilisation gratuite des expressions du folklore au cours d'un service religieux, d'une conférence scientifique, critique, polémique dans l'enseignement ainsi que leur communication ou exécution exclusivement dans un cercle de familles ; il n'y a aucune forme de recette,
- b) Ces exceptions sont considérées comme appropriées par les détenteurs et les utilisateurs du folklore.

d) Autorisation d'utilisation des expressions du folklore

Question II.18 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant l'autorisation d'utilisation des expressions du folklore dans votre pays.

Réponse :

- i) Le folklore appartient à titre originaire au patrimoine national (art. 9 de la loi 043/APN/CP du 09 août 1980);
- ii) Cependant, une œuvre folklorique arrangée ou adaptée par un ou des tiers devient la propriété de ce ou ces dernier(s) avec une participation du BGDA de 25% consacrés à des fins culturelles et sociales au bénéfice des auteurs.

Question II.19 : Votre législation établit-elle une "autorité compétente" ou une "autorité de surveillance" du type visé dans les articles 9 et 10 des dispositions types?

Veuillez fournir des informations sur les compétences, le financement, les missions, la composition, les responsabilités, les fonctions et les activités de ces organismes dans votre pays.

Veuillez décrire la procédure d'obtention des autorisations d'utilisation des expressions du folklore.

Les utilisations de six expressions du folklore sont-elles soumises à redevance et, dans l'affirmative, comment celles-ci sont-elles déterminées et à quelles fins sont-elles perçues (par exemple, pour promouvoir la culture nationale)?

D'une manière générale, quels enseignements et exemples concrets pourraient être utiles à un plus large public?

Réponse :

- i) La législation nationale sur le droit d'auteur et les droits voisins a désigné le BGDA comme « autorité compétente » pour la gestion des droits ainsi que la protection des intérêts matériels et moraux (art. 9 et 46 de la loi 043/APN/CP du 09 août 1980)
- ii) Les informations : compétence, financement, mission, responsabilité, fonctions et activités :
  - délivrance d'autorisations préalables
  - perception et répartition des redevances des droits d'auteurs
  - protection et développement du patrimoine culturel national
- iii) Les utilisations de six expressions sont soumises à redevances qui sont déterminées comme suit :  
  
Pour les œuvres littéraires, artistiques et scientifiques sous forme d'ouvrage  
10% du prix de vente de l'exemplaire de l'œuvre éditée  
15% du prix de vente de l'exemplaire reproduit ou reprographié  
1/5 des frais annuels au cas où pour les producteurs de phonogrammes ou de vidéogrammes, aucune autre base de calcul ne peut être pratiquement déterminée.

e) Sanctions, recours et compétence

Question II.21 : Quelles voies de recours et sanctions prévoient la législation et la réglementation de votre pays?

Réponse :

Procédure et Sanctions

- i) Les folklores ou les expressions du folklore bénéficient de la protection accordée aux œuvres de l'esprit par la législation nationale sur le droit d'auteur et les droits voisins (art. 1<sup>er</sup> de la loi 043/APN/CP du 09 août 1980)
- ii) L'exploitation d'une expression du folklore... qui met d'en faire la déclaration préalable au BGDA est passible d'une amende s'élevant au double du montant des redevances normalement dues avec un minimum de 1.500 Syli (art. 48 de la loi en vigueur)
- iii) Le juge d'instruction ou le président du tribunal sera habilité, moyennant cautions s'il y a lieu, à ordonner la saisie en tous lieux et même en dehors des heures prévues par la loi en vigueur, de six exemplaires fabriqués ou en cours de fabrication, d'une œuvre illicitement produite, de six exemplaires illicitement utilisés et des recettes provenant de toute reproduction, représentation ou diffusion illicite d'une œuvre.
- iv) Il peut également ordonner la suspension de toute fabrication, représentation ou exécution publique ou en cours ou annoncée, constituant une contrefaçon ou un acte préparatoire à une contrefaçon.
- v) Les dispositions ci-dessus sont applicables dans le cas d'exploitation irrégulière du folklore ou du fait de représentation ou d'exécution d'une œuvre tombée dans le domaine public (article 50/Loi 043/APN/CP du 09 août 1980).

Question II.22 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant les recours, les sanctions et la compétence.

Réponse :

- i) Le Président du tribunal pourra ordonner le versement d'une somme ou d'une quantité déterminée de sommes saisies au BGDA à des fins culturelles et sociales au bénéfice des auteurs, lorsque les produits d'exploitation auront fait l'objet d'une saisie –arrêt (art. 51/Loi 043/APN/CP du 09 août 1980).
- ii) Les mesures ordonnées par le Président du tribunal ou par le juge d'instruction seront levées de plein droit en cas de non-lieu ou de relaxe (art. 52/Loi 043/APN/CP du 09 août 1980).



f) Relations avec d'autres formes de protection

Question II.23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d'une protection indirecte, par exemple au titre des droits voisins?

Oui

Non

Veuillez fournir des renseignements supplémentaires et, si possible, des exemples concrets afin d'illustrer votre réponse.

Réponse :

Le folklore étant l'élément fondamental de l'identité culturelle de l'Afrique, tous ceux qui l'interprètent, le représentent, l'exécutent, l'incorporent dans des phonogrammes ou le communiquent au public directement ou indirectement par quelque moyen que ce soit, constituent de précieux auxiliaires pour sa collecte, son enregistrement, sa promotion, son développement et sa diffusion au moyen de produits littéraires et artistiques tels que « Musique du Monde », « BUDAMusic », « Music and in Black & White », « World Music », etc.

Ce n'est donc pas un fait du hasard que la législation nationale sur le droit d'auteur ait pris en compte la protection des droits voisins aux articles 60 à 85 du titre II de la loi.

g) Protection des expressions du folklore étranger

Question II.25 : Avez-vous connaissance de cas dans lesquels des expressions du folklore issues de votre pays ont été exploitées ou utilisées d'une autre manière à l'étranger?

Oui

Non

Dans l'affirmative :

- i) Veuillez fournir des précisions sur ces situations.

Réponse :

Quelques exemples pour illustrer ces situations

<u>Titres</u>	<u>Pays ayant utilisé l'expression</u>
1- DIARABY	SENEGAL
2- FAMADENKE	MALI
3- MAMAYA	MALI

ii) Les autorités compétentes ou les personnes lésées dans votre pays ont-elles été amenées à prendre des mesures juridiques pour prévenir ou réparer cette exploitation ou utilisation? Dans l'affirmative, veuillez préciser, en indiquant la base juridique sur laquelle se fonde cette action (par exemple, sur la base de la réciprocité établie dans la législation ou la réglementation de votre pays).

Réponse :

Préalable : Il y a lieu d'organiser une consultation sous régionale afin de définir ce qui appartient en propre à chaque pays et ce qui est commun au « GRANDMANDING ».

C'est seulement au terme de ces travaux que l'on pourrait véritablement avoir des solutions fiables à ces questions .

Question II.29 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant la protection des expressions du folklore étranger.

Réponse :

i) Chaque État membre devrait tout d'abord effectuer, d'une part, la collecte exhaustive et l'enregistrement de tout ce qui appartient à son patrimoine culturel national et, d'autre part, recenser tout ce qui relève de l'étranger

ii) La seconde action consisterait ensuite à établir une documentation de ce Répertoire que l'on communiquerait aux autres États lors de la signature des contrats de réciprocité par exemple ; ce qui permettrait progressivement de résoudre cette question moyennant peu de frais à un niveau sous régional et international.

*III. Modification ou adaptation des disposition types*

Question III.1 : Veuillez indiquer toutes suggestions de modification ou d'adaptation à apporter aux disposition types afin d'accroître leur utilité en tant que modèle de dispositions normatives nationales, régionales ou internationales.

Réponse :

a) Les exceptions II) et III) de l'article 4 contribuent, contrairement à ce qui est la condition fondamentale de ces exceptions, c'est -à-dire « sans intention de lucre et en dehors de leur contexte traditionnel ou coutumier », une source de droit et donc, de revenu en cas d'exploitation des œuvres originales créées à partir de ces expressions du folklore.

Voilà pourquoi il serait souhaitable de limiter les exceptions aux alinéas ci -après :

i) de l'article 4, alinéa 1

i) de l'article 4, alinéa 2

b) Suggestions : Nous proposons que les œuvres originales créées à partir de expressions du folklore puissent bénéficier de la durée de protection prévue à l'article 7 et 7 bis pour les œuvres de collaboration (Convention de Berne).

[Fin de la réponse de la Guinée]

CUESTIONARIOSOBREEXPERIENCIASNACIONALESENLA PROTECCIÓN  
JURÍDICADELASEXPRESIONESDELFOLCLORE

RESPUESTADEHONDURAS

*Informacióndecontacto*

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*I. AplicacióndelconjuntodeDisposicionesTipo*

PreguntaI.1 :¿Quéministerio(s),departamento(s),organismo(s)yoficina(s) gubernamental(es)desupaíseocupa(n)delascuestionesrelativasalaprotecciónjurídica de lasexpresionesdelfolclore?

Respuesta:

-Secretaría deIndustria yComercio.DirecciónGeneraldePropiedadIntelectual.  
-InstitutoHondureñodeAntropología eHistoria.  
-Secretaría deCultura, Artes yDeportes.

PreguntaI.2 :¿DisponendelasDisposicionesTipoen(unode)losidiomasoficialesdesu país?

Respuesta:

-No

PreguntaI.3: ¿Recibenlas“expresionesdelfolclore”,yaseacomosedefinenenlas DisposicionesTipo,ocomoseentiendaeseterminoensupaís,unaprotecciónjurídica específica comopropiedad intelectual \* ensulegislaciónnacional(estédichalegislación relacionada conlapropiedad intelectualono)?

Respuesta:

Sí

No

Encaso afirmativo:

i) Sírvase facilitar información sobre la legislación pertinente, por ejemplo los nombres completos, los artículos o párrafos pertinentes, las fechas de entrada en vigor y el nombre y las señas del ministerio, departamento, organismo u oficina encargada de la administración de la(s) ley(es) de que se trate. *Sírvase enviar a la Secretaría de la OMPI copias de dicha(s) leyes.*

Respuesta:

Honduras cuenta con la "Ley para la Protección del Patrimonio Cultural de la Nación", según Decreto No. 220 -97 del 21 de febrero de 1998.

La Secretaría de Estado en los Despachos de Cultura, Artes y Deportes, así como, el Instituto de Antropología e Historia, serán los responsables de la ejecución de esta Ley.

ii) ¿Se basa la legislación pertinente, al menos en cierta medida, en las Disposiciones Tipo?

Respuesta:

Sí

No

iii) Sírvase indicar a continuación qué aspecto(s), de haberlo(s), de las Disposiciones Tipo no siguen en su legislación nacional:

Si ha señalado alguno de los cuadros, sírvase facilitar más información.

Respuesta:

No se ha realizado ningún estudio de identificación de necesidades dentro del tema de conocimiento tradicional y folclore, ni creación de capacidades y beneficios para su protección.

Se requieren ser establecidas y transmitidas a la sociedad para que esta demande a los encargados de realizar las leyes que se incorporan a la legislación nacional en el tipo de protección.

El marco de la ley nacional en materia de propiedad intelectual (administrativa y judicial) es únicamente el cumplimiento de las disposiciones emanadas del ADPIC.

Encasonegativo.

ii) En relación con las Disposiciones Tipo específicamente, sírvase indicar a continuación qué aspecto(s) de ésta ha(n) impedido su aplicación en su país:

*Sí, este aspecto puede haber impedido la aplicación de las Disposiciones Tipo*

Respuesta:

Los principios básicos en los que se basan las Disposiciones Tipo (véase el Preámbulo)

El alcance de las “expresiones del folclore” protegidas por las Disposiciones Tipo (Artículo 2)

Los actos contra los cuales se están protegidas las expresiones del folclore y las excepciones (Artículos 3, 4, 6 y 6)

Las disposiciones que se ocupan de la autorización del uso de las expresiones del folclore (Artículos 9 y 10)

Las sanciones y los recursos previstos (Artículos 7 y 8)

Las soluciones que ofrecen las Disposiciones Tipo para la protección de las expresiones del folclore de países extranjeros (Artículos 14)

Si ha señalado algún uno de los cuadros, sírvase facilitar más información.

Respuesta:

Están establecidas sanciones en el Artículo 37 de la Ley, de carácter pecuniario y prisión.

iii) Sírvase indicar otra(s) razón(es) por la(s) cual(es) las Disposiciones Tipo no se ha(n) aplicado en su país.

Respuesta:

Falta de entendimiento de los beneficios.

## Aplicación de las disposiciones principales de las Disposiciones Tipo

Pregunta II.1 : ¿En qué principios se basa la protección del folclore en la legislación nacional?

Respuesta:

Las expresiones de folclore en Honduras, son consideradas constitucionalmente como parte del patrimonio cultural de la nación, no obstante, no están sujetas a un régimen de protección especial, ni están sujetas a protección por la legislación de propiedad intelectual. Pero el texto constitucional no impide que se ansometidas a un régimen.

Pregunta II. 4: ¿Se utiliza un término distinto de “expresiones del folclore” en la legislación nacional para describir el objeto a que se hace referencia en el Artículo 2 de las Disposiciones Tipo? Encaso afirmativo :

- i) ¿Cuáles es el término?
- ii) ¿Cuáles es el objeto que abarca?
- iii) ¿Por qué fue elegido el término?
- iv) ¿Qué objeto abarcaría el término “expresiones del folclore” en su país?

Respuesta:

Las manifestaciones culturales de los pueblos indígenas vivos, sus lenguas, sus tradiciones históricas, sus conocimientos y técnicas, sus formas de organización, sus sistemas de valores, sus prácticas religiosas, música y danzas, los prototipos de la producción artesanal, los lugares asociados a ellos, etc.

Pregunta II.5 : En la aplicación práctica de la legislación nacional, ¿se han planteado dificultades al determinar el folclore que debe protegerse?

Sírvase facilitar más información, si es posible, ejemplos. ¿Cómo se determinan las expresiones del folclore en su país (por ejemplo, ¿están registradas como tales? ¿Existen inventarios, archivos y bases de datos sobre el folclore?)?

Respuesta:

Las artesanías pueden ser de barro, junco, mescal, tuno, telas, maíz, madera, etc. Los grupos indígenas están organizados por federaciones por cada grupo, y luego por la Confederación de Indígenas a Nivel Nacional.

Existe un inventario del Patrimonio Cultural.

Pregunta II.7 :¿Existen “expresiones del folclore” u otros ejemplos de formas de cultura y conocimiento tradicionales que no queden protegidos por las Disposiciones Tipo, y que considere que deberían estarlo?

Respuesta:

El conocimiento tradicional asociado a los recursos genéticos.

Pregunta II.9 : Sírvase facilitar información acerca de la naturaleza de la protección concedida en su legislación con respecto a las expresiones del folclore. Por ejemplo, ¿qué acciones requieren autorización? ¿Los derechos concedidos son exclusivos para usted?

Respuesta:

Las acciones que requieren autorización:

Es el Instituto Hondureño de Antropología e Historia, el que podrá realizar o autorizar trabajos de excavación, rotura de tierras, descuaje de bosques, modificaciones de monumentos, demolición o remodelación de estructuras de los bienes que forman parte del Patrimonio Cultural respetando el derecho de propiedad.

También puede el Instituto autorizar la elaboración de réplicas.

Los derechos en estos casos no son exclusivos.

Pregunta II.10 : ¿Qué principios rigen en la legislación de su país para determinar los usos que requieren autorización? (Por ejemplo, los principios que figuran en el Artículo 3 de las Disposiciones Tipo son que existan fines lucrativos y que el uso se haga fuera de su contexto tradicional o acostumbrado).

Respuesta:

El Instituto no se lucra, sólo busca la conservación natural (Artículo 1 de la Ley)

Pregunta II.13 : ¿Tiene algún límite temporal a la protección que proporciona la legislación de su país?

Si la respuesta es afirmativa , ¿cuáles la duración? ¿Cómo se determina el comienzo de la protección? ¿Qué ocurre con la expresión del folclore después de que expire el período de protección (por ejemplo, pasa a ser de dominio público de manera que cualquier persona pueda copiarla y utilizarla sin restricción)?

Si la respuesta es negativa , ¿tiene su país alguna experiencia a este respecto que pueda servir de ayuda a un público más amplio?

Respuesta:

Notenemos experiencia.



Pregunta II.15 : Teniendo en cuenta las expresiones del folclore que existen en su país, ¿contra qué formas de explotación, utilización y acciones podría ser necesario proteger las expresiones del folclore? Proporcione ejemplos prácticos.

Respuesta:

Hace algunos años se popularizó a nivel iberoamericano y quizá más allá, el ritmo “punta”, propio del grupo étnico Garifunade Honduras, como un ritmoailable en festejos y discotecas, la Comunidad Garifunade aprobó la acción por considerar su ritmo solamente para ser utilizado en sus ceremonias religiosas propias de su etnia.

Queda latente, que los grupos étnicos son un sector muy vulnerable a la explotación ilícita de las expresiones del folclore.

Pregunta II.17 : En su país, ¿se considera que las expresiones del folclore son:

Respuesta:

i) “Propiedad” del país en su conjunto (forman parte del patrimonio cultural nacional)?

Sí

ii) “¿Propiedad” de las comunidades indígenas u otras comunidades locales de su país?

Sí

iii) ¿“Propiedad” de artistas individuales cuyas obras se basan en tradiciones folclóricas?

Sí

iv) Ninguna de las tres. Proporcione información adicional.

Pregunta II.26 : ¿Considera que es necesario establecer un acuerdo internacional para la protección de las expresiones del folclore?

Respuesta:

Sí

No

Pregunta II.27: Encasoderespuesta afirmativa, ¿opina que las Disposiciones Tipo podrían ser un punto de partida adecuado para el desarrollo de ese acuerdo?

Respuesta:

Sí

No

[Fin de la respuesta de Honduras]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF HUNGARY

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Hungarian Patent Office.
- Ministry of National Cultural Heritage.
- Ministry of Justice.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No, they are not available in the Hungarian language.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- The Hungarian Copyright Act (Law No. LXXVI of 1999) excludes expressions of folklore from protection under copyright law. Under Article 1, para. (7) of the Act: “*The expressions of folklore may not enjoy copyright protection. However, this may not prejudice copyright protection due to the author of a folkart inspired work of individual and original nature.*” This provision reflects the practice that has developed on the basis of the former legislation.

- The majority of legal systems, thus also the Hungarian law, excludes the works of folk art and folk poetry because their author(s) is (are) unknown, they are lost in the mists of time, and the works survive and are effective as the collective cultural wealth of peoples and ethnic groups. Hungarian legal literature also takes the view that an expression of folklore can never be a work of authorship, since its main characteristic is not the reflection of the unique personality of an author, but the unchanged representation of the features of cultural public domain. As a consequence, the limited term of protection shall not apply to folklore. In the case of the introduction of a possible instrument of international protection, a further problem is posed by the fact that ethnic groups and frontiers of countries do not coincide and that the “migration” of motifs cannot be identified.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- The Model Provisions have not been implemented in Hungary, because the protection, preservation and the administration, as part of the public domain, of the expressions of folklore can be solved not under copyright law but by applying the rules of cultural administration. The aims of the relevant legislation [Act No. CXL of 1997 on the protection of cultural goods, museums, public library provision and public education, amended several times] are the following:

- to provide for the exploration, preservation and protection of cultural goods accumulated and safeguarded in the course of national and universal history and to make them become part of the public domain;

- to regulate the tasks relating to these goods and the activity of institutions in order to preserve national and universal cultural heritage (subparagraphs a) and b) of Article 1 of the above-mentioned Act).

## *II. Application of the Principal Provisions of the Model Provisions*

### (a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- Hungary does not wish to make further comments upon the principles taken into account in elaborating the Model Provisions.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- Act No. CXL of 1997 on the protection of cultural goods, museums, public library provision and public education, amended several times, lays down in the preamble: "Preservation and worthy continuation of the cultural traditions of the nation, nationalities and ethnic minorities, improvement of the personal, intellectual and economic conditions of collective and individual education, activities improving the quality of life of citizens, as well as promotion of the operation of institutions and organizations established for the implementation of the above-mentioned activities are in the common interest of society."

(b) Protected expressions of folklore

Question II. 6: Is a term other than "expressions of folklore" usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- The aim of the concerned legislation [Act No. CXL of 1997 on the protection of cultural goods, museums, public library provision and public education, amended several times] is:

- to provide for the exploration, preservation and protection of cultural goods accumulated and safeguarded in the course of national and universal history and to make them become part of the public domain,
- to regulate the tasks relating to these goods and the activity of institutions in order to preserve national and universal cultural heritage (subparagraphs a) and b) of Article 1).

- According to the terminology of the Act, *cultural goods* mean all the outstanding and characteristic material, pictorial, written and other proofs (sound documents or archeological objects) of the origin and evolution of animate and inanimate nature, of the history of the Hungarian nation and the peoples of Hungary, as well as artistic creations.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- As it has already been pointed out by the reply to Question II.6., Hungary treats the expressions of folklore as a part of the cultural heritage under the relevant legislation and not as works to be protected under copyright law. It is worth referring to the importance of the municipalities in that field. Article 76 of the above-mentioned 1997 Act, namely subparagraph b) of paragraph (1) and subparagraph c) of paragraph (2), provide a mandatory task for the regional municipalities to promote local public education. The forms thereof are in particular: [...] “exploration and presentation of the environmental, intellectual and artistic values and traditions of the region, maintenance and enrichment of local cultural customs, presentation of the values of national, nationality and minority culture, promotion of understanding and reception, preservation of the culture of holidays [...]”

- Decree No. 3/1999 (II. 24.) NKÖM of the Minister of National Cultural Heritage provides for prizes to be awarded for the recognition of outstanding artistic and other cultural activities. “*Master of Folk Art*” Prize is awarded to folk artists for the recognition of individual works or for their life-work, who achieved outstanding results in the development of folk art. “*Young Master of Folk Art*” Prize is awarded to young (15-35 year old) creators and performers who achieved outstanding individual results in any field of folk art. This prize, unique in Europe, may be regarded as a “milestone” in the recognition of the career of folk artists. “*Tree of life*” Prize is awarded to people who, by their activity, have contributed to the management of folk art as public property, to its preservation and to its handing down from generation to generation.

(c) Acts against which expressions of folklore are protected

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- There is a practical example from the jurisprudence of the Supreme Court, regarding the nature of the protection afforded to expressions of folklore in Hungary. In 1977, the Supreme Court had decided on the issue whether the known “author” of a “folk tale” had created an individual and original work. The Court held that as regards folk tales, originality and authorship must be judged taking into account the special rules of folk poetry. In this respect, first of all the variability of folk tales is important: folk tales are handed down and maintained orally, therefore they are exposed to continuous changes. A tale-teller is not entitled to copyright protection if his role in the formation of tales does not go beyond the traditional frames of telling tales.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input checked="" type="checkbox"/> |

Response:

- With regard to (ii), referring to the importance of the municipalities, see the answer provided under Question II.8.

- Further information to the (iv): expressions of folklore in Hungary are not obliged either to the “property” of the country as whole, or the “property” of individual artists from the point of view of the copyright law.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- The institution of vetting the works of “professional’ artists also exists with respect to the works of applied folk arts. This task is performed by the Secretariat of Applied Folk Arts (hereinafter: NIT) working within the Hungarian Cultural Institute, against the payment of a fee of 300,- HUF (approximately 1,- USD)/piece. The jury consisting of ethnographers and experts dealing with folk art judges the submitted objects in 3 categories: category “A” (distinguished), category “B” (everything else), category “C” (low artistic value) [in practice, the latter is usually not awarded]. The jury draws up a report provided with a seal and signature, a copy of which is forwarded to the applicant. The report and a self-adhesive label on the object certify the artistic quality of the object and its individuality and originality. In this case the work is protected under copyright law, since the requirements of legal protection exist. A photo is also taken of the objects, a copy of which is put, together with the report, in the archives of NIT, and another copy is returned to the creator. According to the information of NIT, there are sometimes disputes of plagiarism between folk artists (who created earlier the given motif or object). In this case the only possible solution is – beside a settlement – to come up for trial.



(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- According to the Hungarian judicial practice, the result of the valuable and useful activity of researchers of folk songs is protected by copyright as a collection of works. With regard to the jurisprudence, in 1973 the Body of Experts on Copyright pointed out that the concrete aim of collections of folk songs is to make them part of the public domain.
- At the request of the Metropolitan Court, the panel of the Body of Experts on Copyright gave the following answer in 1985: "Remuneration is due to the performer even in the case of performing works of folk music, if the performer is professional artist. On the other hand, if an amateur takes part in the recording of folk music (or of any other genre), in principle no remuneration is due to him/her in return for his/her consent to the fixation of the performance, however, in practice the Hungarian Phonogram Producer Company remunerates amateurs as well." Since the amendment of the Hungarian copyright law from 1994 there is no distinction anymore between amateur and professional artists, so from that time the related rights protection is due to all kind of performer's performance. With the ratification of the WPPT in 1998, Hungarian law also includes the definition regarding "performers" contained in Article 2 (a) of WPPT.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- Tax allowance, exemption from tax is the other form of protection afforded to expressions of folklore in Hungary. Concerning value added tax, single objects of folk art and applied art or those manufactured in a limited number of copies by non-industrial technology and which are given a number by the jury, belong to the preferential tax rate of 12 %. The normal tax rate is 25 %, only pharmaceutical products and therapeutic equipment belong to the rate of 0 %.



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF INDIA

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*I. Application of the Model Provisions as a Whole*

Question I.1: Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-Ministry of Human Resource Development  
-Department of Secondary and Higher Education  
-Book Promotion and Copyright Division

Question I.2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

-Yes -In English -one of the official languages of the country.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response : Yes

No

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Till recently there was no debate in India regarding protection of folklore. The organised industries seem to be against the protection of the custodians of folklore. The traditional communities who are the custodians of this knowledge are not organized to demand protection. The formal legal system considered this as common property facilitating both Indian and foreign corporations to freely exploit the folk knowledge without any obligations. Indian Copyright Act has no provision to protect the expressions of folklore. But section 38 of the Act read with section 2(qq) is capable of protecting performers' of folklore in a limited way.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that the same may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

The basic principles underlying the Model Provisions (see the Preamble)

The scope of "expressions of folklore" protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilization of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

-The definition is restrictive and does not cover all aspects of folklore such as folk science and technology and folk medicine etc. There are also no positive rights recognized under the Model Provisions. The question of ownership is not addressed in the Model Provisions.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- There can be no definite reason for this. It may be that it suits some vested interests, the lack of political will, or that everyone is happy with the status quo - as it normally happens. Having said that, however, one can safely infer that while there may not be any direct protection afforded to folklore etc. through IPRL laws, there are indirect/incidental and tangential ways of protecting the performers rendering expressions of folklore or folktales - which in effect means incidental/indirect protection of certain users of folklore and not the folklore itself. However, the application of such protection is not very extensive.

## II. Application of the Principal Provisions of the Model Provisions

Question II.1 : What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Not applicable.

Question II.2 : Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

As the basic principles as enunciated are still fundamental and valid, they are viable. But many may have outlived their utility. There is, however, an urgent need to review and expand the scope of such model provisions which framed in 1982 are understandably outmoded, to be in line with:

- The present and the future by incorporating contextual needs of new technologies like Information Technology, digital technology, e-commerce, bio-technology, bio-informatics, bio-information, ecology, environmental sciences etc. and should generally have a futuristic orientation.
- The past and to cater to the needs of Traditional Knowledge, genetic resources, folklore, community ownership etc.
- The concept of use of modern technologies (info, bio etc.) to exploit folklore, folk medicine etc.
- The concept of both **protection/preservation, promotion and enrichment** of folklore.

The above aspects may need special mention in the principles.

Question II.3 : Please provide any additional information, comments or practical experiences on the basic principle taken into account for the elaboration of the Model Provisions.

Response:

- There is a need to emphasize the role of local communities in the promotion, preservation and protecting the folk knowledge. The management of folk knowledge must be with the communities as far as possible and result in benefit to the community.

(b) Protected expressions of folklore

Question II.4 : Is a term other than “expressions of folklore” used in your national laws or regulation to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- Not applicable.

Question II.5 : In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

-Not applicable.

Question II.6 : Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

-In India the term “expression of folklore” is not used. We use the term “folklore” so as to include all forms of folk knowledge. The term “traditional knowledge” is also used to explain the concept of folklore and folk medicine. The concept of folklore in India is all encompassing covering all forms of folk knowledge including folk medicine, folk science and technology etc.

Question II.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

-Yes. All forms of traditional knowledge need protection under folklore. So the term “expression of folklore” needs reconsideration. It needs to be a kind of ‘omnibus’ expression to cover the entire range of subjects from music to art to handicraft to medicine to agriculture etc.



Question II.8 : Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

-Additions suggested:

- Traditional Agricultural Practices
- Tangible products, such as handicrafts, based upon expressions of folklore.

(c) Acts against which expressions of folklore are protected

Question II.9 : Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

-Not applicable.

Question II.10 : Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

-Not applicable.

Question II.11 :Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

-Being a member State **not providing any specific legal protection** for expression of folklore, we do not have to respond to the query. However, based on certain practical experiences, an attempt is made to answer the query for the benefit of a wider audience. Protections should be granted against the following forms of exploitation, uses and actions in respect of experiences of folklore:

- Traditional Agricultural Practices that impact the value and quality of the produce or the capacity of the crop to produce such value or quality
- Traditional practices that encourage perpetuation of multiple traditional technologies e.g. crops in various combinations and succession, apiculture, dairy, household rural industry, etc.
- Traditional practices that encourage maintenance of particular traditional calendar of crop and husbandry

Question II.12 :If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

-Not applicable .

Question II.13 : Isthe protection afforded by your laws and regulations limited in time?

Response: Yes

Not applicable.

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

-Not applicable.

Question II.14 : Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the viewpoint of both the custodians of folklore and users in your country?

Response:

-Not applicable.

Question II.15 : Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

-“Commercial exploitation” by members outside the community of existing folk knowledge or new products based on folk knowledge.

Question II.16 : Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

-Not applicable.

(d) Authorization of utilization of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

-Neither (i) (ii) or (iii)

-There is no express law in this regard. The customary law treats folklore as property of the local communities. But there are some forms of folk knowledge that are now so widespread that they are considered a part of the property of the nation.

Question II.18 : Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

-Not applicable.

Question II.19 : Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorization to use expressions of folklore.

Are any fees payable for utilization of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

Response:

-Not applicable.

In general, what practical lessons and examples would benefit a wider audience?

Response:

-Not applicable.

Question II.20 : If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

-Not applicable.

(e) Sanctions, remedies and jurisdiction

Question II.21 : Which remedies and sanctions are provided for in your national laws and regulations?

Response:

-Not applicable.

Question II.22 : Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

-Not applicable.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

-Yes. Performers of folklore are protected in a limited way under section 38 of the Copyright Act. However, no practical examples can be cited at this stage.

Question II.24 : Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

-Not applicable.

(g) Protection of expressions of folklore of foreign countries

Question II.25 : Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

Not applicable.

No

If yes :

- (i) Please provide details of these cases.

Response:

-Not applicable.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action that was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

-Not applicable.

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No



Please provide further information on your answer.

Response:

-Yes. Since the modern technology particularly biotechnology enable the technologically advanced, rich and developed nation to commercially exploit the folk knowledge and patent/copyright the new products based on it, there is an urgent need to have international norms to protect all forms of folk knowledge.

Question II.27 : If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

-The principles used in the Model Provisions could serve as a starting point. But the definitions and other provisions need reconsideration in the context of new technological developments. There must also be a clear policy regarding the ownership and control of folk knowledge.

Question II.28 : What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

-The question of identification and documentation of the folk knowledge must be left to the custodians of folk knowledge. There is a need to have a Regional Council on folk knowledge consisting of representatives of the nations of the Region to solve the problem of folk knowledge found in more than one nation.

Question II.29 : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

-Nil.

*III. Modifications or Adaptations to the Model Provisions*

Question III.1 : Please provide any suggestions for modifications or adaptation that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

-The suggestions made in some of the responses to this questionnaire could be used for making the Model Provisions more useful, more relevant as a model for national, regional or international laws and standards.

[End of Response of India]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF INDONESIA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- 1. Directorate General of Intellectual Property Rights, Department of Justice and Human Rights.
- 2. Department of National Education
- 3. Department of Tourism and Culture

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Folklore is protected under the Copyright Law Number 12, 1997, Article 10.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response:    Yes   

                  No   

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- According to the Indonesian Copyright Law Number 12, 1997 mentioned in part four:

Copyright to works of unknown authors article 10:

1. The state shall hold the copyright for works from prehistorical and other national cultural objects.

2.a. Work of popular culture which are commonly owned such as stories, legends, folktales, epics, songs, handicrafts, choreography, dances and other artistic works shall be maintained and protected by the state.

b. The state shall hold the copyright to works referred to in paragraph (2a) outside the country.

3. Further provision on copyright held by the state referred to in this article shall be regulated further in a government regulation.

Article 10A

1. If the author of a work is unknown and the work has not been published the state shall hold the copyright on such work for the sake of the author.

2. If a work has been published and the author of which or the name printed on such work is a pseudonym the publisher shall hold the copyright on the work for the sake of the author.

- The Department responsible for administering the law and regulations is the Directorate General of Intellectual Property Rights, Department of Justice and Human Rights.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the Model Provisions has not been followed in our national laws and regulations*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilization’s of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- 1. In general the same basic principle is covered under Copyright Law. However, it is but not as detailed as proposed in the Model Provisions. We are still preparing the government regulation.
- 2. We have not followed the Model Provisions. The scope protected under our law is quite broad and still in general. Those mentioned in the Model Provisions can be interpreted as covered by the law.
- 3. Basically we have regulated acts against which expressions of folklore are protected but not as specific as the Model Provisions.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- We have not implemented certain aspects of the Model Provisions because they have been regulated (covered) under Copyright Law of the Republic of Indonesia. We are preparing a further government regulation concerning folklore, which may cover those proposed in the Model Provisions.

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- We believe that the principles are still viable and we can follow the concept of the Model Provisions.

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- According to Indonesian Copyright Law Article 10, we use other term for “expression of folklore” with “works of unknown authors.”

- The subject matter covers works from prehistoric remains, historical and other national cultural objects such as stories, legends, folktales, epics, songs, handicraft, choreography, dances and other artistic works.



Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Traditional medicine and indigenous knowledge.

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Publication and reproduction without authorization.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- The state holds the Copyright for works of prehistoric remains, historical and other national cultural objects. The protection of “unknown works” also has moral right and economic right.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- Indonesia at present is preparing the government regulation concerning the protection of folklore. Authorization regulation of such utilization is being discussed.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- In practical experience the performance and recording of traditional Kecak Dance for commercial purpose is protected under neighbouring right.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- Protection of folklore from countries which are not member of Berne Convention should be regulated as so far the Convention only regulates for its member. This is proposed since that at the moment the great number of membership of the World Trade Organization is quite significant.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- (i) The setting up (development) of an international folklore database/information should be initiated and supported.
- (ii) We suggest WIPO to coordinate for settling such two main problems.

*Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- It must be carefully considered that the modification of Model Provisions should not contradict to the interests of each country concerning the protection of folklore.

[End of response of Indonesia]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF ISLAMIC REPUBLIC OF IRAN

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Ministry of Culture and Islamic Guidance;
- The Judiciary;
- Ministry of Industry and Mines;
- Ministry of Commerce;
- The State Organization for Registration of Deeds and Property

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

Response:

1. “The Act on Protection of Authors’, Artists’ and Composers’ Rights” dated 1969.
2. Articles 12 to 13
3. Ministry of Culture and Islamic Guidance and the Judiciary (Ministry of Justice)

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the  
Model Provisions  
has not been followed  
in our national laws  
and regulations*



Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- According to Article 22 of the National Law, authors’ economic right shall be protected by the said Act provided that the work is printed, distributed, published or performed in Iran for the first time and it has not been printed, distributed, published or performed in any other country before. In the National Law, the provisions of Sections 9 and 10 of the Model Provisions have not been taken into consideration.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- Adoption of the National Law (1969) earlier than the Model Provisions (1982) could have been the main reason why certain aspects of the Model Provisions have not been implemented.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Chapter One of the National Law covers “The Works Protected,” Chapter Two deals with “Authors’ Rights” and Chapter Three and Four respectively cover “Duration of Protection of Authors’ Rights and Other Legal Protections” and “Offences and Penalties.”

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- Model Provisions dated 1982 can be effective and sufficient if some modifications and changes are made thereto. In other words, by using it as a model, a mechanism should be established which must be capable of providing international protection for all kinds of expressions of folklore in the broad sense of the word.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- (i) National arts and cultural heritage.
- (ii) It covers all kinds of works, whether material or not (intellectual), having artistic and cultural aspects inherited from our ancestors.
- (iii) National arts and cultural heritage along with folklore will be able to cover all aspects of folklore in the broad sense of the word.
- (iv) Mostly non-materialistic aspects of folklore.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- Registration of expressions of folklore is not compulsory. But there are archives and records in some areas and fields.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Traditional scientific beliefs such as traditional medicine, traditional astrology etc., should be taken into consideration while adopting new Provisions.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- Although economic rights of the authors of expressions of folklore are not limited to any time and place and are non-transferable, according to the National Laws, using an expression of folklore for gainful purposes requires authorization of the owner of the work. Authors of expressions of folklore enjoy the exclusive right to transfer these rights to third parties (Articles 3 and 6).

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- In accordance with Articles 5, 19 and 23 of the National Law, utilizing works for gainful and commercial purposes requires authorizations.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

- According to Article 12 of our National Law, economic rights conferred to authors are protected for a period of thirty (30) years after the author's death. After expiration of the said period the public is allowed to use the work.

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- There are some exceptions in Articles 13, 14 and 15 of our National Law.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

- As explained before, unlike Sections 9 and 10 of the Model Provisions dated 1982, no competent authority or supervising authority has been provided for in our National Law.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Criminal and Civil Sanctions and Remedies (Penalties) have been provided for in Articles 23, 24 and 25 of our National Law against infringement of rights of owners of works.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

If yes:

- (i) Please provide details of these cases.

Response:

- There have been cases where designs, layout and patterns of Iranian carpets have been abused and imitated in foreign countries. These unlawful acts constitute infringement of rights of the owners as a result of which large number of people have encountered great financial losses.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- However, due to administrative and legislative difficulties, no serious action has so far been taken against infringement, imitation and unauthorized use of original and unique designs, layout and patterns of Iranian carpets by foreigners.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No



Please provide further information on your answer.

Response:

- Because, the current intellectual property system does not provide sufficient, effective and adequate protection for all aspects of (expressions of ) folklore. Consequently, adoption of an International Agreement for protection of expressions of folklore is quite essential.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- Because, there are numerous countries whose national laws are based on Model Provisions dated 1982. Consequently, by using the experiences of those countries and researches and studies conducted on the basis of guidelines of the Intergovernmental Committee of the World Intellectual Property Organization (WIPO) we could proceed with completion of the Model Provisions dated 1982 in the framework of an International Agreement.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- In order to find a solution to the above-described problems first of all, by the assistance of concerned international organizations, in particular UNESCO, governments can identify, regulate and organize their expressions of folklore. Secondly, on the basis of cooperation among governments, a mechanism can be established to identify their common expressions of folklore so that no problems arise in relation with serious and effective protection of the rights pertaining thereto. Moreover, concerned international organizations and institutions such as UNESCO can be of great assistance in order to settle any possible disputes.

### *III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- As mentioned earlier, the Model Provisions can be used as a very effective model for the purpose of development of national, regional or international laws and standards. Of course, the Model Provisions should be modified in a manner that:

- (i) Firstly, it covers all the works based on folklore, national heritage and national culture and it's adequately flexible.
- (ii) Secondly, from the international point of view it is able to provide for effective and sufficient protection of expressions of folklore.
- (iii) Thirdly, it promotes human culture and consequently facilitates cultural relations among nations.

Additional Information Provided by the Islamic Republic of Iran

The completed questionnaire submitted by the Islamic Republic of Iran enclosed the following copy:

**The Act on Protection of Authors', Artists' and Composers' Rights**

**CHAPTER ONE**

**Definitions**

Article One: For the purpose of this Act, "Author" is the writer, composer or artist and "work" is what is created as a result of his/her knowledge, art or initiative irrespective of their manner or method of expression and creation.

Article 2: The following works are protected under this Act:

- 1- Books, pamphlets, articles, plays or any other scientific, technical, literary or artistic texts.
- 2- Poems, songs, melodies, and tunes, which are written, recorded or published in any manner or method.
- 3- Audiovisual works for performance on stage or on screen or broadcasting on radio or on television, which have been written recorded or published in any manner or method.
- 4- Musical works, recorded or published in any manner or method.
- 5- Works of drawing, painting, designing, innovative geographical maps, ornamental writings and drawings and any kind of decorative work which has been created in any manner or method either individually or in combination with other works.
- 6- Sculptures.
- 7- Works of architecture including plans and designs of buildings.
- 8- Photographic works created by an innovative method.
- 9- Works of human initiative related to handicrafts, industrial arts, design of carpets, rugs and short napped coarse carpets.
- 10- Innovative works created on the basis of folklore, national heritage and national arts.
- 11 - Any other innovative work created through combination of any of the works indicated in this Chapter.

## **CHAPTER TWO**

### **Authors' Rights**

Article 3: Authors are entitled the exclusive right of publication, distribution, broadcast, sale and performance of their work and exclusive economic and moral rights relating to the use of their name and work.

Article 4: The moral rights conferred to the author are not limited to any place and is unlimited and nontransferable.

Article 5: Authors of the works protected under this Act may transfer their economic rights in all cases including:

- 1- Production of motion pictures, movies for television and the like.
- 2- Stage performances such as plays, ballets and other such performances.
- 3- Audio or visual fixation of their works on records, tapes or any other modes.
- 4- Television or radio or any other kind of broadcasts.
- 5- Translation, publication, reproduction and sale of the works through printing, drawing, photography, gravure, stereotype., molding and the like.
- 6- Using the work in scientific, literary, industrial, artistic and promotional activities.
- 7- Application of a work in preparation or development of other works indicated in this Act.

Article 6: Works created through cooperation of two or more authors, if not separated, is a collective work and the rights conferred to it belong to the authors jointly.

Article 7: Quotation from published works and making any reference to them for literary, scientific, technical, educational, teaching and training purposes in form of criticism and foreword is allowed to a reasonable extent only.

Note:

Indication of the source for pamphlets or booklets prepared and reproduced by teachers in educational institutes is not obligatory provided that it is not intended for profit making purposes.

Article 8: Non-profit Public Libraries, Publication Collecting Institutes, Scientific and Educational Institutes may, in accordance with the Regulations approved by the Council of Ministers, reproduce works protected under this Act, through taking photographs or similar ways in proportion with their activities and on the basis of the required quantity.

Article 9: After enactment of this Act, Ministry of Information can use those works it has published or distributed before enactment of this Act.

Article 10: After approval and enactment of this Act, Ministry of Education can still use the schoolbooks it has printed by virtue of School Books Publication Act before enactment of this Act.

Article 11: Reproduction of works protected under this Act indicated in Article 2(1) and recording television and radio programs shall be allowed only if they are intended for non-profit personal purposes.

### **CHAPTER THREE**

#### **Duration of Protection of Authors' Rights and Other Legal Protections**

Article 12: Economic rights conferred to Authors by this Act that can be transferred through a will or inheritance, are protected for a period of thirty (30) years after the Author's death. If there are no heirs, or the rights are not transferred to a third party through a will, the said rights will be transferred to the Ministry of Arts and Culture.

Note:

The term of protection of a collective mark indicated in Article (6) shall be thirty (30) years from the date of death of the last surviving author.

Article 13: Economic rights of works created upon a request or order, shall belong to the person making the request or order for a period of thirty (30) years as from the date of creation of the work unless otherwise agreed upon.

Note:

All the awards and prizes that in scientific, artistic and literary contests and competitions that are awarded to the works protected under this Act shall belong to the author.

Article 14: The assignee receiving the author's rights can use the said rights for a period of thirty (30) years from the date of transfer, unless a shorter period has been agreed upon.

Article 15: In respect of Article (13) and (14), if after the expiry of the periods indicated therein the author is still alive, he will be entitled to exercise the rights conferred to him. Otherwise, the provisions of Article (12) shall apply.

Article 16: In the following cases the economic rights of the author conferred to him by this Act shall be protected for a period of thirty (30) years as from the date of publication or sale:

- 1 - Cinematographic or photographic works.
- 2- Where the works belongs to a legal entity or the right to use it has been transferred to a legal entity.

Article 17: Any special name, title or sign representing a work shall be protected under this Act and no other person can utilize it for any work of the same or similar kind in a manner that may cause confusion.

Article 18: The assignee, the publisher or those who under this Act hold a license to use a certain work or those who hold the right to make any references or adaptations from a work, for profit making purposes must indicate the name of the author of the work as well as any name or title or special sign representing the work either on the original or printed or reproduced copy in the usual and customary manner unless the author has agreed otherwise.

Article 19: Any kind of distortion, mutilation or other kinds of modifications of the works protected under this Act without the authorization of the author shall be prohibited.

Article 20: Printing houses, broadcasting organizations, workshops and those who deal with printing, publication, distribution, fixation, recording and or reproduction of the works protected under this Act must indicate number of prints made, number of copies of the books, or number of fixations, reproductions, distribution or publications made and the serial number of the sound recordings on all copies distributed along with the date of printing and name of the respective printing house or workshop.

Article 21: Authors can register their work and its name, title and special sign in the department that shall be designated by the Ministry of Culture and Arts.

The Regulations pertaining to procedure and formalities of registration as well as the authority in charge of receiving relevant applications shall be approved by the Council of Ministers.

Article 22: Authors' economic right shall be protected by this Act provided that the work is printed, distributed, published or performed in Iran for the first time and it has not been printed, distributed, published or performed in any other country before.

## **CHAPTER FOUR**

### **Offences and Penalties**

Article 23: Those who publish, distribute or sell all or part of a work protected under this Act in the name of its Author but without the Author's authorization and or knowingly and intentionally publish, distribute or sell it in the name of any person other than the author, shall be sentenced to simple prison for a period of 6 months to three years.

Article 24: Those who, without authorization, print publish or distribute a translation belonging to someone else in his or someone else's name shall be sentenced to prison for a period of 3 months to one year.

Article 25: Those who violate the provisions of Articles 17,18,19 and 20. shall be sentenced to prison for a period of 3 months to one year.

Article 26: Where, as a result of expiry of term of protection of author's right, using and exploitation of a work is free for everyone provided that the provisions of this Act are duly observed, in respect of those who violate the provisions of Article 17,18,19 and 20, the Ministry of Culture and Arts shall act as private plaintiff.

Article 27: The private plaintiff can request the court in charge of issuing the final judgment to publish the contents of the court's judgment in a newspaper at the plaintiff's own choice and cost.

Article 28: Where the party violating the provisions of this Act is a legal entity in addition to the criminal prosecution of the person running the said legal entity under whose decision and guidance the crime was committed, the damages of the private plaintiff shall be remedied from the personal properties of the said person and if his personal properties are not sufficient and adequate for that purpose, the balance shall be taken from the person committing the crime.

Article 29: Judicial authorities can, along with hearing the case raised by the private plaintiff, order the bailiffs of the Justice Administration to prevent publication, distribution or sale of work that is the subject matter of the petition and order to proceed with their confiscation.

Article 30: The works created before adoption and enactment of this Act shall be protected by this Act. Those who, until the adoption and enactment of this Act, have used or exploited works belonging to others without their authorization are not allowed to re-perform, re-publish, re-distribute, reproduce, or re-sell the work unless expressly authorized by the author or his representative and with due observation of the provisions of this Act. Violators of the

provisions of this Article as well as those who, in order to avoid and evade justice, print, record, reproduce or use the work under a date prior to enactment of this Act, shall be sentenced to the punishment indicated in Article 23.

Court actions taken with Judicial Authorities prior to enactment of this Act shall remain effective.

Article 31: Prosecution of crimes indicated in this Act shall be initiated by the private plaintiff and shall be suspended and closed as a result of remission by the said plaintiff only.

Article 32: Articles 245, 246, 247 and 248 of Penal Code are hereby announced as null and void.

Article 33: Executional Regulations pertaining to this Act shall be prepared by the Ministry of Culture and Arts, Ministry of Justice and Ministry of Information and shall be approved by the Council of Ministers.

The above Act comprising 33 Article and 3 Notes, after approval by the Senate in its session of Monday, 3rd Azar 1348 (23rd November 1969) has been further approved by the National Consultative Assembly during its session of Thursday, 11th Day 1348 (January 1<sup>st</sup> 1970).

Abdullah Riazi  
Speaker of the National Consultative Assembly

[End of response of the Islamic Republic of Iran]



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF ITALY

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I. *Application of the Model Provisions as a Whole*

Question I.1 : Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-The (gen eral) protection of expressions of folklore is a task of our Ministry of Culture.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

Ifno.

-The expression of folklore doesn't receive any specific legal protection of intellectual property in our laws system.

-Such protection has not been established in our country because the expressions of folklore are considered like works, performances, or artistic expressions belonging to the common domain and therefore out of a copyright or a neighboring rights protection. According to Article 15.4 of the Bern Convention concerning unpublished work, where the identity of the author is unknown, but where there are grounds to presume that he is our citizen, it's possible to designate the authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

## *II. Application of the Principal Provisions of the Model Provisions*

### (b) Protected expressions of folklore

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

-In our laws system the expression of folklore can be protected against some prejudicial actions, and also against some illicit exploitation, when those conducts are able to compromise or damage the authenticity of the tradition or the heritage itself. In these cases the object of the protection is not the exclusive right of the owner (or the stakeholder) of the expression of folklore, but the integrity of the tradition itself, or the individuality of the community (for example, the holy religious image, a significant design typical for a religious community, or the national flag etc.).

-It's a question of liability if somebody uses an expression of folklore distorting or offending the cultural interests or the heritage of the community concerned.

(c) Acts against which expressions of folklore are protected

Question II.15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

-In our country a protection for expressions of folklore could be necessary against all kinds of the abusive forms of exploitation, uses and actions which do not respect the dignity of the community concerned, or are offensive against their respectability or their honor (e.g. some sacrilegious utilization of artistic expressions belonging to religious traditions, etc.).

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The "property" of the country as a whole (as part of the national cultural heritage)?
- (ii) As the "property" of indigenous or other local communities within your country?
- (iii) As the "property" of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

-In our country the expression of folklore belongs normally to the public domain and therefore cannot be regarded as object of an exclusive right, because such expressions are a part of the National (or regional) cultural patrimony, or of religious traditions.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes   
No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

-In our country some expressions of folklore can receive protection by indirect means: for example, some artistic local traditions, under certain conditions, could be protected against unfair use made with gainful intent, or against abusive exploitation or reproduction outside their customary context. Such protection can play in favor of one specific community or an organized group which is generally considered as rightsholders or original titular of the same artistic tradition.

(g) Protection of expressions of folklore of foreign countries

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Please provide further information on your answer.

Response:

-We do think that an international agreement for the protection of expressions of folklore is necessary, especially in favor of the developing Countries and/or in favor of the Indigenous and local communities.

Question II.27 : If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

-We also believe that the Model Provision could serve as an adequate starting point for the development of such an agreement.

Question II.28 : What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

-Among the main problems arising in order to ensure an adequate and effective protection of the expressions of folklore, it has to be considered not only the lack of appropriate sources for identification of such expressions, or the lack of workable mechanisms for settling the questions of expressions of folklore operating in one country, but also the identification of the legal rightsholder (which could be, for instance, legitimate to act judicially), and the exclusivity of the origin of such expressions in one country.

*Modifications or Adaptations to the Model Provisions*

Question III.1 : Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

-Solution must be found for cases where more than one community holds the same expression of folklore.

[End of response of Italy]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF JAMAICA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- The Ministry of Industry, Commerce and Technology (MICT)
- The Jamaica Intellectual Property Office (JIPO) is a specialized division of MICT.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.



If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Consultations are still in progress. On May 24-25, 2001, WIPO in collaboration with JIPO hosted a Workshop on TK and Folklore to discuss the importance of the basic principles and to solicit feedback and input from stakeholders. This workshop was a follow-up to a fact-finding mission conducted in Jamaica on June 7-10, 1999. Further, on May 28-30, 2001, UNESCO in collaboration with the Government of Jamaica hosted the Caribbean Member States Meeting on TCF to review the provisions of the model law and to solicit feedback and recommendations from Member States. Note that there is a proposed Geographical Indications Bill which will make some provision for Agricultural and Craft Products. Note also that consideration is being given to adopting the model law but with possible modification to take into account the Internet and a more workable licensing/authorization regime.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- The principles which were taken into account in elaborating the Model Provisions are still viable today. However, it may also be necessary to include the principles of cultural diversity which is shared versus cultural specificity. This is a real issue which countries in the Regions must grapple with as a pre-requisite to research, inventory and protection of TCF and TK.

(b) Protected expressions of folklore

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Culinary recipes and processes.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Any publication reproduction and any distribution of copies of expressions of folklore.
- 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.
- Any translation or adaptation of expressions of folklore.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- The Jamaican Copyright Act of 1993 provides for the protection of related rights in a broad way so that expressions of folklore would be captured in the genus of works being referred to as it relates to performers rights and the rights of persons having recording rights (see Sections 107-114 of the Act).
- The Copyright Act also empowers the Minister under Section 104 (I) (c) to designate National Cultural Events under this provision, the Copyright Tribunal is charged with the responsibility of recommending to the Minister a rate of royalty or other payments payable in respect of the use or presentation in such national cultural event as the Minister may by order designate if any works or performance in which copyright or other rights subsist.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- It would also be useful to examine the Peru Model of a Community Rights Legislative System and Japan's Ancient Shrine and Temple Act and National Treasure Act.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- Countries richest in TK and TCF have been unable to archive, utilize and share it. What is needed at the national level is the adoption and implementation of policies favorable to protection, archiving, preservation technical training, research, documentation and public awareness. At the regional level, the creation of a regional organization which would serve as a repository of data submitted from countries as a result of their national efforts. This organization would be comprised of Member States of the region and would be charged with the responsibility of establishing a Caribbean methodology for researching our culture, guidelines for benefit-sharing schemes, identifying common expression in the region and to promote the exchange of information between Member States and other regions. In addition, assistance with funding and expertise is needed at the international level to facilitate the foregoing proposals. It may be necessary to consider the formation of a world court/tribunal for the preservation/protection of TCK and TK.

*Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

1. The establishment of a code of ethics ensuring appropriate respectful approaches to and recognition of traditional scholars – the creators, bearers and transmitters of TCF and TK.
2. The repatriation of compensation post facto of TCF and TK works exploited, for example, the Jamaican Taino Zemi in the possession of the British museum.
3. The protection of indigenous peoples and endangered TCF and TK community spaces, burial sites.

[End of response of Jamaica]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF JAPAN

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

Agency for Cultural Affairs (Copyright)  
Ministry of Economy, Trade and Industry  
Ministry of Agriculture, Forestry and Fisheries

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

No

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Yes

No

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

It is very difficult to provide specific legal protection for “expressions of folklore” in Japan because of their ambiguity on definition, ownership etc. So far, there seems to be no strong requests for their protection as IPR in Japan.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.



Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

(i) “work”, “performance”

(ii) “work” is defined as “a production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain” (Article 2 (1)(i)) under Copyright Law.

“Expressions of folklore” in the Article 2 of the Model Provision might be included within the scope of “work”, therefore, their authors are granted copyright in accordance with the Copyright Law of Japan, where applicable.

In addition, “Performance” is defined as “the acting on stage, dancing musical playing, singing, delivering or performing in other way of a work, and includes similar acts not involving the performance of a work which have the nature of public entertainment” (Article 2(1)(iii)) under the Copyright Law. The performances of “expressions of folklore” are included within the scope of “performance”, therefore, the performers of expressions of folklore are adequately protected in accordance with the Copyright Law of Japan.

(Reference) Copyright Law

(Classification of works)

Article 10. (1) As used in this Law, "works" shall include, in particular, the following:

- (i) novels, dramas, articles, lectures and other literary works;
- (ii) musical works;
- (iii) choreographic works and pantomimes;
- (iv) paintings, engravings, sculptures and other artistic works;
- (v) architectural works;
- (vi) maps as well as figurative works of a scientific nature such as plans, charts, and models;
- (vii) cinematographic works;
- (viii) photographic works;
- (ix) program works.

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response

So far, there seems to be no strong requests for the protection of folklore as IPR in Japan.

Question II.17: Are expressions of folklore regarded in your country as:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

There is no agreed consensus on definition and ownership of folklore both domestically and internationally. Therefore, it is difficult to make any classification among the choices presented above.

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

○ Copyright Law

“performance” : “Performance” is defined as “the acting on stage, dancing musical playing, singing, delivering or performing in other way of a work, and includes similar acts not involving the performance of a work which have the nature of public entertainment” (Article 2(1)(iii)) under the Copyright Law. The performances of “expressions of folklore” are included within the scope of “performance”, therefore, the performers of expressions of folklore are adequately protected in accordance with Copyright Law of Japan. This protection is consistent with the obligations under WPPT.

○ Law for the protection of cultural properties

“folk-cultural properties” : “Folk-cultural properties” is defined as “manners and customs related food, clothing and housing, to occupations, religious faiths, festival, etc., to folk-entertainment and clothes, implements, houses and other objects used therefore, which are indispensable for the understanding of changes in our people’s modes of life”(Article 2(1)(iii)) under the Law for the protection of cultural properties. Among these tangible or intangible folk-cultural properties, the properties, which are considered having special importance, are designated and provided special protection as important tangible (or intangible) folk-cultural properties.

“intangible cultural properties” : “Intangible cultural properties” is defined as “art and skill employed in drama, music and applied arts, and other intangible cultural products, which possess a high historical and/or artistic value in and for this country”(Article 2(1)(ii)) under the Law for the protection of cultural properties. Among these intangible cultural properties, the properties, which are considered having special importance, are designated as important intangible cultural properties, and those persons and bodies that highly embody these skills are also recognized and protected.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Yes

No

Please provide further information on your answer.

Response:

The discussion for international legal framework of protection of folklore might not be unnecessary in the future. However, it might be too premature to initiate the discussion because there are quite a few fundamental questions to be answered. Therefore, currently, discussions should be focused upon basic issues such as definition, ownership, allocation and exercise of rights, treatment of folklore existing beyond borders. It might be much more important to develop common understandings on these issues among WIPO member countries, rather than initiating the discussion for international legal framework..

[End of response of Japan]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF KENYA

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*I. Application of the Model Provisions as a Whole*

Question I.1: Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-Attorney General's Office.

Question I.2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

-Yes, they are available in English.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes :

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or officer responsible for administering the laws and regulations . *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

-The Copyright Act Chapter 130 of the Laws of Kenya.

-Section 18(3) empowers “the Attorney General to make regulations authorizing and describing terms and conditions governing any specified use of folklore, except by national publicity for non-commercial purposes or importation of any work made abroad which embodies folklore.

-Section 18(4) defines folklore as hereunder “for the purposes of sub-section (3) “folklore” means literary, musical or artistic works presumed to have been created within Kenya by an unidentified author which has been passed from one generation to another and constitutes a basic element of the traditional cultural heritage of Kenya.”

-These provisions came into force in 1975 by Act No. 5 of 1975, section 11.

-The responsible ministry is the Attorney General’s Chambers.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are there relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

-The regulations that were to be made under section 18 of the Copyright Act were not made or rather have not been made, thus making it difficult to implement the Model Provisions.

## II. Application of the Principal Provisions of the Model Provisions

### (a) Basic principles taken into account for the elaboration of the Model Provisions

Question II.1 : What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

-The inclusion of the protection of expressions of folklore in the Copyright Act of Kenya is basically to protect them against commercial exploitation by third parties and to retain the traditional cultural heritage of Kenya.

Question II.2 : Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

-The principles underlying the protection of expressions of folklore in the Model Provisions still hold and are thus valid.

(b) Protected expressions of folklore

Question II.4 : Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

-The current Act uses the term “folklore” as opposed to “expressions of folklore.” The term “folklore” as used in the Act covers all literary, artistic and musical works created within Kenya and passed down generations. It is an all-inclusive definition.

Question II.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

-No.

(c) Acts against which expressions of folklore are protected

Question II.9 : Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

-If the regulations were made, they would protect folklore from commercial unauthorized use as well as illicit exploitation just as the Copyright Act protects against unauthorized use and grants moral rights (recognizes the moral rights of the author).



Question II.10 : Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

-Regulations not in place yet.

Question II.12 : If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

-Folklore is identified as that which constitutes a basic element of the traditional heritage of Kenya and is presumed to have been created within Kenya.

Question II.13 : Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

Question II.14 : Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the viewpoint of both the custodians of folklore and users in your country?

Response:

-Exceptions to the protection accorded by section 18 are basically the use of folklore by a national public entity for non-commercial purposes or the importation of any work made abroad which embodies folklore.

(d) Authorization of utilization of expressions of folklore

Question II.20 : If indigenous or other local communities within your country are regarded by your law as "owners" of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wide audience?

Response:

-Not applicable.

(e) Sanctions, remedies and jurisdiction

Question II.21 : Which remedies and sanctions are provided for in your national laws and regulations?

Response:

-Not applicable.

Question II.22 : Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

-Not applicable.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

(g) Protection of expressions of folklore of foreign countries

Question II.25 : Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:

-Not applicable.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

-Not applicable.

[End of response of Kenya]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF KYRGYZSTAN

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- The state policy in the field of intellectual property protection in Kyrgyzstan is carried out by the State Agency of Science and Intellectual Property under the Government of the Kyrgyz Republic, the sphere of culture is regulated by the Ministry of Education and Culture of the Kyrgyz Republic, scientific researches in the field of national cultural heritage are carried out by the National Academy of Sciences of the KR and Kyrgyzpatent's Scientific Research Centre.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No, they are not.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If you have marked any of the boxes, please provide further information.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- In the Kyrgyz Republic there are not any laws on the protection of expressions of folklore. Legislation of the Kyrgyz Republic on Intellectual Property considers expressions of folklore as public domain. However, the Law of KR “On Copyright and Related Rights,” provides for the payments to the State Fund of Intellectual Property for the usage of works which was in public domain. Funds of the latter are used for the development of culture.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- We deem that development of model provisions was based on the right principles. In particular, it is important to preserve the balance between strong protection and the possibility of a free development of folklore and it's propaganda.

(b) Protected expressions of folklore

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- In Kyrgyzstan for the designation of the term “Expressions of Folklore” are used two terms: “works of people’s traditional art” and “works of people’s creativity.” The term “expressions of folklore” in Kyrgyzstan is understood in a more narrow sense than is provided in the Model Provisions, and means basically the works of people’s oral art.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- From our point of view, the Model Provisions cover practically all types of works of people's creativity.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Except the actions designated in Model Provisions and resulting in a economic damage, we deem that it is necessary to provide protection of the moral rights of the nation. In particular, in our country there are the cases where certain authors take the works without designation that this work is common to all the people, and make the misrepresentation which prejudice the original work.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

- Expressions of folklore are the property of the nation and performers, the works of which are based on the people’s works.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- In Kyrgyz there is a system for the collective management of copyright and related rights and licensing is provided for the use of copyright subject matters. Organization for copyright management collects the fees for the use of works which are in public domain as well, which are transferred to the State Fund of Intellectual Property.



(f) Relation to other forms of protection

Question II. 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- The necessity for an international treaty on the protection of expressions of folklore is stimulated by the increasing amounts of cases of people's creativity products unfair utilization. And first of all there is a necessity for the protection of expression of folklore on the international level.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- In the Model Provisions there already provided for certain points of the future legislation for the protection of expression of folklore as well as on the international level.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

(i) On the criteria for determination (identification) of expression of folklore might be genre features (for example: epochs, fairy tales, legends, which have the people's heritage origin, on the contrary, novels, essays are made by the authors) and such a criteria might be the absence of author.

(ii) One of the ways for the solution of this matter from our point of view is the foundation, on the basis of regional agreements, of Regional Centres for protection and examination of expressions of folklore, which can deal with the protection of expressions of folklore matters and management of countries with similar traditional culture and be capable to make competent conclusions on belonging of a particular expression of folklore to the nation of one or other country.

*II. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- From our point of view it is necessary to conduct seminars in those WIPO Member States, where there is not any form of protection provided for expressions of folklore for the time being. It is also necessary to make the translation of Model Provisions in official languages of WIPO Member States.

[End of response of Kyrgyzstan]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF LATVIA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- There is no such authority in Latvia

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Not available

If you have marked any of the boxes, please provide further information.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Since there is not any group of people in Latvia practicing traditional knowledge in everyday life and we have not faced any illicit exploitation of our traditional knowledge we have not established any system of legal protection of traditional knowledge and folklore. Folklore is considered in Latvia as expression of art.

*II. Application of the Principal Provisions of the Model Provisions*

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- At present we have not thought of folklore as a subject matter of any property rights. We have not had any discussion among interested circles concerning this matter

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- In Latvia there is accepted definition of folklore as it is adopted by the 25<sup>th</sup> Session of Conference of the General Assembly of UNESCO on 15<sup>th</sup> November 1989 in Paris. Music, dances, games, plays, mythology, rites, customs, handicrafts and the like are considered as expressions of folklore.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- There is no legal protection afforded to expressions of folklore in our country. Each person can use elements of folklore in creation of new products or works which can be protected according to copyright or industrial property rights.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response:

- At present we can not answer this question neither positively nor negatively.

[End of response of Latvia]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE REPUBLIC OF LITHUANIA

In a letter received on October 2, 2001, by the Secretariat of the World Intellectual Property Organization (WIPO), the State Patent Bureau of the Republic of Lithuania advised that there are no special provisions protecting traditional knowledge and folklore in the legal acts of Lithuania. In addition, according to the Law on Copyright and Neighbouring Rights (Art.5), protection of this law does not apply to the subject matter of works of folk art and they therefore should be *sui generis* protected. It was further stated that because Lithuania has many old traditions and folklore, Lithuania is interested in the activities within this field.

[End of response of the Republic of Lithuania]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF MALAYSIA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- None for the moment.



Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- None.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Not relevant.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

Not relevant

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

Response - Not relevant

*This aspect of the  
Model Provisions  
has not been followed  
in our national laws  
and regulations*

The basic principles underlying the Model Provisions (see the Preamble)	<input type="checkbox"/>
The scope of “expressions of folklore” protected by the Model Provisions (section 2)	<input type="checkbox"/>
The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)	<input type="checkbox"/>
The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)	<input type="checkbox"/>
The sanctions and remedies provided for (sections 7 and 8)	<input type="checkbox"/>
The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)	<input type="checkbox"/>

If you have marked any of the boxes, please provide further information.

Response:

- Not relevant.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- Not relevant.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Being a new subject matter, it needs to be studied in great detail.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

- Not relevant.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- None.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Not relevant.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- Model Provisions need to be modified to suit the current technological environment.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- None.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- Not relevant.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Yes

Not relevant.

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- (a) Identified by cultural performances by ethnic groups
- (b) The Ministry of Culture, Arts and Tourism maintains a list of these ethnic groups.

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- None.



Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- None.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- None.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- Not relevant.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Not relevant.

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

- Not relevant.

Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- Not relevant.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Yes

Not relevant.

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

- Not relevant.

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- Not relevant.

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

1. Shadow plays in Malay Heartland of Kelantan and Terengganu
2. Folk poetry
3. Folk songs
4. Instrumental folk music
5. Folk dances

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- None.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- None for the moment.
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Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

- Not relevant.

Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

- Not relevant.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Not relevant.

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- Not relevant.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Not relevant.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- None

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Yes

Not relevant.

No

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- International agreement is necessary in order to settle possible disputes arising between countries on claim of ownership of the expressions of folklore.



Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

1. Create database on expressions of folklore
2. Define workable mechanism among the countries in the region in cases of common expressions of folklore.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- None

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

1. Amend the Model Provision to the current technological environment.

[End of response of Malaysia]

CUESTIONARIO SOBRE EXPERIENCIAS NACIONALES EN LA PROTECCIÓN  
JURÍDICA DE LAS EXPRESIONES DEL FOLCLORE

RESPUESTA DE MÉXICO

*Información de contacto*

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*I. Aplicación del conjunto de Disposiciones Tipo*

Pregunta I. 1: ¿Qué ministerio(s), departamento(s), organismo(s) y oficina(s) gubernamental(es) de su país se ocupa(n) de las cuestiones relativas a la protección jurídica de las expresiones del folclore?

Respuesta:

Instituto Nacional del Derecho de Autor, Órgano desconcentrado de la Secretaría de Educación Pública.

Pregunta I. 2: ¿Disponen de las Disposiciones Tipo en (uno de) los idiomas oficiales de su país?

Respuesta:

Actualmente las Disposiciones Tipo no se encuentran disponibles en idioma español.

Pregunta I. 3: ¿Reciben las “expresiones del folclore”, ya sea como se definen en las Disposiciones Tipo, o como se entienda ese término en su país, una protección jurídica específica como propiedad intelectual\* en su legislación nacional (esté dicha legislación relacionada con la propiedad intelectual o no)?

Respuesta:

Sí

No

En caso afirmativo:

i) Sírvase facilitar información sobre la legislación pertinente, por ejemplo los nombres completos, los artículos o párrafos pertinentes, las fechas de entrada en vigor y el nombre y las señas del ministerio, departamento, organismo u oficina encargada de la administración de la(s) ley(es) de que se trate. *Sírvase enviar a la Secretaría de la OMPI copias de dicha(s) leyes.*

Respuesta:

La Ley Federal del Derecho de Autor

Título VII

De los Derechos de Autor sobre los Símbolos Patrios y de las Expresiones de las Culturas Populares

Capítulo I

Disposiciones Generales

Artículo 154

Capítulo III

De las Culturas Populares

Artículo 157 al 161

Título XII

De los procedimientos Administrativos

Capítulo I

De las Infracciones en Materia de Derecho de Autor

Artículo 229, fracción XIII y Artículo 230 fracción I

Entrada en vigencia

24 de marzo de 1997

Reglamento de la Ley Federal del Derecho de Autor

Título VI

De los Derechos sobre los Símbolos Patrios y las Culturas Populares

Capítulo Único

Artículo 48

Entrada en vigencia

23 de mayo de 1998

ii) ¿Se basa la legislación pertinente, al menos en cierta medida, en las Disposiciones Tipo?

Respuesta:

Sí

No

iii) Sírvase indicar a continuación qué aspecto(s), de haberlo(s), de las Disposiciones Tipo no se siguen en su legislación nacional:

*Este aspecto de las Disposiciones Tipo no se ha seguido en nuestra legislación nacional*

Respuesta:

Los principios básicos en los que se basan las Disposiciones Tipo (véase el Preámbulo)

El alcance de las “expresiones del folclore” protegidas por las Disposiciones Tipo (Artículo 2)

Los actos contra los cuales están protegidas las expresiones del folclore y las excepciones al respecto (Artículos 3, 4, 6 y 6)

Las disposiciones que se ocupan de la autorización de los usos de las expresiones del folclore (Artículos 9 y 10)

Las sanciones y los recursos previstos (Artículos 7 y 8)

Las soluciones que ofrecen las Disposiciones Tipo para la protección de las expresiones del folclore de países extranjeros (Artículo 14)

Si ha señalado alguno de los cuadros, sírvase facilitar más información.

Respuesta:

Véase la respuesta en el siguiente punto.

iv) Indique otra(s) razón(es) por la(s) que determinados aspectos de las Disposiciones Tipo no se han aplicado en su país.

Respuesta:

Se desconoce porqué las Administraciones anteriores no propusieron las reformas legislativas para que la nueva Ley Federal del Derecho de Autor incluyera todas las disposiciones tipo.

## *II. Aplicación de las disposiciones principales de las Disposiciones Tipo*

Pregunta II. 1: ¿En qué principios se basa la protección del folclore en su legislación nacional?

Respuesta:

La Ley Federal del Derecho de Autor establece la protección de las expresiones del folclore como “Cultura Popular”. En este sentido, prevé la protección de las obras literarias, artísticas, de arte popular o artesanal, así como todas las manifestaciones primigenias en sus propias lenguas y los usos, costumbres y tradiciones de la composición pluricultural que conforman el Estado mexicano que no cuenten con autor identificable.

Las obras literarias, artísticas, de arte popular o artesanal, desarrolladas y perpetuadas en una comunidad o etnia originaria o arraigada en la República Mexicana estarán protegidas por la Ley contra su deformación, que cause demérito a la misma o perjuicio a la reputación o imagen de la comunidad o etnia a la cual pertenecen.

En toda fijación, representación, publicación, comunicación o utilización en cualquier forma, de una obra literaria, artística, de arte popular o artesanal deberá mencionarse la comunidad o etnia, o la región de la que es propia.

Pregunta II. 2: ¿Tiene alguna observación con respecto a los principios tenidos en cuenta en la elaboración de las Disposiciones Tipo? ¿Cree que los principios siguen siendo viables? ¿Existen otros principios adicionales que deberían tomarse en cuenta en cualquier modificación de las Disposiciones Tipo?

Respuesta:

Se consideran adecuados los principios que guiaron la elaboración de las Disposiciones Tipo y se estima que éstos aún son viables.

Pregunta II. 3: Sírvase facilitar información, observaciones o experiencias prácticas nuevas sobre los principios básicos tomados en consideración para la elaboración de las Disposiciones Tipo.

Respuesta:

Coincidimos plenamente con el principio consistente en que debe existir un balance entre la protección de las expresiones del folclore por un lado, y la libertad y fomento de desarrollos adicionales de las mismas, por el otro, ya que este balance conlleva necesariamente a la evolución y enriquecimiento de las expresiones del folclore.

Pregunta II. 4: ¿Se utiliza un término distinto de “expresiones del folclore” en su legislación nacional para describir el objeto a que se hace referencia en el Artículo 2 de las Disposiciones Tipo? En caso afirmativo:

- i) ¿Cuál es ese término?
- ii) ¿Cuál es el objeto que abarca?
- iii) ¿Por qué fue elegido ese término?
- iv) ¿Qué objeto abarcaría el término “expresiones del folclore” en su país?

Respuesta:

El término empleado en la Ley Federal del Derecho de Autor para las expresiones de folclore es “Cultura Popular”. Este término se refiere al conjunto de creaciones que emanan de una comunidad cultural fundada en la tradición y que es expresada por un grupo que responde a las expectativas de la comunidad en cuanto a expresión de su identidad cultural y social.

La palabra Cultura Popular cubre todas las categorías de expresión previstas en la sección 2 de las Disposiciones Tipo.

Pregunta II. 5: En la aplicación práctica de su legislación nacional, ¿se han planteado dificultades al determinar el folclore que debe protegerse?

Respuesta:

Sí

No

Sírvase facilitar más información y, si es posible, ejemplos. ¿Cómo se determinan las expresiones del folclore en su país (por ejemplo, ¿están registradas como tales? ¿Existen inventarios, archivos y bases de datos sobre el folclore?)?

Respuesta:

En virtud de que la Ley Federal del Derecho de Autor es prácticamente nueva, a la fecha no se cuenta con información práctica en la materia.

Pregunta II. 7: ¿Existen “expresiones del folclore” u otros ejemplos o formas de cultura y conocimientos tradicionales que no queden protegidos por las Disposiciones Tipo, y que considere que deberían estarlo?

Respuesta:

Tal vez faltaría la protección de la medicina tradicional.

Pregunta II.8: Sírvase facilitar información, hacer observaciones o explicar su experiencia práctica acerca del alcance de las expresiones del folclore protegidas.

Respuesta:

El Instituto Nacional del Derecho de Autor, preocupado por difundir la protección de la cultura popular en México, el 17 de agosto de 2001, organizó la celebración del Primer Seminario sobre la Protección de la Cultura Popular.

Pregunta II. 9: Sírvase facilitar información acerca de la naturaleza de la protección concedida en su legislación con respecto a las expresiones del folclore. Por ejemplo, ¿qué acciones requieren autorización? ¿Los derechos concedidos son exclusivos?

Respuesta:

A Ley Federal del Derecho de Autor dispone que las obras literarias, artísticas, de arte popular o artesanal, así como todas las manifestaciones primigenias en sus propias lenguas, y los usos, costumbres y tradiciones quedan protegidas independientemente de que no se pueda determinar la autoría individual de ellas o que el plazo de protección otorgado a sus autores se haya agotado.

La legislación mexicana no contempla la autorización de la autoridad o de la comunidad para la utilización de las obras literarias, artísticas, de arte popular o artesanal, ya que ésta dispone que es libre la utilización de este tipo de obras, siempre que no se contravengan las disposiciones de dicha Ley.

La Ley no prevé un derecho exclusivo para la protección de las obras literarias, artísticas, de arte popular o artesanal.



Pregunta II. 10: ¿Qué principios rigen en la legislación de su país para determinar los usos que requieren autorización? (Por ejemplo, los principios que figuran en el Artículo 3 de las Disposiciones Tipo son que exista fin lucrativo y que el uso se haga fuera de su contexto tradicional o acostumbrado).

Respuesta:

Como se mencionó en el punto anterior, la legislación mexicana no contempla la autorización de la autoridad o comunidad para la utilización de las obras literarias, artísticas, de arte popular o artesanal.

Pregunta II. 11: Tomando como base la experiencia en la aplicación de la legislación de su país, ¿contra qué formas de explotación, utilización y acciones en relación con las expresiones del folclore se debería otorgar protección? Proporcione ejemplos prácticos. ¿Existe alguna experiencia práctica relacionada con la aplicación de las disposiciones pertinentes de la legislación de su país que pudiera servir de ayuda a un público más amplio?

Respuesta:

No se cuenta con información práctica.

Pregunta II. 12: Si la legislación de su país prevé derechos en relación con la mención de la fuente (como los previstos en el Artículo 5 de las Disposiciones Tipo), indique, haciendo referencia en la medida de lo posible a ejemplos prácticos, si esos derechos han sido útiles, eficaces y viables en la práctica.

Por ejemplo, ¿cómo se aplica en su país el requisito de que la expresión del folclore sea “identificable” (que proceda de una comunidad o lugar conocidos)? ¿Cómo se aplica este requisito en el caso de que en su país haya varias comunidades que compartan expresiones del folclore similares? ¿O en el caso de que en su país haya comunidades que vivan también en países vecinos, y/o comunidades que hayan adoptado y desarrollado una expresión del folclore que proceda de otro país?

Respuesta:

No se cuenta con información práctica.

Pregunta II. 13: ¿Tiene algún límite temporal la protección que proporciona la legislación de su país?

Respuesta:

Sí

No

Si la respuesta es afirmativa, ¿cuál es la duración? ¿Cómo se determina el comienzo de la protección? ¿Qué ocurre con la expresión del folclore después de que expire el período de protección (por ejemplo, pasa a ser de dominio público de manera que cualquier persona pueda copiarla y utilizarla sin restricción)?

Si la respuesta es negativa, ¿tiene su país alguna experiencia a este respecto que pueda servir de ayuda a un público más amplio?

Respuesta:

No se cuenta con experiencia práctica.

Pregunta II. 16: Facilite cualquier otra información o experiencia práctica relacionadas con la naturaleza de la protección que se concede a las expresiones del folclore en su país.

Respuesta:

No se cuenta con experiencia en la materia.

Pregunta II.17: En su país, ¿se considera que las expresiones del folclore son:

Respuesta:

i) “Propiedad” del país en su conjunto (forman parte del patrimonio cultural nacional)?

ii) “¿Propiedad” de las comunidades indígenas u otras comunidades locales de su país?

iii) ¿“Propiedad” de artistas individuales cuyas obras se basan en tradiciones folclóricas?

iv) Ninguna de las tres. Proporcione información adicional.

Pregunta II. 18: Facilite cualquier otra información o experiencia práctica relacionada con la autorización de utilización de expresiones del folclore en su país.

Respuesta:

Como se mencionó anteriormente la Ley Federal del Derecho de Autor no prevé la autorización de la autoridad o de la comunidad para la utilización de las expresiones del folclore.

Pregunta II. 19: ¿Establece la legislación de su país una “autoridad competente” y/o una “autoridad supervisora” tal como figura en los Artículos 9 y 10 de las Disposiciones Tipo?

Facilite información acerca de las atribuciones, la financiación, el mandato, la composición, las responsabilidades, las funciones y las actividades de esos órganos en su país.

Describa el procedimiento para obtener autorizaciones para utilizar expresiones del folclore.

¿Hay que pagar alguna tasa para utilizar las expresiones del folclore?, y, en caso de que así sea, ¿cómo se determinan y a qué objetivos se destinan (por ejemplo, a la promoción de la cultura nacional)?

Respuesta:

El Instituto Nacional del Derecho de Autor es la autoridad encargada de la protección de las obras literarias, artísticas, de arte popular o artesanal y, por ende, de vigilar el cumplimiento de las disposiciones previstas en la materia, en la Ley Federal del Derecho de Autor.

La legislación nacional no prevé el pago de una retribución por el uso de las expresiones del folclore.

En general, ¿qué lecciones y ejemplos prácticos podrían ser útiles para un público más amplio?

Respuesta:

No se cuenta con información práctica.

Pregunta II. 20: Si la legislación de su país considera que las comunidades indígenas u otras comunidades locales de su país son “titulares” de sus formas respectivas de patrimonio artístico tradicional, ¿cómo ponen en práctica, gestionan y ejercen sus derechos las comunidades concernidas de conformidad con la legislación? ¿Qué lecciones y ejemplos prácticos podrían ser útiles para un público más amplio?

Respuesta:

Las comunidades de los Estados de la República Mexicana pueden acudir al Instituto Nacional del Derecho de Autor cuando:

- las obras literarias o artísticas, de arte popular o artesanal que sean desarrolladas por su comunicad o etnia estén siendo deformadas con el objeto de causar demérito a la misma o perjuicio a la reputación o imagen de la comunidad a la cual pertenecen dichas obras.
- Cuando en una fijación, representación, publicación, comunicación o utilización de una obra literaria, artística, de arte popular o artesanal no se mencione la comunidad o etnia o la región de la República Mexicana de la cual es propia.

Es importante mencionar que a la fecha no se cuenta con experiencia en la materia.

Pregunta II. 21: ¿Qué recursos y sanciones prevé la legislación de su país?

Respuesta:

La sanción prevista en la legislación mexicana para el caso de violación de los derechos de la cultura popular inicia con un procedimiento administrativo de infracción en materia de derechos de autor que se encuentra plasmado en el Artículo 229, fracción XIII de la Ley Federal del Derecho de Autor.

Pregunta II. 22: Facilite cualquier otra información o experiencia práctica relacionadas con los recursos, las sanciones y la jurisdicción.

Respuesta:

No se cuenta con información práctica.

Pregunta II.23: ¿Existe algún ejemplo en su país de expresiones del folclore que hayan obtenido protección por medios indirectos tal como los derechos conexos?

Respuesta:

Sí

No

Pregunta II. 24: Proporcione cualquier otra información o experiencia práctica relacionada con otras formas de protección otorgada a las expresiones del folclore en su país.

Respuesta:

No existen otras formas de protección en México.

Pregunta II. 25: ¿Existe algún caso en el que el folclore original de su país se haya explotado o utilizado en un país extranjero?

Respuesta:

NOTA: Hasta ahora se desconoce oficialmente si las obras literarias, artísticas, de arte popular o artesanal han sido explotadas o utilizadas en otros países.

Sí

No

En caso de respuesta afirmativa:

- ii) ¿Pudieron las autoridades pertinentes y/o las personas afectadas de su país emprender alguna acción legal para impedir esa explotación o utilización o para u obtener indemnización al respecto? En caso de respuesta afirmativa facilite información detallada en la que se incluya la base jurídica sobre la que se emprendió tal acción legal (por ejemplo, la base de la reciprocidad establecida en la legislación de su país). Respuesta:Pregunta II. 26: ¿Considera que es necesario establecer un acuerdo internacional para la protección de las expresiones del folclore?

Respuesta:

En términos generales la Ley Federal del Derecho de Autor establece una sanción de cinco mil hasta quince mil días de salario mínimo para aquella persona que fije, represente, publique, efectúe alguna comunicación o utilice en cualquier forma una obra literaria y artística protegida conforme al Capítulo III del Título VII de la Ley Federal del Derecho de Autor.

Pregunta II.26: ¿Considera que es necesario establecer un acuerdo internacional para la protección de las expresiones del folclore?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Se considera necesario el establecimiento de un instrumento jurídico internacional que permita la protección de las expresiones del folclore, toda vez que algunas de estas expresiones han sido utilizadas y explotadas sin autorización o sin el reconocimiento de las comunidades o etnias de las cuales son originarias.

Pregunta II. 27: En caso de respuesta afirmativa, ¿opina que las Disposiciones Tipo podrían ser un punto de partida adecuado para el desarrollo de ese acuerdo?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Se considera que las Disposiciones Tipo pueden servir de base para la elaboración de un Proyecto de Acuerdo o Tratado internacional que permita la protección de las expresiones del folclore.

Pregunta II. 28: ¿Tiene alguna práctica en relación con los dos principales problemas que impidieron la conclusión de un tratado internacional en 1984 (a saber, i) la falta de fuentes adecuadas para identificar las expresiones del folclore que debían ser protegidas y ii) la falta de mecanismos viables para determinar las expresiones del folclore que se podían encontrar no sólo en un país sino en varios países de una región)?

Respuesta:

Se considera que el primer problema podría ser resuelto mediante la elaboración de bases de datos sobre las expresiones del folclore, por parte de cada país.

Pregunta II. 29: Proporcione cualquier otra información o experiencia práctica relativa a la protección de las expresiones del folclore de países extranjeros.

Respuesta:

No se cuenta con información práctica.

[Fin de la respuesta de México]

QUESTIONNAIRE RELATIF A L'EXPERIENCE ACQUISE AU NIVEAU  
NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DE MONACO

*Coordonnées*

Nom :  
Qualité :  
Office/organisation : Direction de l'expansion économique  
État membre : Principauté de Monaco  
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*I. Application des dispositions types dans leur ensemble*

Question I. 2 : Les dispositions types sont elles disponibles dans la (une des) langue(s) officielle(s) de votre pays?

Réponse :

Oui.

Question I. 3 : Les “expressions du folklore”, soit telles qu’elles sont décrites dans les dispositions types, soit telles qu’on les entend dans votre pays, bénéficient-elles d’une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (que les dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

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\* Le questionnaire porte sur l'expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle. Il est donc question d'une protection juridique spécifique de l'ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d'une législation *sui generis* (particulière) ou des dispositions d'une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d'auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l'identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu'objets de propriété intellectuelle.



Réponse :

Oui

Non

d) Autorisation d'utilisation des expressions du folklore

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la "propriété" du pays dans son ensemble (en tant que partie du patrimoine culturel national)?

ii) la "propriété" de communautés autochtones ou locales vivant dans votre pays?

iii) la "propriété" des différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

f) Relations avec d'autres formes de protection

Question II. 23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d'une protection indirecte, par exemple au titre des droits voisins?

Réponse :

Oui

Non

[Fin de la réponse de Monaco]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF MOZAMBIQUE

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Ministry of Culture
- Instituto Nacional Do Livro e Disco (National Institute of Books and Record)
- Departamento de Directos de Autor (Copyrights Department)

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Copyright Law (published on 27<sup>th</sup> February 2001), Articles 4 (l), 31, 50, Glossary 13.
- Ministry of Culture.
- National Institute of Book and Record – Copyrights Department.
- The regulations are in production.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Until this year we are using the former colonial Copyrights Law (1966). Since the official publication of our new Copyrights Law we have not produced yet the necessary regulations to reinforce it.

## *II. Application of the Principal Provisions of the Model Provisions*

### (a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- In our Copyright law we consider the folklore as the other intellectual creations, give it an unlimited time protection and give to the state the copyright property.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- No comments since we have no experience until now.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- No.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- We still are producing the Copyrights Law regulations, thus we have not fixed these aspects.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Idem.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

- It is the State through the Ministers Council. The details will be in the regulations to be produced.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- The same as for any other intellectual property.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Not at this moment.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- An international agreement will help to discover and act against the illegal exploitation of folklore since it will give a chance to detect the foreign exploiters.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No



Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- None at the moment.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- None.

Additional Information provided by Mozambique

The completed questionnaire submitted by Mozambique enclosed a copy of the Copyright Law as published on February 27, 2001. The following articles of the Law apply directly to expressions of folklore:

**Artigo 4 Amibito material**

1. A presente Lei aplica-se em especial ás obras literárias, artísticas e científicas quando criações intelectuais originais no domínio literário e científico, nomeadamente:  
(1) ... as expressões do folclore.

**Artigo 31 Obras de foclore**

1. A titularidadedo direito de autor sobre as obras de foclore pertence ao Estado que o exerce através do Cobselho de Ministros, sem prejuízo dos direitos daqueles que a recolheram, transcreveram, arranjaram ou traduziram, desde que tais recolhas, arranjos ou traduções se revistam de originalidade e reseitem a sua autenticidade.
2. Os exemplares das obras de foclore, bem como as respectivas transcrições, traduções, arranjos ou outras transformações reproduzidos ou realizados no estrangeiro sem autorização da autoridae competente só podem ser imporados ou distribuídos no território nacional mediante autorização do órgão governnamental responsável pela área da Cultura.

**Artigo 50 Protecção das obras de foclore**

A protecção das obras de foclore é ilimitada no tempo.

**Glossário**

13. Expressões do foclore – produções de elementos característicos do património artístico tradicional, desenvolvido e perpetuado por uma comunidade ou por indivíduos reconhecidos como respondendo aos anseios dessa comunidade, compreendendo os populares, as danças e espectáculos dos rituais e as produções de arte popular.

[End of response of Mozambique]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF NAMIBIA

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

Ministry of Foreign Affairs, Information and Broadcasting – Directorate Audiovisual Media and Namibia Communications Commission

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

Yes

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- The Namibian Copyright and Neighbouring Rights Protection Act, Act 6 of 1994 as amended in 2000.
- Part V Sections 60-63 (see end of questionnaire).
- The same Ministry of Foreign Affairs, Information and Broadcasting administers the Act.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the Model Provisions has not been followed in our national laws and regulations*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

The Model Provisions arrived after the law had already been amended.

(iv) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

The Model Provisions were received after the law had already been revised

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

It was received at a later stage.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- I think it would be advisable, for the sake of proper comprehension of our respective legislations, that the Model Provisions be inserted as is. They are simple and in this way they would be easily understood by any ordinary person.
- Sections 6 and 9 (1) – (2) of the Provisions must be left to the Member States themselves.
- It is advisable that with regards to Section 11 (1) and (2) any appeals or decisions by or against the competent authority must be done through the High Court only. This is to emphasise the Government's seriousness about the protection of its national heritage.
- Should Section 14(i) be left as is, it would not ensure effective protection of folklore since not all Member States have signed reciprocal agreements with one another. Rather use the provisions of the Berne Convention and the TRIPs Agreement.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- The first "definition" of the term "folklore" as given in Section 2 of the Model Provisions would somehow make the protection process a bit difficult for the following reasons:

The Namibian Example:

- Communities in the Southern Angolan Provinces share the same cultures and traditions with Namibian in the far northern parts.
- People from the western side of Botswana also share almost everything with Namibians from the Eastern border town of Gobabis.
- Another common example is that one of the Maasai people who live both in Kenya and Tanzania and both share the same cultures and/or traditions.

(b) Protected expressions of folklore

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- In artistic works, folklore is identified with the assistance of the National Copyright Owners Collecting Society (NASCAM).
- In literary works, folklore is identified through a specific department in the Ministry of Environment and Tourism, the Namibian Publishers Association and the Ministry of Basic Education and Culture.
- The National Archives in the Ministry of Basic Education, Culture and Sport, also plays a very important role in the preservation of folkloral works.
- The only difficulties there are, are those of communities sharing the same cultures and traditions with neighbouring countries.



Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the tem?
- (ii) What subject matter does it cover?

Response:

- No. The term “expressions of folklore” is the one generally used.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- So far, the Model Provisions has covered almost everything.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- The protection period is indefinite.
- Authorisation is required for any act that is commercially oriented.
- The community from which the expression has been derived owns the right to such an expression.
- The Act is not clear whether the rights granted are exclusive or non-exclusive.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- The principles used as per Section 61 (1) (a) – (f), are such that the use of these expressions must not be of commercial intent.
- Unless the use of any folkloral expressions is aimed at:
  - Private or personal use;
  - Criticism or reporting on current events;
  - Teaching or researching and/or;
  - Illustrations;
  - Incidental use.
- That use would always require authorisation

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

- Protection of the expression of folklore in Namibia should be given in:
  - Artistic works – Rock paintings by the San people, commonly known as the Bushmen.
  - Literary works – Folk tales, poetry and short stories told by our forefathers to the missionaries and translated into western languages to be sold back to us in form of literature books.
  - Musical expressions – Musical instrument that have been transformed into other modern instruments and given different names.
  - Folk dances and rituals.

Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

- Refer to Question II.3.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

- The protection for the expression of folklore is indefinite as per Section 60 (2) of the Act.

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- Section 61 (1) (a) – (f) states the exemptions as follows:

- Protection for the expression of folklore shall not be violated if:

- the act is for private or personal use;
- criticism or review of the expression;
- reporting on current events;
- for educational or research purposes;
- an illustration in an original work;
- borrowing of an expression for creating an original work;
- incidental use.

- We take it that all stakeholders are somehow happy with the current form of protection since no comments or complaints have been received from the public during the revision of the law

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Refer to answers to Question II.11.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- The protection period is indefinite – Section 60 (2).
- The act is not clear on which form of expressions are to be protected, that is why we see it as a necessity to insert the Model Provisions as is.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- There is little we could say at this moment since the supervisory authority that should deal with this issue has not yet been set up. Everything is still being taken care of by the MFAIB with assistance from NASCAM and other stakeholders.

Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

- Since there is no supervisory authority in place, anybody who wishes to make use of any expressions is normally directed to either the Ministry of Environment and Tourism, Basic Education and Culture or MFAIB. Some go to the Copyright Society which in return, informs the relevant authority.

(e) Sanctions, remedies and jurisdiction

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- Section 62 (2) states that:
- The community from which the infringed expressions are derived can sue.
- The copies of the infringed expressions must be delivered to the plaintiff.
- Sections 63 (a) and (b) states that the offender shall be liable to either a fine ranging from N\$ 20 000 – N\$ 30 000 or to an imprisonment of a period ranging from four to six years or both.
- The Act is not clear as to which court has the jurisdiction over sanctions of this nature.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Folkloral artistic works: Tourists who get interested in the artistic rock paintings by the bushmen are not allowed to do anything with such works without giving something back that community.
- Traditional garments, headgear etc: Those interested in photographing the Himbas of Kaokoland in the Kunene region are also not allowed to do so without any compensation. The Himbas wear special garments and headgear made out of pure leather that covers only half of their brown-painted bodies. These photographs are normally used as postcards.
- Folkloral musical works: Music users including broadcasting organizations that perform folk music in public usually pay the adopters of such music with the assistance of the Copyright Society.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- Folkloral literary works: The Namibian Publishers Association has been sensitised to be on the look out for any book of literature that enters the Namibian book market and which is suspected as being a translation of any of the Namibian tales and/or short stories told by our forefathers.

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

If yes:

- (i) Please provide details of these cases.

Response:

- Photographing of the Bushmen and the Himbas and displaying these photographs on postcards by people calling themselves tourists. These postcards come to Namibia from other countries and are sold in bookshops around the country while we know very well that they were not published anywhere in Namibia.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Even if somebody wished to institute legal actions against anyone involved in the practice of infringing the expression of folklore, it was not that easy as there were no proper legal procedures to this effect. There were clear guidelines regarding the legal protection of folkloral expressions.



Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- The Model Provision is one such example if it is inserted in our respective legislation as is.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- The Model Provision could undoubtedly serve as an effective tool but it must not be implemented on a reciprocity basis since not all countries have signed such agreements with one another.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- (i) With the adoption of the Model Provisions, the sources for the identification of folkloral expression does not seem to be a problem any more. The supervisory or competent authority must only be legally empowered to perform such task.
- (ii) This problem could be solved by identifying and licensing the expressions individually where two communities from either sides of the border happen to share the same cultures and traditions.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- Perhaps a special reciprocal agreement between countries shall also somehow help in the protection of folklore expressions of foreign origin but it must not be the basis or platform upon which overall protection of foreign expression must be granted. The Model Provision must still be the guiding tool in this regard.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- So far, the Model Provisions look good in their present form and it is only advisable that they be inserted in national legislations as such.
- The other suggestions we have is for the Global Intellectual Property Issues Division of WIPO to come up with another Model Provisions that would serve as an example of the special reciprocal agreement on the protection of folkloral expressions of foreign origin.

Additional Information Provided by Namibia

The Ministry of Foreign Affairs, Information and Broadcasting advised in its letter enclosing the above response as follows:

“Regarding Question 1.3 on page 3 of the questionnaire, we attach herewith copies of sections 60-64 of our Copyright bill that deals with the protection of expressions of folklore and which is currently being revised.”

The sections attached to the letter are the following:

Restrictions on use of expressions of folklore

60. (1) Subject to the provisions of this Part, no person shall without the consent of the community from where an expression is derived-
- (a) publish, make a reproduction or distribute copies of the expression;
  - (b) communicate the expression to the public by performance, broadcasting, distribution by cable or other means;
  - (c) include the expression in a cinematograph film or a television broadcast;
  - (d) cause the expression, or a television programme or other programme including the expression, to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the expression, and is operated by the original broadcaster;
  - (e) make adaptations, translations and other transformations of the expression, when such adaptations, translations and other transformations are made either for commercial purposes or outside the traditional or customary context of the expression;
  - (f) do in relation to adaptations, translations and other transformations of the expression any act specified in paragraphs (a) to (d).
- (2) The restrictions imposed under subsection (1) shall be applicable for an indefinite period of time.

Exceptions regarding protection of expressions of folklore

61. (1) Section 60 shall not apply where the acts referred to in that subsection relate to-

- (a) personal or private use;
- (b) criticism or review of the expressions or reporting on a current event, if only short excerpts from the expressions, to the extent justified by the purpose, are used;
- (c) teaching or scientific research;
- (d) an illustration of an original work, if the extent of the use is compatible with fair practice;
- (e) borrowing of expressions of folklore for creating an original work, if the extent of the use is compatible with fair practice;
- (f) incidental use of expressions of folklore, including the use of objects containing expressions of folklore, which are permanently located in a place where they can be viewed by the public, if the use consists in the inclusion of their image in a photograph, a film, audiovisual work or a television broadcast.

(2) In all printed publications, and in connection with any communication to the public, of any identifiable expression of folklore, the source of that expression shall be indicated by mentioning the community or place from where the expression used is derived.

Infringement of folklore

62. (1) A person infringes rights in expressions of folklore, if the person, without the consent of the community from which the expression is derived, does or causes any other person to do any act which the community has the exclusive right to do or to authorise.

(2) Subject to the provisions of this Act, infringements of the rights in expressions of folklore are actionable at the suit of the community from which the expressions are derived, and in any action arising from an infringement all such relief by way of damages, interdict, delivery of infringing copies or plates used or intended to be used for infringing copies or otherwise shall be available to the plaintiff as is available to the plaintiff in any corresponding proceedings in respect of infringements of other proprietary rights.

Offences and penalties

63. A person who knowingly contravenes any provision of section 60 shall be guilty of an offence and shall-
- (a) in the case of a first conviction, be liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment; or
  - (b) in the case of a second or subsequent conviction, be liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.

Measures, remedies and sanctions against abuses in respect of technical means of protection and rights management information

64. (1) The following acts are unlawful and, in the application of sections 56 to 59, 62 and 63, shall be considered to be infringements of the rights protected under this Part-
- (a) the manufacture or importation for sale or hire of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a phonogram or to impair the quality of copies made.
  - (b) the removal or alteration of any electronic rights management information without the consent of the owner of the rights acquired under this Part;
  - (c) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authority, of performances, phonograms or expressions of folklore, knowing or having reason to know that electronic rights management information has been removed or altered without the consent of the owner of the rights acquired under this Part.
- (2) In the application of sections 56 to 59, 62 and 63, any device and means mentioned in subsection (1) and any copy from which rights management information has been removed, or in which such information has been altered, shall be considered to be infringing copies and any act referred to in subsection (1) shall be treated as an infringement of neighbouring rights to which the civil remedies and criminal sanctions provided for in sections 56 to 59, 62 and 63 are applicable.

[End of response of Namibia]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE NETHERLANDS

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*I. Application of the Model Provisions as a Whole*

For all Member States

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Ministry of Education, Culture and Science (with regard to cultural heritage and folklore)
- Ministry of Justice (with regard to intellectual property issues)

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- In the Netherlands there is no national legal protection of an intellectual property nature for expressions of folklore. The Netherlands feel there is no specific need for such legal protection. Dutch folklore is seen as a part of the public domain. Legal protection of an intellectual property nature can be too rigid and possibly withdraw folklore from the public domain. The Netherlands would hereby like to stress the importance of the principle of free access to information and more specific access to cultural heritage, such as folklore.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.



II. *Application of the Principal Provisions of the Model Provisions*

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Response:

- Yes, especially with respect to intellectual property rights.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Article 1 sub a of the Dutch Neighbouring Rights Act of 1993 reads as follows

For the purposes of this Act and provisions laid down pursuant to this Act:

- a. *performer* means an actor, singer, musician, dancer or any other person who acts, sings, delivers or otherwise performs a literary or artistic work, or an artist who performs a variety or circus act or a puppet show;

- The Act on *Preservation of Cultural Heritage* (Wet tot behoud van het Cultuurbezit) makes it possible for the government to make a bid for important works in private property, which are being considered as unique by the Counsel of Culture. Purpose of this act is to prevent the selling of these works on forehand by the private owner to foreign countries. The cultural heritage, which is protected by this act, is an addition to the cultural heritage that is being preserved by government and museums. This extra protection is especially of importance for cultural heritage from which is to be expected that it is going to be lost for the Netherlands. To keep and obtain works of art which are of great importance for the Netherlands, there is a fund established. This fund is being financed by the Ministries of Finances and of Education, Culture and Science. On the list with objects which are protected under this law, are in the categories 'folklore' only some barrel organs named.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Please provide further information on your answer.

Response:

- In Europe culture is a national affair. An international agreement for the protection of expressions of folklore is therefore not the most obvious solution.
- The growing need for legal protection of folklore exists particularly in developing countries. We do see the importance of protection against the use and abuse of their cultural heritage. But again we would like to stress the importance of free exchange of information and artistic freedom.

[End of response of the Netherlands]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF NEW ZEALAND

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Introductory comments

New Zealand welcomes the opportunity to contribute to the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, by responding to this questionnaire, which seeks to gather legal and practical information on national experiences with the implementation of the Model Provisions for National Laws on the Protection of Expression of Folklore Against Illicit Exploitation and Other Prejudicial Actions ("the Model Provisions").

New Zealand is however of the view, and has stated for the record in a number of international forums in recent years (including UNESCO), that the use of the term "folklore" (and the concepts folklore encompasses) is not entirely appropriate to New Zealand's domestic situation. The term "expression of folklore" referred to in Model Provisions does not necessarily encompass those aspects of traditional or cultural property or practice that Maori might seek to protect. For these reasons New Zealand has not and would not implement the Model Provisions. New Zealand's answers to the following questions are premised on this proviso.

New Zealand is also of the view that the term "expression of folklore" is one that indigenous peoples may not use today to describe the sort of traditions and practices described by the Model Provisions. In a number of respects the Model Provisions may no longer reflect the aspirations of many indigenous peoples, including Maori, whose goal is to protect their rights and interests in this regard.

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<sup>1</sup>Please note this response makes several references to the term 'Maori'. For the purpose of this document 'Maori' is used to refer to the indigenous people of New Zealand.

I. Application of the Model Provisions as a Whole

Question I.1: Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-Ministry of Economic Development:

- Intellectual Property Rights Policy Group (intellectual property policy including copyright)
- Intellectual Property Office of New Zealand (registration of industrial property including designs)

-Ministry of Māori Development

-Ministry of Foreign Affairs and Trade

-Ministry for Culture and Heritage

-Ministry for the Environment

-National Library of New Zealand

-Archives New Zealand

Question I.2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

-Yes.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes :

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

-Not applicable.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are there relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

Not applicable.

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are followed in your national laws and regulations: not

*This aspect of the  
Model Provisions  
has not been followed  
in national laws  
and regulations*

Response:

Not applicable.

The basic principles underlying the Model Provisions (see the Preamble)

The scope of "expressions of folklore" protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exception thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilization of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

-Not applicable.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

-Not applicable.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

-Aspects of Maori traditional or cultural property and practice are to an extent protected by intellectual property laws. For example, traditional literary or artistic works may qualify for protection as copyright works under the Copyright Act 1994. Certain works might also be registrable as registered designs under the Designs Act 1953.

-A new Trade Marks Bill, currently being considered by Parliament, will if enacted allow the Commissioner of Trade Marks to refuse to register a trademark where its use or registration would be likely to offend a significant section of the community, including Maori. This provision would provide additional protection to some traditional or cultural expressions by preventing the inappropriate registration of marks based on Maori text and imagery.



-Te Waka Toi -the Maori Arts Board of Creative New Zealand and its making use of trademark protection through the development of the 'Maori Made Mark'. It is intended to be a [trade] mark of authenticity and quality, which will indicate to consumers that the creator of goods is of Maori descent and produces work of a particular quality. It is a response to concerns raised by Maori regarding the protection of cultural and intellectual property rights, the misuse and abuse of Maori concepts, styles and imagery and the lack of commercial benefits accruing back to Maori. The mark is regarded by many as an interim means of providing limited protection to Maori cultural property. The mechanism will not prevent the actual misuse of Maori concepts, styles and imagery but may decrease the market for "copycat" products.

-Different forms of protection are provided through culture and heritage law.

- The Antiquities Act 1975 regulates the export, sale and ownership of antiquities including Maori artifacts (including anything that relates to the history, art, culture and traditions of Maori). A review of the Act is currently being undertaken which will consider a number of matters including: improved export and import regulation of cultural heritage objects, appropriate protection for both Maori and nationally significant objects (and establishing descriptive categories for those objects that would be subject to Crown protection), the custody of newly found cultural heritage objects, accession to international conventions on the illicit trade in intellectual and cultural property, and ensuring that penalties provide better protection for cultural heritage objects.
- New Zealand is currently undertaking a review of the role of government in Maori culture and heritage. The review covers both tangible and intangible elements, and incorporates land-based historic heritage, natural resources, sacred sites, cultural property, Maori arts, and language and customs. In the context of the review, New Zealand will also consider the development of legislation to protect tangible treasures or property (as defined by Maori) which will include physical artifacts.
- The Historic Places Act 1993 has as its purpose the promotion of the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand. A range of Maori heritage services are provided including advice on conservation of tangible cultural heritage. The Historic Places Trust registers archaeological, traditional and sacred sites and Maori structures. Some archaeological sites have artistic features, for example rock paintings by some of New Zealand's earliest indigenous people.
- The National Library of New Zealand has a statutory role to preserve the documentary cultural heritage of the nation. This includes published and unpublished documents and sound recordings reflecting the experience of the various groups that emigrated to New Zealand. The National Library has developed its 'Plan for Partnership', a policy whereby it seeks to ensure that its work in caring for cultural property and making it accessible to the people of New Zealand, takes full account of the aspirations of Maori. Such cultural property may be in the form of documents or images on paper, or in electronic form.

- Similarly, Archives New Zealand negotiates access arrangements for records. Records transferred from the Maori Land Court, for example, can describe artistic aspects of Maori cultural property, genealogy and significant historical events referred to in evidence to the Court.

-New Zealand is considering whether additional protection is required for the cultural and intellectual property of Maori. The possibility of developing *suigeneris* models is currently being considered. To date a number of scoping reports have been produced. Further work is being progressed looking at the experiences of other states using *suigeneris* models, the use of non-legislative mechanisms to protect traditional knowledge, and the use of intellectual property legislation to protect traditional knowledge in New Zealand. For the purposes of this work, artistic expression has not been separated out from the corpus of traditional knowledge.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of "expressions of folklore" protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilization of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

-The answers that follow are premised on the position that New Zealand would not implement the Model Provisions on the basis that they are outdated and not applicable to New Zealand's domestic situation. Comments are, however, provided on certain aspects of the Model Provisions, which may be of assistance to the Intergovernmental Committee in its more general consideration of the protection of traditional knowledge.

▪ Basic principles

New Zealand supports the underlying intention of the Model Provisions - to curb the unauthorised expropriation or exploitation of traditional or cultural expressions. The basic principles appear to seek a balance between the economic and moral rights pertaining to "expressions of folklore" and between preventing improper exploitation and promoting further development and dissemination of those expressions. New Zealand is of the view that the nature of this balance should be considered further.

As noted previously, however, the precise expression of some of the basic principles in the preamble are not entirely appropriate to New Zealand's domestic situation. For example it is not clear whether the reference to the "cultural heritage of the nation" simply recognises the value and benefit of protecting a community's cultural heritage within a nation, or is claiming some right to that cultural heritage for the nation as a whole (which could be problematic). The basic principles, and the Model Provisions more generally, do not address the prior issue of determining "property rights" or authority in respect of "folklore" which may need to be clarified before any mechanism regulating authorisation could be implemented.

▪ The scope of "expressions of folklore"

The scope of protected "expressions of folklore" provided for in the Model Provisions may not adequately encompass those aspects of Maori culture and traditional knowledge which might be termed artistic. The drafting of the Model Provisions does not provide clarity or certainty as to what expressions would be protected. New Zealand would need to give further thought to whether the categories of expression (verbal, musical, action and tangible), and the examples given, might be appropriately applied to the New Zealand situation.

In particular, New Zealand would need to discuss with Maori, in the context of its *suigeneris* work, whether the separation of artistic elements from the corpus of Maori traditional knowledge (for protection purposes) would be consistent with the holistic Maori world view.

For example, section 2 of the Model Provisions refer to 'folk tales', "artistic forms or rituals", and tangible expressions such as carving. The closest fit to Maori culture might be oral tradition or to "ceremonies". These are expressions between elders and younger generations relate information about genealogy, traditions and history. The ceremonies are not considered "ritualistic" but a necessary part of everyday life. The question arises whether these aspects of Maori culture should be considered artistic expressions, divorced from their wider cultural significance, alongside expressions of "folklore" which might be more appropriately described as artistic and "appealing to our aesthetic senses". In raising this issue, New Zealand is mindful that a similar situation may well exist for other WIPO Member States within indigenous populations.

▪ The acts against which expressions of folklore are protected

The requirement in section 3 of the Model provision that authorisation is needed for use of expressions of folklore "outside their traditional or customary context" may be problematic. It is difficult, from outside of a culture, to know what is outside traditional or customary context, and in such cases it would be difficult to know when authorisation is required. New Zealand would need to consider further how this issue might be addressed in practice.

It is also not clear whether the forms of utilisation subject to authorisation, and the exceptions in section 3, would address Maori concerns about inappropriate use. New Zealand would need to consider this matter further along with the potential risks of isolating a culture through restrictive regulation.

▪ The provisions dealing with authorisation of utilisation of expressions of folklore

Sections 9 and 10 regarding the establishment of "competent authorities" and "supervisory authorities" may be problematic for a number of reasons.

New Zealand would need to think further about whether and to what extent the government should or could become involved in the establishment of such authorities. Issues of mandate and representation have, for example, proved to be very complicated in the settlement of Treaty of Waitangi claims (see below, explanation of Treaty of Waitangi).

Prior issues include the definition of a "community" and whether "communities" are in fact sufficiently organised (or resourced) to administer the utilisation of the expressions of their "folklore" (in which case the Model Provisions provide that authorisation may be granted by the community itself). The government is aware that traditional structures and processes already exist within Maori society to make decisions about cultural property. Some tribes have established arts, policy or cultural units, and enter into memorandums of understanding with various agencies and tourism operators. The establishment of new authorities could be viewed as interfering with traditional structures. This issue will be discussed with Maori in the context of New Zealand's *suu generis* scoping work.

The degree to which the New Zealand government should be involved with decisions concerning "Maori cultural and intellectual property" is a key issue currently the subject of a claim before the Waitangi Tribunal. The Waitangi Tribunal considers claims by Maori who consider themselves to be prejudicially affected by acts, omissions, policies etc., of the "Crown" which are in breach of the principles of the Treaty of Waitangi. The status of the Treaty and the nature of the rights and obligations afforded to Maori and the Crown under it are subject to differing interpretations. The Waitangi Tribunal describes the Treaty as an agreement under which the Crown assumed the right to govern in exchange for recognition of continued authority of Maori over their own affairs including lands, forests, fisheries and other things important to them. The outcome of the claim (still some time away) will be an important consideration in New Zealand's position on this issue and others raised in this questionnaire.

In short, the establishment of competent authorities or the assessment of existing "community" structures is a very complex issue that requires further consideration.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

-Comprehensive discussion with Maori would be required before New Zealand would consider implementing any regime of cultural or intellectual property -type protection for traditional knowledge (including artistic aspects).

## II. Application of the Principal Provisions of the Model Provisions

### (a) Basic principles taken into account for the elaboration of the Model Provisions

Question II.1 : What are the principles underlying the protection of folklore in your national law or regulations?

Response:

-Not applicable.

Question II.2 : Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

-The principles may benefit from reconsideration in light of the aspirations, rights and interests currently claimed by indigenous peoples.  
-Please refer also to introductory comments and comments on basic principles above.

Question II.3 : Please provide any additional information, comments or practical experiences on the basic principle taken into account for the elaboration of the Model Provisions.

Response:

-Nil.

(b) Protected expressions of folklore

Question II.4 : Is a term other than “expressions of folklore” used in your national laws or regulation to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

-Not applicable.

Question II.5 : In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Not applicable.

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

-Not applicable.

Question II.6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

-As discussed previously, New Zealand does not consider that the term “expressions of folklore” appropriately or adequately reflects those aspects of traditional or cultural property and practice that Maori<sup>1</sup> might seek to protect (see also introductory comments and comments on page 9 of this response).

-New Zealand does not support the use of the term “folklore”, used in the Model Provisions, which relates only to “artistic” heritage, and excludes traditional beliefs and traditional knowledge more generally.

-In the Maori world-view, genealogy, traditional knowledge including beliefs, cultural customs and language etc, are intertwined with artistic aspects of heritage. As a result the terminology used in New Zealand does not tend to separate artistic heritage from traditional knowledge more generally, including cosmology and biodiversity related knowledge.

-In addition, the term “folklore” does not seem to appropriately describe or apply to what might be considered the artistic aspects of Maori culture, but which are intimately related to the Maori world-view.

-Recent domestic preference is to use the term “taonga Maori”. While it is not appropriate for the government to translate Maori language terms, it is used in this context to refer to a number of aspects of “Maori culture and heritage” including land-based cultural heritage, natural resources, sacred sites, and cultural property. The term “cultural property” is used to refer to Maori arts, language and customs and practices. The term “cultural property” might be the closest substitute to “folklore”, however it is more encompassing.

Question II.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

-Please refer to comments concerning the scope of expressions of folklore and the use of the term folklore.

Question II.8 : Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

-Nil.

(c) Acts against which expressions of folklore are protected

Question II.9 : Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

-Not applicable.



Question II.10 : Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

-Not applicable.

Question II.11 : Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

-Not applicable.

Question II.12 : If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

-Not applicable.

Question II.13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

Not applicable.

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

-Not applicable.

Question II.14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the viewpoint of both the custodians of folklore and users in your country?

Response:

-Not applicable.

Question II.15 : Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

-The protection required includes the activities protected against in the Copyright Act 1994 and the Designs Act 1953. For copyright these include economic rights such as publication, performance, making available to the public and the making of adaptations, and moral rights such as the right of attribution and the right to object to derogatory treatment of a work.

-Concerns have been raised about the use of Maori images and designs out of context. For example, Maori have indicated that protection is required to prevent the inappropriate or unauthorised use of Maori text and imagery to promote tourism. Concerns have also been expressed about the use of Maori designs by non-Maori (and persons from outside of New Zealand) in the fashion industry, and the use of Maori lyrics in the music industry. Another area where protection is sought is the souvenir industry where a range of products are considered to denigrate Maori culture, or under value authentic Maori works.

-Thought might also be given to digital technology issues such as the manipulation of cultural property including images and music uploaded, downloaded or reproduced from a website, outside of "traditional or customary context".

-A recent practical example of protection sought by Maori concerns the Lego case (although this concern is traditional knowledge more generally). Lego, a Danish toy company, launched a new range of toys, many of which were given Maori and Polynesian names, for example "tohunga", a spiritual healer. Lego did not seek to trademark the names of the new toys in New Zealand, and as such New Zealand's intellectual property rights legislation was of no assistance to Maori who considered the use of the Maori language by Lego to be inappropriate and offensive. Following approaches from Maori groups claiming expropriation of cultural heritage rights, Lego, while initially claiming that it had not done anything illegal, later acknowledged that it had acted inappropriately. Representatives of Maori groups and Lego have met to discuss the development of an international self-regulating code of conduct for toy manufacturing companies. The possibility of Maori authorising Lego to produce a range of toys using Maori designs, symbols and words, by prior informed consent has also been discussed. The New Zealand government has not been involved in these discussions.

-New Zealand plans to consider these issues further following discussion with Maori about *suive nerism* model of protection. It is expected that this work will commence in the coming year.

Question II.16 : Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

-Nil.

(d) Authorization of utilizations of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

Response:

(i) The “property” of the country as a whole (as part of the national cultural heritage)?

(ii) As the “property” of indigenous or other local communities within your country?

(iii) As the “property” of individual artists whose works are based upon folkloric traditions?

(iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

-The Copyright Act 1994 does not recognise collective or communal ownership except for works of “joint authorship” where identifiable individuals or bodies corporate have contributed to the work. “Expressions of folklore” that are protected by copyright are therefore considered to be the property of individual “artists” under the law.

-The traditional knowledge of Maori is, however, generally accepted to be the “property” or responsibility of collective groups known as whanau (family), hapu (larger family groupings) and iwi (tribes). Individuals are chosen to have care and guardianship of such knowledge for the benefit of the greater group and ensure its survival for future generations.

-New Zealand will be giving further consideration to the issue of “collective ownership” as part of its scoping work on *suu generis* models for the protection of traditional knowledge.

Question II.18 : Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

-Not applicable.

Question II.19 : Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorization to use expressions of folklore.

Are any fees payable for utilization of folklore, and, if so, how are they determined and to which purpose are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

-Not applicable.

Question II.20 : If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

-Not applicable.

(e) Sanctions, remedies and jurisdiction

Question II.21 : Which remedies and sanctions are provided for in your national laws and regulations?

Response:

-Not applicable.

Question II.22 : Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

-Not applicable.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

-The Copyright Act 1994 confers rights to performers in respect of their performances. Protected performances are defined by reference to the traditional categories of copyright works, including dramatic performances, musical performances, readings and recitations of literary works and the performance of a variety act. Performances of Maori and other ethnic groups are likely to be protected under the current definition of performance, but are not specifically referred to. Performers are deemed to be the first owners of the rights that arise from a performance.

-New Zealand is currently undertaking a review of its performers rights regime. The review will consider whether the current definition of performances should specifically refer to "cultural performances". The review is also considering the issue of whether some form of collective ownership might be more appropriate for rights that arise from "cultural performances".

Question II.24 : Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

-Not applicable .

(g) Protection of expressions of folklore of foreign countries

Question II.25 : Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

Not applicable

No

If yes :

- (i) Please provide details of these cases.

Response:

-Not applicable.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

-Not applicable.

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

-New Zealand considers that it would be premature to provide a definitive answer to this question at this time. New Zealand does, however, support further work in this area by the Intergovernmental Committee to determine whether there is a need for such an international agreement.



Question II.27 : If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

-The Model Provisions alone would not provide a suitable starting point but should be considered along with other sourced documents and submissions.

Question II.28 : What practical proposal do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

-Nil.

Question II.29 : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

-Not applicable.

*III. Modifications or Adaptations to the Model Provisions*

Question III.1 : Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

-Please refer to answer to question II.27.

[End of response of New Zealand]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF NORWAY

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*I. Application of the Model Provisions as a Whole*

Question I.1 : Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-The Ministry of Cultural Affairs has legislative responsibility for copyright protection.  
-The Ministry of Justice has legislative responsibility for industrial property rights protection (all IPR's which may be registered). The registration authority is the Norwegian Patent Office.

Question I.2 : Are the Model Provisions available in (one of) the official languages of your country?

Response:

-No.

Question I.3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

## II. Application of the Principal Provisions of the Model Provisions

### (b) Protected expressions of folklore

Question II.6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- Terms vary according to category, but among the terms used are “traditional” (in relation to the product), “folk music”, folk dance, folk costumes, traditional expressions of cultural heritage.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(c) Acts against which expressions of folklore are protected

Question II.16 : Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

-The Norwegian copyright act provides for neighbouring right's protection for the performance of works, covering also the performance of many expressions of folklore. For instance, this may cover the musician's performance of folk music. Our copyright act also provides for copyright protection for adaptation of other works, whether the works being adapted are in the public domain or not. This may also provide a musician with copyright protection for his adaptation of the piece of folk music. In addition, the Norwegian copyright act provides for a certain protection against making publicly available a work which is in the public domain because the term of protection has lapsed – if this is done in a way that harms the original copyright owner's moral rights or harms important cultural interests. The Ministry of Cultural Affairs may decide to prohibit such harmful dissemination, and sanctions are available.

(d) Authorization of utilizations of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

Response:

- (i) The "property" of the country as a whole (as part of the national cultural heritage)?
- (ii) As the "property" of indigenous or other local communities within your country?
- (iii) As the "property" of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response:    Yes   

                  No   

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

-As mentioned above, there is a high level of protection for performers against the unauthorized fixation and reproduction of fixations of his/her performance, for instance of folk music and folk dance.

(g) Protection of expressions of folklore of foreign countries

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response:    Yes   

                  No

Please provide further information on your answer.

Response:

-Norway remains positive to the work being undertaken at international level now. It is important to focus on identifying any insufficiencies of various intellectual property rights of existing international regimes and improving information on existing international regimes and improving information on existing rights and sanction possibilities to communities concerned.

-The focus of this questionnaire being on intellectual property protection, we have not provided information on the various non-IPR forms of protection for cultural heritage at a national level, such as financial support schemes and legislation on the preservation of national cultural heritage and the preservation of the Sami cultural heritage.

[End of response of Norway]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF PAKISTAN

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92-51-2261808 (Res.)

*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Ministry of Culture, Government of Pakistan

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

-Yes



Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Not applicable

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response:    Yes   

                  No   

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the  
Model Provisions  
has not been followed  
in our national laws  
and regulations*

Response:

The basic principles underlying the Model Provisions (see the Preamble)	<input checked="" type="checkbox"/>
The scope of “expressions of folklore” protected by the Model Provisions (section 2)	<input checked="" type="checkbox"/>
The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)	<input checked="" type="checkbox"/>
The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)	<input checked="" type="checkbox"/>
The sanctions and remedies provided for (sections 7 and 8)	<input checked="" type="checkbox"/>
The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)	<input checked="" type="checkbox"/>

If you have marked any of the boxes, please provide further information.

Response:

- Current legislation is limited to copyright and piracy laws with no legislation for folklore.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- Inadequate legislation for folklore protection.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Lack of expertise on cultural legislation.
- Inadequate coordination between state law and cultural organizations.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- Nil

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- Not applicable

(c) Acts against which expressions of folklore are protected

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Not applicable

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

- Not applicable

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Piracy      - folk music recordings are pirated, folk motifs and crafts are copied.
- Royalty      - royalty paid is virtually non-existent and state royalty tariffs remain low.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- No protection except for peripheral cover under current piracy and copyright laws.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Not applicable

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- Not applicable

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Folklore expression is routinely exploited to further marketing aims of the private sector.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- Nil

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:

- Not applicable

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Not applicable



Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- Marketing of folklore expressions is a global phenomenon requiring global regulations, international agreement provides the basis for such enlightened legislation.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- The Model Provisions in their present form are summaries of minutes with an immanent recommendation domain. They should be stripped to take essentials in a transparent overview and the current text be relegated to annex format.

CUESTIONARIOSOBREEXPERIENCIASNACIONALESENLAPROTECCIÓN  
JURÍDICADELASEXPRESIONESDELFOLCLO RE

RESPUESTADEPANAMÁ

*Informacióndecontacto*

Nombre: LuzCelesteRíosdeDavis  
Cargo: DirectoraGeneraldelRegistrode laPropiedadIndustrial  
Oficina/Organización: DIGERPI  
Estadomembro: Panamá  
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*I. AplicacióndelconjuntodeDisposicionesTipo*

PreguntaI.1 :¿Quéministerio(s),departamento(s),organismo(s)yoficina(s) gubernamental(es)desupaísseocupa(n)delascuestionesrelativasalaprotecciónjurídica de lasexpresionesdelfolcl ore?

Respuesta:

-DireccióndelRegistrode laPropiedadIndustrialdelMinisteriodeComercioeIndustrias

PreguntaI.2 :¿DisponendelasDisposicionesTipoen(unode)losidiomasoficialesdesu país?

Respuesta:

-Sí.

PreguntaI.3: ¿Recibenlas“expresionesdelfolclore”,yaseacomosedefinenenlas DisposicionesTipo,ocomoseentiend aasetérminoensupaís,unaprotecciónjurídica específicacomopropiedadintelectual \* ensulegislaciónnacional(estédichalegislación relacionadaconlapropiedadintelectualono)?

Respuesta:

Sí

No

Respuesta:

Este cuestionario se ocupa de las experiencias nacionales en el ámbito de la protección jurídica de las expresiones del folclore como propiedad intelectual, es decir, la protección jurídica específica desde el punto de vista de la propiedad intelectual de las expresiones del folclore. Esta protección puede estar prevista en la legislación sobre propiedad intelectual del Estado, aunque no necesariamente. La protección puede estar prevista en legislación *sui generis*, o como parte de una ley sobre el patrimonio cultural nacional, por ejemplo. Por lo tanto, el presente cuestionario no se ocupa de la protección directa, o incidental, de las expresiones del folclore, que en determinados casos puede estar prevista en el derecho de autor, los derechos conexos o las leyes sobre propiedad industrial. Tampoco se ocupa de la identificación, la preservación, la promoción y la difusión del folclore, excepto en la medida en que éstas pueden ser pertinentes para la protección jurídica de las expresiones del folclore en cuanto a propiedad intelectual.

En caso afirmativo:

i) Sírvase facilitar información sobre la legislación pertinente, por ejemplo los nombres completos, los artículos o párrafos pertinentes, las fechas de entrada en vigor y el nombre y las señas del ministerio, departamento, organismo u oficina encargada de la administración de la(s) ley(es) de que se trate. *Sírvase enviar a la Secretaría de la OMPI copias de dicha(s) leyes.*

Respuesta:

Ley No. 20, del 26 de junio de 2000. Reglamentada por el Decreto No. 12 del 20 de marzo de 2001. "Del régimen especial de propiedad intelectual sobre los derechos colectivos de los pueblos indígenas para la protección y defensa de su identidad cultural y de sus conocimientos tradicionales y sus tradiciones y disposiciones". Entró en vigor el 27 de junio de 2000 al ser promulgado en la Gaceta Oficial No. 24.083. La reglamentación de la Ley "Decreto No. 12" entró en vigor desde su promulgación en la Gaceta Oficial No. 24.270 del 28 de marzo de 2001. La Ley crea el Departamento de Derechos Colectivos y Expresiones Folclóricas dentro de la Dirección General del Registro de la Propiedad Industrial que es la oficina encargada de coordinar, desarrollar, asesorar y registrar en términos generales las actividades de protección de los Derechos Colectivos de los poseedores de los conocimientos tradicionales y expresiones Folclóricas.

ii)¿Sebasalaleislaciónpertinente,almenosenciertamedida,enlasDisposiciones Tipo?

Respuesta:

Sí

No

iii)Sír vaseindicaracontinuaciónqué aspecto(s),dehaberlo(s),delasDisposiciones Tipo nosesiguenensuleislaciónnacional:

*Esteaspectodelas  
DisposicionesTipo  
nohaseguidoen  
nuestra legislación  
nacional*

Respuesta:

Los principiosbásicosenlosquesebasanlasDisposicionesTipo(véaseel Preámbulo)

Elalcancedelas“expresionesdelfolclore”protegidasporlasDisposicionesTipo (Artículo 2)

Losactoscontraloscualesestánprotegidaslasexpresionesdelfolclor eylas excepcionesalrespecto(Artículos 3,4,6y6)

Lasdisposicionesqueseocupandelaautorizacióndelosusosdelasexpresiones delfolclore(Artículos 9y 10)

Lassancionesylosrecursosprevistos(Artículos 7y 8)

Lassolucionesqueof recenlasDisposicionesTipoparalaproteccióndelas expresionesdelfolcloredepaísesextranjeros(Artículo 14)

Sihas Señaladoalgunodeloscuadros,sír vasefacilitarmásinformación.

Respuesta:

Losactoscontraloscualesestánprotegidossoncontemplados(artículo3),noasílas excepcionescontempladasenelartículo4.Conrespectoalartículo6 stasdisposicionesson contempladosenlaLey20.Observación:Textualmentenosecontemplanperoen término generallosobjetivossonlosmismos.

iv) Indique otra(s) razón(es) por la(s) que determinados aspectos de las Disposiciones Tipo no se han aplicado en su país.

Respuesta:

Los pueblos indígenas prefirieron no exceptuar los casos especificados en el artículo 4; sin embargo la reglamentación de la Ley introduce una figura: Contratos de licencia de uso para que los derechos colectivos protegidos sean utilizados por terceros, autorizados por los pueblos indígenas.

## II. Aplicación de las disposiciones principales de las Disposiciones Tipo

Pregunta II.1 : ¿En qué principios se basa la protección del folclore en su legislación nacional?

Respuesta:

Además de lo dispuesto en las disposiciones tipo se adiciona el principio del conocimiento tradicional. Observación: En la Ley No. 20 de 2000, los pueblos indígenas prefirieron utilizar el término patrimonio cultural.

Pregunta II.2 : ¿Tiene alguna observación con respecto a los principios tenidos en cuenta en la elaboración de las Disposiciones Tipo? ¿Cree que los principios siguen siendo viables? ¿Existen otros principios adicionales que deberían tomarse en cuenta en cualquier modificación de las Disposiciones Tipo?

Respuesta:

Los principios siguen siendo viables no obstante se adiciona el conocimiento tradicional implícito en las expresiones del folclore, como por ejemplo en la medicina tradicional, artesanales de consumo, técnicas tradicionales, usos, costumbres y otras del patrimonio cultural.

Pregunta II.3 : ¿Sirva facilitar información, observaciones o experiencias prácticas nuevas sobre los principios básicos tomados en consideración para la elaboración de las Disposiciones Tipo.

Respuesta:

Instituciones Gubernamentales, Organizaciones no Gubernamentales poseedoras, del conocimiento tradicional convocados por DIGERPI analizaron las disposiciones tipo y concluyeron que las mismas serían consideradas en el proyecto de ley sobre la protección intelectual de los Derechos Colectivos de los Conocimientos Tradicionales y Expresiones Folclóricas. El artículo 2 de las Disposiciones tipo "Expresiones del Folclore protegidas", los participantes añadieron otras expresiones y los conocimientos tradicionales.

Pregunta II.4 :¿Se utiliza un término distinto de “expresiones del folclore” en su legislación nacional para describir el objeto a que se hace referencia en el Artículo 2 de las Disposiciones Tipo? Encaso afirmati vo:

- i)¿Cuáles es el término?
- ii)¿Cuáles es el objeto que abarca?
- iii)¿Por qué fue elegido el término?
- iv)¿Qué objeto abarcaría el término “expresiones del folclore” en su país?

Respuesta:

Expresiones del Folclore: Las producciones integradas por elementos característicos del patrimonio cultural, manifestaciones populares y costumbres, artísticas, científicas, medicina tradicional, las innovaciones, gastronomía, técnicas tradicionales, rituales, desarrolladas y perpetuadas por una comunidad cultural de la República de Panamá; son también culturas vivas en permanente renovación de las que emanan creaciones y conocimientos, o las integradas por individuos que reflejan las expectativas culturales y artísticas tradicionales de esa comunidad, en particular. El término fue elegido porque la propia constitución de la república enmarca el patrimonio cultural del país: Compuesto por las manifestaciones artísticas, filosóficas, científicas, producidas por el hombre a través de las épocas. Las artesanías en Panamá comprenden: Artesanías Decorativas y utilitarias; artesanías de consumo (gastronomía, medicina tradicionales); artesanías de servicios.

Pregunta II.5 :En la aplicación práctica de su legislación nacional, ¿se han planteado dificultades al determinar el folclore que debe protegerse?

Respuesta:

Sí

No

Sírvase facilitar más información, si es posible, ejemplos. ¿Cómo se determinan las expresiones del folclore en su país (por ejemplo, ¿están registradas como tales? ¿Existen inventarios, archivos y bases de datos sobre el folclore?)?

Respuesta:

Acercadelasexpresionesdelfolloreenelpaís laprotecciónyelfomentosonllevadasacabo porvariasInstitucionesgubernamentales: InstitutoNacionaldeCultura (INAC), yconcretamente lasArtesanías, porelMinisteriodeComercioeIndustrias. Estasesánregistradas, comotales, peroinventarios, yarchivosdelasmismasnosetiene. Acercadelasexpresionescorporales: BailesFolclóricosydanzas, elINAC hainiciadouninventario; elOrganismonogubernamental: ComisiónNacionaldelFolclorpromueveuninventariodelasmanifestacionesfolclóricas. El mismodistamuchodeserunabasededatosconfiable. PormandatodelaLey20de2000, el Depto. de DerechosColectivosyExpresionesFolclóricashainiciadounprogramatendientea implementardichoarchivo.

PreguntaII.6 :¿Seutilizaensupaísnormalmenteuntérminodistintode“expresionesdel folclore”paradescribirelobjetoalquesehaceref erenciaenelArtículo 2delas DisposicionesTipo?Encasoaafirmativo:

- i)¿Cuálesesetermino?
- ii)¿Cuáleselobjetoqueabarca?

Respuesta:

IndistintamenteseledenominaManifestaciónoExpresión.

PreguntaII.7 :¿Existen“expresionesdelfolclore”uotrosejemplosformasdeculturay conocimientostr adicionalesquenoquedenprotegidosporlasDisposicionesTipo, yque considerequedeberíanestarlo?

Respuesta:

Entretros: LosconocimientosTradicionalessobrelasciencias, lastécnicas, labiología tradicionaldelospueblosindígena sycomunidadeslocales.

PreguntaII.8 :Sírvasefacilitarinformación, hacerobservacionesoexplicarsuexperiencia prácticaacercadelalcancedelasexpresiones delfolcloreprotegidas.

Respuesta:

LuegodepromulgadalareglamentacióndelaLey, el28demarzode 2001, seprocedióa comunicaraloscongresosyautoridadesIndígenasTradicionales, responsablesporlaLeypara solicitaranombrelacomunidadelregistrodelasexpresionesFolclóricas. Hamostrado interéslacomarcaKunaYaladeregistrarurgent ementelaartesaniádenominada“MOLA”. SonvariaslascomarcasypueblosdeorigenKunadiseminadosenelpaís. Lacomunicación entreunayotranoeslobastantefácilparaestospueblosderecursoslimitados. Porsuparte DIGERPIhavisitadocomunidad esKunasconelpropósitodecapacitarlosenlapresentación desolicitudes. Hastahoynoseharegistradoningunaexpresión.

Pregunta II.9 :Sírvesefacilitarinformaciónacercadelanaturalezadelaprotección concedidaensulegislaciónconrespectoalasexpresionesdelfolclore.Porejemplo,¿qué accionesrequierenautorización?¿Losderechosconcedidossonexclusivos?

Respuesta:

Losderechosconcedidossonexclusivos.LasaccionesestablecidasenlaLeytipoyelaccesoalosconocimientostradicionalesconfinesdeaplicacióncomercialeindustrial.

Pregunta II.10 :¿Quéprincipiosrigenenlalegislacióndesupaísparadeterminarlosusos querequierenautorización?(Porejemplo,losprincipiosquefiguranenelArtículo 3delas Disposiciones Tiposonqueexistafinlucrativoyqueelusosehagafueradesucontexto tradicionaloacostumbrado).

Respuesta:

Finlucrativo.  
Queelusosehagafueradesucontextotradicionaloacostumbrado.  
Distorsióndelosvaloresocioculturalesdelasculturasindígenasycomunidadeslocales.  
PirateríadeTradiciones.

Pregunta II.11 :Tomandocomobaselaexperienciaenlaaplicacióndelalegislacióndesu país,¿contraquéformasdeexplotación,utilizaciónyaccionesenrelaciónconlasexpresiones delfolcloresedeberíaotorgarprotección?Proporcioneejemplosprácticos.¿Existealguna experienciaprácticarelacionadaconlaaplicacióndelasdisposicionespertinentesdela legislacióndesupaís quepudieraservirdeayudaaupúblicomásamplio?

Respuesta:

Nosehaaplicado.



Pregunta II.12 : Si la legislación de su país prevé derechos en relación con la mención de la fuente (como los previstos en el Artículo 5 de las Disposiciones Tipo), indique, haciendo referencia en la medida de lo posible a ejemplos prácticos, si esos derechos han sido útiles, eficaces y viables en la práctica.

Por ejemplo, ¿cómo se aplica en su país el requisito de que la expresión del folclore sea “identificable” (que proceda de un lugar o comunidad o lugar conocidos)? ¿Cómo se aplica este requisito en el caso de que en su país haya varias comunidades que compartan expresiones del folclore similares? ¿O en el caso de que en su país haya comunidades que vivan también en países vecinos, y / o comunidades que hayan adoptado y desarrollado una expresión del folclore que proceda de otro país?

Respuesta:

Se identificable. Se trata de una artesanía. Bajo certificación de la Dirección General de artesanía. Se trata de manifestaciones culturales y bajo certificaciones de la Dirección Nacional de Patrimonio Histórico INAC. Además la solicitud de Registro de un Derecho Colectivo ante la DIGERPI, se deberá presentar el Reglamento de uso del Derecho Colectivo. Con respecto al acceso de los conocimientos tradicionales de la Biodiversidad actualmente se estudia en la asamblea legislativa el proyecto de Ley sobre la creación de un Instituto de Medicina Tradicional adscrito al Ministerio de salud.

Varios Comunidades que comparten.

El Reglamento de la Ley contempla que las expresiones folclóricas pueden proceder de varias comunidades, pero el registro, se asignará a los representantes de los congresos o autoridades Indígenas que presenten la solicitud y cumpla con los requisitos exigidos. Se adiciona un párrafo en el cual se reconoce lo siguiente: Los conocimientos tradicionales de los pueblos indígenas son creaciones compartidas entre los miembros de varias comunidades, y los beneficios son concebidos a favor de todos ellos colectivamente. A las comunidades no indígenas que comparten expresiones folclóricas similares a las indígenas (réplicas) y las comercializan la ley establece que podrán continuar con esta práctica, pero no podrán reclamar los derechos colectivos reconocidos por los pueblos indígenas. Con respecto a las comunidades indígenas que comparten una expresión folclórica no impide que el mismo se continúe utilizando, ni afectará el derecho de las generaciones presentes y futuras de seguir utilizándola y desarrollando a partir de la expresión folclórica o conocimiento tradicional. De otro país, se establece en la Ley que: Las expresiones artísticas y tradicionales indígenas de otro país tendrán los mismos beneficios establecidos en la Ley para los nacionales, siempre que se efectúen mediante acuerdos internacionales recíprocos con dichos países

Pregunta II.13 : ¿Tiene algún límite temporal a la protección que proporciona la legislación de su país?

Respuesta:

Notenemos experiencia.

Pregunta II.14 : Proporcione información de las excepciones, si las hay, que prevalea la legislación de su país a los derechos mencionados anteriormente. ¿Opinan los custodios del folclore y los usuarios de su país que son adecuadas?

Respuesta:

Excepciones.

Para utilización en actividades pedagógicas por parte de Instituciones públicas en concordancia con las autoridades tradicionales indígenas.

En exposiciones y ventases escolares promovidas por estudiantes.

Se respetan los derechos reconocidos anteriormente con base en la legislación sobre la materia.

Los conjuntos de Bailes de proyecciones folclóricas. Pero éstos deberán incluir miembros de los pueblos indígenas cuando se presenten y/o ejecuten una representación artística indígena.

Pregunta II.16 : Facilite cualquier otra información o experiencia práctica relacionada con la naturaleza de la protección que se concede a las expresiones del folclore en su país.

Respuesta:

Notenemos experiencia.

Pregunta II.17 : En su país, ¿se considera que las expresiones del folclore son:

Respuesta:

i) "Propiedad" del país en su conjunto (forman parte del patrimonio cultural nacional)?

ii) "¿Propiedad" de las comunidades indígenas u otras comunidades locales de su país?

iii) ¿"Propiedad" de artistas individuales cuyas obras se basan en tradiciones folclóricas?

iv) Ninguna de las tres. Proporcione información adicional.

Pregunta II.18: Facilite cualquier otra información o experiencia práctica relacionada con la autorización de utilización de expresiones del folclore en su país.

Respuesta:

Las autorizaciones de utilización de las experiencias del folclore serán formuladas por los pueblos indígenas y comunidades locales a través de contratos de licencias de uso a terceras personas.

Pregunta II.19 : ¿Establece la legislación de su país una “autoridad competente” y/o una “autoridad supervisora” tal como figura en los Artículos 9 y 10 de las Disposiciones Tipo?

Facilite información acerca de las atribuciones, la financiación, el mandato, la composición, las responsabilidades, las funciones y las actividades de esos órganos en su país.

Describa el procedimiento para obtener autorizaciones para utilizar expresiones del folclore.

¿Hay que pagar alguna tasa para utilizar las expresiones del folclore?, y, en caso de que así sea, ¿cómo se determina y a qué objetivos se destinan (por ejemplo, a la promoción de la cultura nacional)?

En general, ¿qué lecciones y ejemplos prácticos podrían ser útiles para un público más amplio?

Respuesta:

\*Sobre autoridad competente y autoridad supervisora no, en lo que se refiere a Autoridad Competente, porque los titulares son los propios pueblos indígenas y comunidades locales.

Autoridad Supervisora: El Ministerio de Comercio e Industria, a través de la DIGERPI.

\*Atribuciones de las Autoridades Tradicionales Indígenas, de los Congresos, representando a la Comunidad:

Solicitar el registro del Derecho Colectivo ante las Oficinas de Registro

Elaboración del Reglamento de uso del Derecho Colectivo a registrar.

Admitir los recursos contra los registros solicitados.

Consentimientos previos y Expresos para la autorización de la reproducción industrial de un derecho colectivo a través de un Acta de Acuerdo.

Principales funciones de Departamento de Derechos Colectivos y Expresiones folclóricas de la DIGERPI, creadas mediante la Ley No. 20 de 2000.

Examinar las solicitudes que se presentan para registrar los Derechos Colectivos Indígenas y de las Comunidades locales.

Creación de un archivo manual y automatizado de los conocimientos tradicionales y Expresiones folclóricas.

Velar por el cumplimiento de las leyes existentes de propiedad intelectual que se refieren a los derechos colectivos de pueblos indígenas y comunidades locales.  
Apoyar técnico y de capacitación en el campo de la protección intelectual del conocimiento tradicional y expresiones del Folclore.  
Promoción del programa de la protección intelectual de los Derechos Colectivos.

**\*Financiamiento**

Se financiará la programación del Departamento de Derechos Colectivos y Expresiones Folclóricas vía Presupuesto Nacional.

**\*Procedimiento para obtener autorizaciones para utilizar las expresiones del folclore, mediante Contrato de Licencia de uso del Derecho Colectivo Registrado.**

Estos deberán inscribirse en un registro que para tal fin, llevará a la DIGERPI. La autorización será expedida por el Ministerio de Comercio e Industria, luego que las oficinas de Registros autorizadas por la Ley (DIGERPI y Dirección Nacional de Derecho de Autor), estudien y analicen la documentación que presentarán los titulares del registro:

- a) Acta del acuerdo de autorización expresado del congreso y/o autoridades en la que se especifica que el Derecho Colectivo registrado será otorgado mediante contrato de Licencia de uso a terceras personas
- b) Copia del Contrato de Licencia de uso del Derecho Colectivo otorgado
- c) Identificación de los representantes de los pueblos indígenas poseedores del conocimiento tradicional o expresiones Folclóricas registrado que firmen el contrato
- d) Identificación de las demás partes en el contrato y de sus representantes

El uso que se espera dar al conocimiento tradicional o expresión folclórica.

Solo será registrado un contrato de licencia de uso del Derecho Colectivo cuando concurren los siguientes requisitos:

- a) Identificación de las partes
- b) Descripción del Derecho Colectivo Registrado objeto del Contrato
- c) El establecimiento de las regalías que recibirán los pueblos indígenas por el uso del Derecho Colectivo. Estas regalías incluirán un pago inicial o alguna forma de compensación directa y media a los pueblos indígenas y un porcentaje del valor de las ventas resultantes de la comercialización de los productos desarrollados a partir de dicho Derecho Colectivo.
- d) El suministro de suficiente información relativa a los propósitos y fines de dicha actividad, los plazos de utilización, incluyendo los eventuales usos del derecho colectivo, de ser el caso, el valor del mismo.
- e) La obligación del licenciario de informar periódicamente, en términos generales, al licenciante acerca de los avances en la investigación, industrialización y comercialización de los productos desarrollados a partir de los derechos colectivos objeto de la licencia.

En el caso que en el contrato se pacten un deber de reserva el mismo deberá constar expresamente.

**\*Tasa:** los registros de los Derechos Colectivos de los pueblos indígenas se exceptúan de cualquier pago ante la DIGERPI.

Pregunta II.20 : Si la legislación de su país considera que las comunidades indígenas u otras comunidades locales de su país son “titulares” de sus formas respectivas de patrimonio artístico tradicional, ¿cómo ponen en práctica, gestión y ejercicio sus derechos las comunidades concernidas de conformidad con la legislación? ¿Qué elecciones y ejemplos prácticos podrían ser útiles para un público más amplio?

Respuesta:

Remitirse a la pregunta II.19. Procedimiento para obtener autorizaciones para utilizar expresiones del folclore.

Pregunta II.21 : ¿Qué recursos y sanciones prevé la legislación de su país?

Respuesta:

En los casos no contemplados en la legislación aduanera y en la de propiedad industrial la infracción de la Ley 20 de 2000 serán sancionadas dependiendo de su gravedad, con multas de mil dólares (\$ 1.000) a cinco mil dólares (\$ 5.000). En caso de reincidencia, la multa será el doble de la cuantía anterior. La sanción se aplicará en adición al comiso y destrucción de los productos utilizados para cometer la infracción.

Pregunta II.22 : Facilite cualquier otra información o experiencia práctica relacionada con los recursos, las sanciones y la jurisdicción.

Respuesta:

Información adicional

De las multas impuestas, el 50% quedará a beneficio del Tesoro Nacional y el otro 50% será destinado a gastos de inversión de las Comarcas o pueblos indígenas respectivos o, las comunidades locales.

Pregunta II.23: ¿Existe algún ejemplo en su país de expresiones del folclore que hayan obtenido protección por medios indirectos tal como los derechos conexos?

Respuesta:

Sí

No

Pregunta II.24: Proporcione cualquier otra información o experiencia práctica relacionada con otras formas de protección otorgadas a las expresiones del folclore en su país.

Respuesta:

Otras formas de protección otorgadas a las expresiones del folclore en Panamá.  
Ley No. 26 del 22 de octubre de 1984: "Se prohíbe la importación de copias de Molos"  
Ley No. 27 del 24 de julio de 1997: "Por la cual se establecen la Protección, el Fomento y el desarrollo Artesanal. El Capítulo VIII establece la protección a las Artesanías Nacionales mediante la prohibición de la importación de productos artesanales o por partes que imiten piezas y vestidos autóctonos y tradicionales panameños."

Pregunta II.25: ¿Existe algún caso en el que el folclore original de su país se haya explotado o utilizado en un país extranjero?

Respuesta:

Sí

No

Encasoderespuestaafirmativa:

- i) Proporcione información detallada de esos casos.

Respuesta:

La mola es una artesanía del ramo del bordado, confeccionada por los indígenas Kuna. Según la tradición y la mitología Kuna, la diosa KIKADIRYAI fue quien le trajo la técnica del hilado de algodón y la confección de la mola (morra en lengua Kuna), que es parte de la indumentaria de la mujer; sin embargo, la técnica y los diseños que se emplean, se enseñan y se comercializan en países en los que no hay indígenas Kuna. Revistas editadas en el exterior, enseñan, a través de catálogos, la técnica de aplicar y los diseños empleados por los propios indígenas Kuna a la elaboración de las molas.

- ii) ¿Podieron las autoridades pertinentes y/o las personas afectadas de su país emprender alguna acción legal para impedir la explotación o utilización para obtener indemnización respecto? Encasoderespuestaafirmativa facilite información detallada en la que se incluya la base jurídica sobre la que se emprendió la acción legal (por ejemplo, la base de la reciprocidad establecida en la legislación de su país).

Respuesta:

Nose ha podido; sin embargo no de los primeros registros que se gestionará por parte del Congreso General Kunaes de la Mola.

Pregunta II.26 :¿ Considera que es necesario establecer un acuerdo internacional para la protección de las expresiones del folclore?

Respuesta:

Sí

No

Facilite información más detallada acerca de su respuesta.

Respuesta:

Un mayor respeto a la propiedad intelectual de los conocimientos tradicionales y las expresiones folclóricas de los pueblos indígenas y comunidades locales es en especial a nivel, internacional preservaría, conservar y ampararía a éstos de la explotación abusiva, al apropiarse o tragar a un agente muy distinta a los miembros de pueblos indígenas y comunidades locales, sin que los beneficios derivados de estos conocimientos y manifestaciones lleguen a las comunidades dueñas de los mismos. Los conservamos porque no ser así, estos están destinados a desaparecer. Además que esta protección, vendría a defender las culturas nacionales. ¿Por qué entonces no conseguir igual respeto a nuestro folclore y conocimientos tradicionales de parte de los países desarrollados?

Pregunta II.27: En caso de respuesta afirmativa, ¿opina que las Disposiciones Tipo podrían ser un punto de partida adecuado para el desarrollo de ese acuerdo?

Respuesta:

Sí

No

Respuesta:

SereconocelalaborpioneradelaUNESCOylaOMPIeneltemadelas expresionesdel folclore.Lasdisposicionestiposonproductosdeuntrabajoimportanterealizadoporexertos enlamateria;motivoporelcualstedocumentohacontribuidoalasensibilizacióndelos paísesyalfortalecimientodelaproteccióndelas expresionesdelfolclor.Noobstanteyahan transcurrido17añosdesdesupromulgaciónysedebetomarencuentalasnuevastecnologíasy unmundoglobalizado,enelquelosconocimientosobre biodiversidadinteresaamuchos,sin llegarabeneficiaral osposeedoresdelconocimientotradicional.

### *III. Modificaciones o adaptaciones de las Disposiciones Tipo*

Pregunta III.1: Propongamos modificaciones o adaptaciones que puedan hacer las Disposiciones Tipo más útiles como modelo para las legislaciones nacionales, regionales o internacionales.

Respuesta:

Incluir los conocimientos tradicionales de pueblos indígenas y comunidades locales (como colectividad).

[Fin de la respuesta de Panamá]



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE REPUBLIC OF THE PHILIPPINES

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- In so far as “expressions of folklore” fall within the purview of copyright and related rights, the Intellectual Property Office (IPO). Otherwise, at present, there is no government agency or office, which provides legal protection to expressions of folklore as contemplated in the Model Provisions for National Laws on the Protection of Expressions of Folklore against illicit Exploitation and other Prejudicial Actions.

- However, the Philippines has a National Commission for Culture and the Arts (NCCA) which is the premiere government agency that is mandated to promote, disseminate and conserve the Filipino national culture and arts.<sup>1</sup>

- We also have the National Commission for Indigenous Peoples (NCIP), which is mandated to protect and promote the interest and well being of indigenous cultural communities and indigenous peoples.<sup>2</sup>

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<sup>1</sup> Republic Act No. 7356.

<sup>2</sup> Rep. Act No. 8371

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes. The Model Provisions are available in English.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- Various government agencies dealing with culture and arts are of the opinion that promotion and dissemination of our traditions, customs and practices is tantamount to conservation and ultimately “protection” of our expressions of folklore. We have yet to agree on the terms of reference on how expressions of folklore are to be given legal protection in a manner suggested by the Model Provisions.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

Response:

*Yes, this aspect may have prevented implementation of the Model Provisions*

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- The provisions of our related laws are couched in general language and there is no resolve to specify the acts because our basic principles in formulating policies for the development of culture and arts, include the promotion of Filipino national culture and arts and the preservation of the Filipino cultural heritage.<sup>3</sup> It has been generally held that protection is afforded to our expressions of folklore when they are promoted and disseminated.

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<sup>3</sup> Rep. Act No. 7356, Sec. 8.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- The absence of a government agency that shall perform the functions envisioned in the Model Provisions prevents the implementation of the Model Provisions for the protection of expressions of folklore.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- The scope of the definition of folklore may be expanded to include traditional belief and intangible heritage. The principles on dissemination and promotion of expressions of folklore as concepts of protection of expressions of folklore may be considered.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- Expressions of folklore form part of the traditional beliefs of the people and are part of the intangible heritage.

(b) Protected expressions of folklore

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

1. Community Intellectual Rights. This refers to the rights of indigenous cultural communities and indigenous peoples to own, control, develop and protect:
  - (a) The past, present and future manifestations of their cultures, such as but not limited to, archaeological and historical sites, artifacts, designs, ceremonies, technologies, visual and performing arts and literature as well as religious and spiritual properties;
  - (b) Science and technology including, but not limited to, human and other genetic resources, seeds, medicine, health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, resource management systems, agricultural technologies, knowledge of the properties of fauna and flora, oral traditions, designs, scientific discoveries; and
  - (c) Language, script, histories, oral traditions and teaching and learning systems.<sup>4</sup>
2. Filipino historical and cultural heritage and resources.<sup>5</sup>
3. Traditional culture and its various creative.<sup>6</sup>

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<sup>4</sup> NCIP ADMINISTRATIVE ORDER NO. 01-98, Rule I, Section 4 (j).

<sup>5</sup> Rep. Act No. 7356, Sections 7 & 12 (b).

<sup>6</sup> Supra, Sec. 12 (d).

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Yes, the concept of Cultural Space. It is an anthropological concept, which is defined as a place where popular and traditional cultural activities are concentrated, but also as a period of time involving a degree of periodicity (cyclical, seasonal or yearly) or a particular event. Finally, that temporal or physical space owes its existence to the cultural events, which traditionally take place there.<sup>7</sup>

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<sup>7</sup> UNESCO, 29<sup>th</sup> General Conference, Masterpieces of Oral and Intangible Heritage of Humanity.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- The scope of expressions of folklore may also include traditional beliefs. Folklore is evolving and one cannot just legislate protection of folklore similar to the context of the Model Provisions.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Although we already have laws, which protect indigenous cultural communities and indigenous peoples and which promote and disseminate our cultural heritage, we have not yet provided the specific mechanisms to ensure their protection against illicit exploitation and prejudicial actions.
- There is also a need to control illicit trade and exportation of ethnographic materials in the Philippines. Although antiquities dealers are licensed here, and archeological materials are well protected, ethnographic artifacts are more difficult to categorize in terms of defined and measurable importance to local culture. Archeological antiquities (defined as at least 100 years old) are legally protected because they can be dated. Ethnographic artifacts are very difficult to date because denominators are difficult to set up, such that these could not be placed within the category of antiquities as legally defined.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- Protecting the expressions of folklore may also mean promotion notwithstanding that other persons may be making money out of it. To illustrate, the printing in books of a particular epic of a certain region or the making of a film on such epic is a form of protection although other people may make money out of it. The publication of the book and the showing of the film will “protect” the existence of such epic as it will be passed on to the next generations.



(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- We have an Administrative Order issued by the National Commission on Indigenous People (NCIP), (NCIP Administrative Order No. 01-98), which is the Rules and Regulations implementing Republic Act No. 8371, otherwise known as “The Indigenous People’s Rights Act of 1997.” It requires all development and cultural activities concerning indigenous cultural communities and indigenous peoples to be subject to free and prior informed consent of the indigenous cultural community and indigenous peoples. A component part of the process of securing the free and prior informed consent of the concerned Indigenous Cultural Committees (ICCs)/Indigenous Peoples (IPs) is a Memorandum of Agreement (MOA) which shall be executed by and between the proponent, host ICC/IP community, and the NCIP, written in the dialect or language of the concerned ICCs/IPs, with corresponding English and Filipino translation.<sup>8</sup>

<sup>8</sup> NCIP Administrative Order no. 01-98, Rule IV, Sec. 7 & 8.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Indirectly, expressions of folklore, reduced to tangible medium or material form (i.e. books) and insofar as they are protected by copyright are protected under the Intellectual Property Code of the Philippines (Republic Act No. 8293).

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- The State shall recognize, respect and protect the rights of indigenous cultural communities and indigenous peoples to preserve and develop their cultures, traditions and institutions, and shall take measures, with the participation of the indigenous cultural communities and indigenous peoples to protect their rights and guarantee respect for cultural integrity.<sup>9</sup>

- The rights of indigenous peoples to cultural integrity shall include:

- (a) Protection of indigenous culture, traditions and institutions;
- (b) Right to establish and control educational and learning systems;
- (c) Recognition of cultural diversity;
- (d) Right to name, identity and history;
- (e) Community intellectual property rights;
- (f) Protection of religious, cultural sites and ceremonies;
- (g) Rights to indigenous spiritual beliefs and traditions;
- (h) Protection of indigenous sacred places;
- (i) Right to protection of indigenous knowledge systems and practices; and
- (j) Right to science and technology.<sup>10</sup>

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<sup>9</sup> Supra, Rule VI, Sec. 10.

<sup>10</sup> NCIP Administrative Order No. 01-98, Rule VI, Sec. 10.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- The international agreement will require the member countries to observe reciprocity in terms of protection of expressions of folklore.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- The concept and scope of protection of expressions of folklore would have to be adapted in the local context considering the peculiarities and diversities of such among the various groupings in the country.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- A continuing exchange of ideas, discussions and sharing of experiences among the member countries must be held towards understanding of the issues and leading to a common action involving protection.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- While “competent authority” which authorizes the utilization of expressions of folklore may be easily pinpointed in foreign jurisdictions, the same thing cannot be said of the Philippines. To define “competent authority” is difficult as yet in this jurisdiction. We must be able to resolve this issue of whether the term refers to an authorized representative of each cultural community or the highest political leader of such community.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- The scope of the expressions of folklore may be expanded to include all traditional beliefs, the concept of intangible heritage and cultural space.

[End of response of the Republic of the Philippines]

QUESTIONNAIRE RELATIF À L'EXPERIENCE ACQUISE A UN NIVEAU  
NATIONAL ENCE QU'IL CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DE PORTUGAL

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In a fax dated November 1, 2001, the National Institute of Industrial Property (INPI) of  
Portugal gave the following response to the Questionnaire :

Étant donné que la propriété industrielle a pour fonction sociale celle de garantir la  
loyauté de la concurrence à travers l'attribution de droits privatifs (...), bien comme la  
répression de la concurrence déloyale (article 1er du Code de la Propriété Industrielle  
CPI - approuvé par le Décret - loi no. 16/95, en date du 24 janvier 1995), les modalités de  
propriété industrielle, en général, et les marques, individuelles ou collectives, les  
appellations d'origine et les indications géographiques, en particulier, jouent un rôle  
important en l'absence d'une législation spécifique sur la matière, sans oublier,  
naturellement, les droits d'auteur dont la protection est assurée au Portugal par une autre  
entité que l'Institut National de la Propriété Industrielle.

Aussi, s'agissant des marques, faut-il souligner que la protection accordée en matière  
de produits est telle qu'ils agissent à l'instar d'une forme de protection indirecte de cette réalité qui vise  
dans l'essentiel, éviter, empêcher l'enregistrement de marques ou de « signes distinctifs »  
portant sur la désignation du « savoir traditionnel » en cause.

Une forme de protection plus accentuée, peut-être retrouvée au niveau des marques  
collectives (article 172 du CPI), d'association (article 173 du CPI) et de certification  
(article 174 du CPI), toutes deux pouvant être constituées de signes ou indications  
utilisées dans le commerce pour désigner l'origine géographique des produits ou services,  
particulièrement lorsqu'il s'agit de « producteurs » d'un savoir traditionnel d'une  
localité ou région donnée, entendent s'associer ou se mettre d'accord pour certifier celui-  
ci.

Au Portugal, par exemple, il est à souligner, que l'Association des Producteurs des Tapis  
d'Arraiolos a bénéficié de l'enregistrement de la marque d'association sur ses produits.

Les savoirs traditionnels trouvent, toutefois, une forme de protection plus efficace et  
directe, dans le cadre des appellations d'origine et indications géographiques.

On entend par appellations d'origine le nom d'une région, d'un lieu déterminé ou, dans des cas exceptionnels, d'un pays, qui sert à désigner ou à identifier un produit, dont la qualité ou les caractères sont dus essentiellement ou exclusivement au milieu géographique comprenant les facteurs naturels et humains, et dont la production, la transformation et l'élaboration ont lieu dans l'aire géographique délimitée. Au Portugal, cette forme de protection protège, par exemple, le Vin de Porto ou de Madère, les Fromages des Serpa ou de Azeitão, à savoir, dans l'essentiel, des produits agricoles qui puisent dans leur milieu naturel (la spécificité de la terre ou du climat par exemple) leur véritable spécificité (article 249, no. 1 du CPI).

Lorsque le facteur naturel n'est point déterminant, mais que le produit bénéficie d'une réputation, d'une qualité déterminée ou d'une autre caractéristique peut être tributaire à cette origine géographique déterminée, celui-ci doit être protégé sous la forme d'une indication géographique (article 249, no. 3 du CPI).

Parallèlement, il faut attirer l'attention que la législation portugaise, ainsi que celle de tous les États membres de l'Union Européenne, dû à l'implantation de la Directive 98/71/CE du Parlement Européen et du Conseil qui a eu lieu le 13 octobre 1998, va considérer la possibilité d'enregistrement d'Artisanat comme un dessin ou un modèle (article 1er de la Directive). Cependant, afin d'obtenir la protection pour les produits d'ARTISANAT et pour tous les produits industriels, il faut que les mêmes soient nouveaux et aient un caractère unique (article 3ème).

Au Portugal il y a plusieurs produits qui appartiennent à notre patrimoine culturel mais qui à cause d'un manque de nouveauté ne pourront pas être protégés comme des dessins et modèles, malgré que certains soient déjà considérés comme artisanat.

Actuellement, un nouveau Code de la propriété industrielle est en train d'être finalisé à l'Assemblée de la République portugaise, prévoyant un nouveau régime pour les dessins ou modèles et qui créera de nouvelles conditions de protection pour l'artisanat.

L'appellation d'origine et l'indication géographique, lorsqu'elles sont enregistrées, constituent la propriété commune des personnes qui ont leur domicile ou leur établissement dans la localité, la région ou le territoire et confèrent le droit d'interdire, l'utilisation, par des tiers, dans la désignation ou la présentation d'un produit, d'un quelconque moyen indiquant ou suggérant que le produit en question est originaire d'une région géographique autre que son véritable lieu d'origine ou encore tout acte de concurrence déloyale au sens de l'article 10 bis de la Convention de Paris (article 251 du CPI).



QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF ROMANIA

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*I. Application of the Model Provisions as a Whole*

Question I.1 : Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

1. The Ministry of Culture and Religious Affairs – as the authority in charge of the protection of national cultural heritage.
2. The Institute of Ethnography and Folklore – under the authority of The Romanian Academy.
3. The Center for Preservation and Capitalization of Folklore Tradition and Creation – under the authority of the Ministry of Culture and Religious Affairs.
4. The Romanian Copyright Office – as an authority in charge of the protection of related rights regarding expressions of folklore.

Question I.2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

-The Model Provisions was translated in Romanian after the Romanian Copyright Office received this Questionnaire in September 2001.

Question I.3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

(ii) Are there relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

Info.

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

-At the time this Model Provision was elaborated, Romania was a communist country. It is possible that the political regime considered unnecessary to protect expressions of folklore as intellectual property. In Romania, the protection of expression of folklore, as a whole, has been a concern of the authorities even since 1866 when the Romanian Academy was established. In its establishing act was included also as signments related to "collection and preservation of folklore."

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of "expressions of folklore" protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

-According to communist laws, even the exploitation of the works protected by the Berne Convention was made by legal licenses and not by exercising some exclusive rights recognized to the authors. Taking in consideration, it was difficult to justify the recognition of some exclusive rights regarding the exploitation of folklore even when these would become the property of an entire community.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

-The change of political system in 1990 brought a lot of changes regarding common and private property. Because of this, the entire intellectual property system needed to be rebuilt. At this moment, the Romanian Copyright Law protects copyright and related rights, but there aren't any other provisions that refer to or presume the protection of folklore in the way these Model Provisions ask.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II.2 : Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

-At the following principle "Considering that the dissemination of various expressions of folklore may lead to improper exploitation of the cultural heritage of the nation", we consider necessary to add the following: "and this exploitation grew up lately in geometrical progression because of the technological progress."

-Regarding the others, yes, they are still viable.

Question II.3 : Please provide any additional information, comments or practical experiences on the basic principle taken into account for the elaboration of the Model Provisions.

Response:

-As we point out before, we consider that the technological progress affects the expressions of folklore both regarding their ways of dissemination and regarding their continuous development.

(b) Protected expressions of folklore

Question II.5 : In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Question II.6 : Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

-“Goods with Ethnological Value ” –they are defined in the Law No.182/2000 regarding the protection of tangible national heritage and they consist of:

- (a) tools, objects for family/household use;
- (b) pieces of furniture;
- (c) pottery;
- (d) textiles, costumes, leather goods;
- (e) other objects made of wood, metal, bone, stone, or glass;
- (f) religious objects;
- (g) jewels;
- (h) ensembles of technological objects;
- (i) other goods from this category.

Question II.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

-The definition stated in Section 2 of the Model Provisions covers all the forms of expressions of folklore from the point of intellectual property law, but it could miss some forms related to industrial property such as: traditional medicine and medicinal practices, traditional food, traditional knowledge.

Question II.8 : Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

Although the expressions of folklore are not protected by law or regulations based on the Model Provisions, they are protected as a part of national cultural heritage. The Romanian experience regarding the folklore protection consists of identification, inventory, evidence, preservation, and conservation. These are special functions of specialized bodies of the Romanian Academy or the Ministry of Culture and Religious Affairs.

(c) Acts against which expressions of folklore are protected

Question II.13 : Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

Question II.15 : Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Expressions of folklore that are appropriate to be protected against acts protected by copyright laws such as: reproductions, dissemination, presentation on stage, recitation, or any other form of performance or direct public presentation.

Question II.16 : Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- According to the Law on the Protection of Tangible Cultural National Heritage, the Romanian state ensures the protection of the goods belonging to the national cultural heritage including the "goods with ethnological value" as the expressions of folklore are defined. Also it ensures the material base and financial resources to discover, bookkeep, examine, classify, research, store, conserve, restore, protect.

- According to the same law, if a good is classified as belonging to the national cultural heritage, nobody could make any kind of copy of it without the permission of the rightholder even if this is in the public or private property.

(d) Authorization of utilization of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

Response:

- (i) The "property" of the country as a whole (as part of the national cultural heritage)?
- (ii) As the "property" of indigenous or other local communities within your country?
- (iii) As the "property" of individual artists whose works are based upon folkloric traditions?

(iv) Neither (i), (ii) or (iii). Please provide further information.

Question II.18 : Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

-According to the Law on Protection of Tangible Cultural National Heritage –expressions of folklore is defined as “goods with ethnological value” are the property of the country “as a whole”. But according to copyright law, the copyright on the work inspired by expressions of folklore belong to its author.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

-According to the Law No. 8/1996 on Copyright and Related rights, it protects all the performers “who present, sing, dance, recite, declaim, act, direct, conduct, or in any other way execute a literary or artistic work, a performance of any kind including performances of folklore”. They are owners of so-called “neighboring rights”.



Question II.24 : Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- As a form of protection, there is a fee - called "folkloric stamp" which is collected as a percent, 5% of the price of the ticket to a folkloric show or 2% of the price of each cassette, CD, printings, etc., containing expressions of folklore. This fee is used to highlight the folkloric and ethnographic heritage of Romania.

- Also under copyright laws are protected the authors whose work is inspired by an expression of folklore.

- Another form of protection is stipulated in the Law on Protection of Cultural National Heritage and regards all the goods classified as belonging to national heritage. They cannot be reproduced in any form without the permission of the rightholder.

(g) Protection of expressions of folklore of foreign countries

Question II.25 : Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

-An international agreement for the protection of expressions of folklore will help to solve the problem that this issue creates. An international agreement will lead to a better protection because it is an issue that involves not only a single country, but also several countries of a region.

Question II.27 : If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Question II.28 : What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

-We consider that an international institute will be the best solution to these problems. This institute should include representatives of all states concerned, possible specialists from the national agencies that are responsible with folklore protection. Amongst its responsibilities could be included also the setting up of an international database of expressions of folklore, to intermediate the conflicts generated by the expressions of folklore that belong to several countries of a region.

[End of response of Romania]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE REPUBLIC OF KOREA

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*I. Application of the Model Provisions as a Whole*

Question I.1 : Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

Copyright Division  
Of Cultural Policy Bureau  
Of MCT (Ministry of Culture and Tourism)

Question I.2 : Are the Model Provisions available in (one of) the official languages of your country?

Response:

Yes, but it is not an official translation.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or a term understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Yes

No

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

There has not been a call for such legal protection of expressions of folklore in Korea. Subsequently, both the need for and the means of such protection have not yet been sufficiently studied.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

The basic principles underlying the Model Provisions (see the Preamble)

The scope of "expressions of folklore" protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exception thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilization of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

The scope of the "expressions of folklore" provided in section 2 of the Model Provision is overly broad. It is difficult to distinguish what deserves to be protected from those that does not. In addition, the "acts against which expressions of folklore are protected" are not clear. In other words, in most cases the expressions of folklore are used outside traditional or customary context, and a lot of cases are also used with gainful intent. So, it will be a lot more difficult to use the expressions of folklore, even if it does not prejudice them.

II. *Application of the Principal Provisions of the Model Provisions*

(a) Basic principle taken into account for the elaboration of the Model Provisions

Question II.2 : Do you have any comments on the principle taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

It is our belief that the principles are still viable. Most of all, it is important to maintain a proper balance between protection against abuses of expression of folklore, on the one hand, and freedom and encouragement of further development and dissemination of folklore, on the other.

(b) Protected expression of folklore

Question II.6 : Is a term other than “expression of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

In Korea the term “traditional culture” is used instead of “folklore”. However, “traditional culture” also encompasses high-class culture.

The “expressions of traditional culture” are understood to mean “cultural property.” Although “cultural property” may then be considered to mean “expression of folklore”, as well, they do not have the same meaning. Unlike the term “expression of folklore”, “cultural property” includes natural monuments (ex. protected wildlife), as well as tangible cultural property, intangible cultural property and folk materials by the “Law of Protection of Cultural Property.”

In addition, “traditional cultural heritage” is another term used for “expressions of folklore”. The “traditional cultural heritage” is generally understood to cover a wider scope of meaning than the expressions of folklore.

Question I.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

More consideration is needed to answer this question.

(c) Acts against which expressions of folklore are protected

Question II.15 : Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

In regard to Korea, there does not appear the need to grant intellectual property rights for the expressions of folklore, as there has been no official or unofficial demand for such protection. Many experts on cultural property in Korea state that granting intellectual property rights for the expressions of folklore might impede its promotion and further development. These experts also believe culture to be something that must continuously change to develop and survive. Some others believe, however, the sources must be indicated, unless this proves impossible.

Question II.16 : Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

In Korea, many cultural properties designated as “national or local cultural properties” by the Law of Protection of Cultural Property are to be protected from destruction, and to be maintained. Those properties are protected and maintained for purposes of good preservation, not in regards to intellectual property rights.

While, all performances are protected as neighboring rights under the Copyright Law of Korea. Performances include expressions of something other than a work done by acting, musical playing, singing, reciting, screening or by other artistic means. Therefore performances of expressions of folklore are protected as neighboring rights. In addition, some expressions of folklore are to be protected indirectly as the neighboring rights of phonogram producers, when they are recorded.

(d) Authorization of utilization of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

In Korea, there have not been any serious discussions on the ownership of the expressions of folklore. People usually regard one of the reeparties (country, community, individual) as the owner of an expression of folklore depending on the particular expression of folklore and the circumstances.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

All performances are protected as neighboring rights under Copyright Law of Korea. Performances include the expression of something other than a work done by acting, musical playing, singing, reciting, screening or by other artistic means. In addition, some expressions of folklore are to be protected indirectly by the neighboring rights of the phonogram producers when they are recorded.



(g) Protection of expressions of folklore of foreign countries

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Yes

No

Please provide further information on your answer.

Response:

More consideration is needed to answer this question.

Question II.28 : What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

More consideration is needed to answer this question.

Question II.29 : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

In our daily lives there are so many instances of the use of foreign expressions of folklore, for example, folk music, folk dance, folk tales, traditional clothes, traditional games. So, it is not easy for the public to regard them as objects of the intellectual property rights, as they have become a part of life already.

For more specific example, traditional clothes that we sometimes wear may be the expressions of folklore of some other country (or countries). In this case, we do not have an idea whether we have to think those clothes are the intellectual property of a foreign country and we have to get an authorization to make and wear them outside traditional and customary context with a gainful intent (for clothes makers).

*III. Modifications or Adaptations to the Model Provisions*

Question III.1 : Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

More consideration is needed to answer this question.

[End of Response of the Republic of Korea]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE RUSSIAN FEDERATION

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

1. Russian Agency for Patents and Trademarks (Rospatent)
2. Rospatent Federal Institute of Industrial Property

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- In accordance with Article 8 of the Law of the Russian Federation on Copyright and Related Rights, non-material works of folklore are not protected.

- The provision of protection for the works of all peoples of the Russian Federation is virtually impossible since, as per the experience of developed countries (for example, France and Germany), works of folklore are public property and elements of the cultural heritage are interwoven into everyday life; it does not therefore serve any purpose to prohibit their free use.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)



If you have marked any of the boxes, please provide further information.

Response:

- The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)
- The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

Further information:

- It is assumed that the cultural heritage in the broad sense of the term is universal property and that the prohibition of its use is inappropriate since elements of traditional knowledge and cultural are interwoven into everyday life in all places. At the same time, the cultural heritage of indigenous peoples and minorities, which requires documentation and further study, represents a special case. However, this matter has begun to be widely discussed only in the past few years, as evidenced by the laws adopted during that period, relating to the rights and cultural heritage of the indigenous peoples of the Russian Federation, the North and so on.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- No precedents have been established for applications to the patent or other offices in the Russian Federation for the recognition of special rights to expressions of folklore, or any other facts concerning their violation, from representatives of indigenous peoples and minorities.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- The principle of adequate protection for (material expressions) of folklore, as part of the existing intellectual property system in the Russian Federation.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- No.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- No response.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- (i) In the Russian Federation, terms other than “expressions of folklore” are used, in particular “popular creative industries” and “creative professions.”
- (ii) Basically, material expressions of folklore.
- (iii) The term is used as a result of the traditional lexicon adopted.
- (iv) The terms “expressions of folklore”, i.e. as normally understood, refer to works of ethnic creation, and include or embrace both material and non-material works, in other words oral, musical, dance, ceremonial and other works.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No



Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- Archives or databases have not been created. However, those expressions of folklore that are protected as part of the existing intellectual property system have a sufficiently clearly expressed classification in the International Patent Classification, the International Classification for Industrial Designs and the International Classification of Goods and Services.

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- (i) The terms “popular creation,” “folklore industries” and “creative professions” are used.
- (ii) The first is broader and covers all four groups (according to the Model Provisions) of “expressions of folklore,” and the second includes material productions constituting “expressions of folklore.”

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- For the expressions of folklore protected by the Patent Law and the Law on Trademarks, Service Marks and Appellations of Origin, protection is provided within these laws. The granting of permission for the use of folklore by authorized bodies is not envisaged.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- The principles of authorization are based on the existence of genuine indigenous territorially-defined means for using natural resources and traditional methods of existence for indigenous peoples and minorities that are required by such groups.

Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- No legal provision.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

- If an expression of folklore is protected by a patent or an industrial design or by other protected documents within existing laws, then the periods of validity for such protected documents shall be established in accordance with these laws. Once the period of validity has expired, the expression of folklore may become universal property.

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- No information available.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- Protection is afforded only within the framework of the above laws.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- Authorization is granted within the framework of the laws in force.

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

- There is no system for the granting of authorizations.
- Broader information on the activities of other countries in this regard would benefit a wider audience.

Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

- There are no practical examples, since a special law does not exist.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Responsibility in accordance with the aforementioned laws.

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- None.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- The Law of the Russian Federation on Copyright and Related Rights does not envisage any protection for “expressions of folklore”; however, the aforementioned laws of the Russian Federation relating to the rights of indigenous peoples provide for the preservation (but not for the protection as intellectual property) of the cultural and historical heritage, monuments, artistic creation, places of worship and ceremony, and burial grounds.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- The protection of the cultural heritage is the duty of the State and aims at the preservation and careful use of this heritage by the populations of the Russian Federation. Protection in the form of patents is envisaged for those subjects of “expressions of folklore” that are covered by the existing intellectual property system.

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No



If yes:

- (i) Please provide details of these cases.

Response:

- Cases in which restaurants, dancing and singing have been used in the traditions of Russian folkloric styles and productions such as Gzhel (Russian porcelain), Palekh and Khokloma (lacquered wood), Russian songs in verse, and so on – are widely known. However, precedents for disputes arising in relation to the rights to such use have not been recorded.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Since use has been made not of specific works, which are protected for example by patents for industrial designs, but of a general style, there have been no grounds for legal action within the framework of the laws in force.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- The adoption of international agreements would put an end to the pirating of national cultural property, in particular those of indigenous peoples and minorities.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- The Model Provisions provide sufficiently full coverage of the matters relating to the protection of the subjects of popular creation.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- The need to create traditional knowledge databases is self-evident. The research currently being undertaken by Rospatent as regards the possibility of protecting traditional knowledge, genetic resources and folklore by means of the existing intellectual property system has demonstrated the need to create a database covering these three subjects with a view to their inclusion in the search area of the patent procedure.
- We consider the example set by the Patent Office of India regarding the proposal to set up a digital library for traditional knowledge to be very positive.
- The adoption of an international agreement on the subjects in question is also extremely important.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- Expressions of foreign folklore are protected in the Russian Federation in the same way as national expressions, within the framework of the Patent Law and the Law on Trademarks, Service Marks and Appellations of Origin.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- In order to produce specific proposals, research into the matter in question is required at the regional, national and international levels. A database on traditional knowledge, genetic resources and folklore should also be set up.

[End of response of the Russian Federation]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF RUSSIA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- 1. Российское агентство по патентам и товарным знакам (Роспатент)
- 2. Федеральный институт промышленной собственности Роспатента

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Нет

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

Response:

- В соответствии со ст. 8 Закона РФ “Об авторском праве и смежных правах” нематериальные произведения народного творчества не охраняются.

- Введение охраны произведений всех народов РФ практически невозможно, так как аналогично опыту развитых стран (например, Германия, Франция), произведения народного творчества находятся в общественном достоянии и элементы культурного наследия вплетены в повседневную жизнь и запрет на их свободное использование не имеет смысла.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- Предполагается, что культурное наследие в широком смысле есть всеобщее достояние и запрет на его использование нецелесообразен, так как повсеместно элементы традиционных знаний и культуры вплетены в повседневность. В то же время, особый случай представляет культурное наследие коренных малых народов, которое нуждается в документировании и дальнейшем изучении. Однако этот вопрос начинает широко обсуждаться лишь в последние годы – пример тому принятые в последние годы законы, касающиеся прав и культурного наследия коренных народов Российской Федерации, народов Севера и пр.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- Не известны прецеденты по обращению в патентное или другие ведомства РФ о признании особых прав на выражения фольклора или каких-либо фактов их нарушения от представителей коренных и малочисленных народов



Application of the Principal Provisions of the Model Provisions

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Принцип адекватной защиты фольклора (материальных выражений) в рамках существующей системы интеллектуальной собственности РФ

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- НЕТ

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- Не имеется

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- (i) В РФ приняты иные, кроме “выражения фольклора” термины, в частности – “народные художественные промыслы”, «художественные ремесла».
- (ii) в основном – материальные выражения фольклора
- (iii) термин употребляется в силу сложившейся традиционной лексики
- (iv) термином “выражениями фольклора”, то есть, как принято понимать под этим – произведения народного творчества, включают или охватывают как материальные, так и нематериальные произведения народного творчества, то есть устные, музыкальные танцевальные, обрядовые и прочие.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- Архивация или создание базы данных не проводилась, однако те выражения фольклора, которые охраняются в рамках существующей системы интеллектуальной собственности, имеют достаточно четко выраженную классификацию в МПК, МКПО и МКТУ

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- (i) термины “народное творчество” и “народные промыслы”, «художественные ремесла»  
- (ii) первый - более широкий и подразумевает все четыре группы ( по Типовым Положениям) “выражений фольклора”, второй – охватывает материальные составляющие “выражений фольклора

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- НЕТ

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- Для выражений фольклора, охраняемых в рамках патентного закона и закона о товарных знаках, знаках обслуживания и наименованиях мест происхождения товаров защита предоставляется в рамках этих законов.

Выдача разрешений на использование фольклора уполномоченными органами не предусмотрена.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Принципы разрешений основаны на наличии подлинных и необходимых народам исконных территориально-определенных способов пользования природными ресурсами и традиционных способов бытования коренных и малых народов

Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- В ЗАКОНЕ НЕ ПРЕДУСМОТРЕНО

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

- Если выражение фольклора защищено патентом на промышленный образец или прочими охранными документами в рамках действующих законов, то и сроки действия таких охранных документов устанавливаются в соответствии с этими законами. После окончания срока их действия выражение фольклора может стать всеобщим достоянием

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- НЕ ИМЕЮТСЯ

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

ТОЛЬКО В РАМКАХ УКАЗАННЫХ ЗАКОНОВ

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- В РАМКАХ ДЕЙСТВУЮЩИХ ЗАКОНОВ

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

Response:

- Системы выдачи разрешений нет

In general, what practical lessons and examples would benefit a wider audience?

Response:

- Более широкая информация о деятельности других стран в этом направлении



Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

- Практических примеров нет, поскольку нет специального закона

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Ответственность в соответствии с вышеназванными законами

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- НЕТ

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Закон РФ “О б авторском праве и смежных правах” не подразумевает никакой защиты для “ выражений фольклора”, однако вышеприведенными законами РФ, касающимися прав коренных народов предусмотрено сохранение (но не охрана как интеллектуальная собственность) культурно-исторического наследия, памятников, художественного творчества, культовых мест и мест обрядов, мест захоронений

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- Охрана культурного наследия является общегосударственной задачей и направлена на сохранение и бережное отношение к наследию народов, населяющих Российскую Федерацию. Охрана в виде патентов предусмотрена для тех объектов “выражений фольклора”, которые охвачены имеющейся системой интеллектуальной собственности

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

If yes:

(i) Please provide details of these cases.

Response:

- Широко известны случаи использования оформления ресторанов, танцевальных и песенных шоу в традициях русских фольклорных стилей и произведений – Гжель, Палех, Хохлома, русские песни-частушки и пр. Однако, прецедентов по возникновению споров относительно прав на использование их не зарегистрировано

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Поскольку использованы не конкретные произведения, защищенные, например патентами на промышленные образцы, а общий стиль, оснований для судебного иска в рамках действующих законов, не имеется

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- Принятие международных соглашений положило бы конец пиратскому использованию национального культурного достояния народов, в частности коренных малых народов

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- Типовые Положения достаточно полно охватывают вопросы, касающиеся охраны объектов народного творчества

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- Очевидна необходимость создания баз данных по традиционным знаниям. Проводимое в настоящее время в Роспатенте исследование вопроса о возможности охраны традиционных знаний(ТрЗ), генетических ресурсов(ГР) и фольклора (Ф) существующей системой интеллектуальной собственности показало необходимость создания базы данных по ТрЗ, ГР и Ф для включения их в область поиска в патентной процедуре.

- Считаю весьма положительным пример патентного ведомства Индии по предложению создания цифровой библиотеки традиционных знаний.

- Крайне важным является также принятие международного соглашения по указанным вопросам.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

Выражения иностранного фольклора охраняются в Российской Федерации наравне с отечественными в рамках Патентного закона и Закона о товарных знаках, знаках обслуживания и наименованиях мест происхождения товаров.

## *II. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- Для выработки конкретных предложений необходимо исследование данного вопроса на национальном, региональном и международном уровне. А также создание современных баз данных по Традиционным Знаниям, Генетическим Ресурсам и Фольклору.

[End of response of Russia]

QUESTIONNAIRE RELATIF À L'EXPERIENCE ACQUISE A UN NIVEAU NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES EXPRESSIONS DU FOLKLORE

RÉPONSE DU SÉNÉGAL

*Coordonnées*

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*I. Application des dispositions types dans l'ensemble*

Question I.1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Ministère de la culture  
- Bureau sénégalais du droit d'auteur  
- Service du patrimoine national

Question I.2 : Les dispositions types sont-elles disponibles dans la (une) langue(s) officielle(s) de votre pays?

Réponse :

Oui

Question I.3 : Les “expressions du folklore”, soit celles qu’elles sont décrites dans les dispositions types, soit celles qu’on les entend dans votre pays, bénéficient -elles d’une protection juridique spécifique au titre de la propriété intellectuelle \* aux termes de votre législation ou réglementation nationale (quelles dispositions législatives ou réglementaires en question serapportent ou non à la propriété intellectuelle)?

Réponse :

Oui

Non

Dans l’affirmative :

i) Veuillez fournir des renseignements sur les instruments législatif et réglementaire pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d’entrée en vigueur et le nom et les coordonnées du ministre, du département, de l’organisme ou de l’office chargé de leur administration.

Réponse :

L7352 du 4 décembre 1973

Articles:

Règlement de perception du BSDA

Projet de loi sur le patrimoine culturel

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\* Le questionnaire porte sur l’expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle. Il est donc question d’une protection juridique spécifique de l’ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d’une législation *suigeneris* (particulière) ou des dispositions d’une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d’auteur et les droits connexes ou des lois de propriété industrielle. Il ne rapporte pas non plus à l’identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle.



ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les disposition types ?

Réponse :

Oui

Non

iii) Veuil lez indiquer ci-dessous le ou les aspects des disposition types qui, le cas échéant, ne sont pas pris en considération dans le cadre législatif et réglementaire de votre pays :

**Cet aspect des  
disposition types  
ne figure pas dans  
notre cadre législatif  
et réglementaire national**

Les principes fondamentaux sur lesquels reposent les disposition types (voir le préambule)

L'étendue des "expressions du folklore" protégées par les disposition types (article 2)

Les actes contre lesquels les expressions du folklore sont protégées et les exceptions en la matière (articles 3, 4, 5 et 6)

Les dispositions relatives à l'autorisation des utilisations des expressions du folklore (articles 9 et 10)

Les sanctions et recours prévus (articles 7 et 8)

Les solutions proposées par les disposition types en matière de protection des expressions du folklore étranger (article 14)

Si vous avez coché l'une des cases ci-dessus, veuillez préciser votre réponse.

Réponse :

L'esprit du législateur sénégalais quant au modèle de protection est tout à fait reflété dans le préambule, l'étendue des droits et les sanctions contre toutes formes d'atteintes sont à l'identique, cependant la spécificité réside sur la titularité des droits qui appartiennent à tout le national sénégalais et non à une communauté. La mise en oeuvre des droits est confiée au BSDA et les droits collectés servent à promouvoir l'agriculture.

iv) Veuillez indiquer toute autre raison pour laquelle certains aspects des disposition types ne seraient pas pris en considération dans votre pays.

Réponse :

Il ne se pose aucune difficulté à la mise en oeuvre étant à préciser qu'au plan des principes les préoccupations sont prises en compte.

Dans la négative ,

- i) Veuillez indiquer, si possible, les raisons pour lesquelles cette protection n'a pas été établie.

Réponse :

Aucune difficulté ne se pose.

- ii) Veuillez indiquer ci-dessous quel(s) aspect(s) des disposition types peuvent avoir empêché leur application dans votre pays :

Oui, cet aspect peut avoir  
entravé l'application  
des disposition types

Les principes fondamentaux sur lesquels reposent les disposition types  
(voir le préambule)

L'étendue des "expressions du folklore" protégées par les disposition types  
(article 2)

Les actes contre lesquels les expressions du folklore sont protégées  
et les exceptions en la matière (articles 3, 4, 5 et 6)

Les dispositions relatives à l'autorisation des utilisations des expressions  
du folklore (articles 9 et 10)

Les sanctions et recours prévus (articles 7 et 8)

Les solutions proposées par les disposition types en matière de protection  
des expressions du folklore étranger (article 14)

Si vous avez coché l'une des cases ci-dessus, veuillez préciser votre réponse.

Réponse :

La prise en compte des préoccupations du gouvernement de la République du Sénégal justifie l'adhésion totale aux dispositions soumises.

## II. Application des principaux aspects des dispositions types

a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II.1 : Sur quels principes repose la protection du folklore établie dans la législation ou la réglementation de votre pays ?

Réponse :

Le folklore constitue l'âme d'une nation, il est un héritage culturel inestimable pour un peuple. Il est un élément d'unité nationale où l'option pour le législateur de le considérer comme un bien commun.

Question II.2 : Avez-vous des observations à formuler sur les principes pris en considération dans l'élaboration des dispositions types ? Pensez-vous que ces principes sont toujours applicables ? Faudrait-il prendre d'autres principes en considération en cas d'adaptation des dispositions types ?

Réponse :

Les principes énoncés paraissent appropriés seulement si, avant de prendre une décision, procédera au recensement, à la collecte, à la préservation du folklore et régler préalablement toutes les réclamations quant à la titularité des droits. L'OMPI et l'UNESCO devront aider à la tenue de larges concertations dans le respect de deux principes clés : la nécessité de préserver l'identité culturelle des peuples et l'exigence éventuelle pour une communauté de tirer un profit économique de l'exploitation de son patrimoine culturel tout en affirmant son identité. La protection du folklore et de ses expressions pour être efficace doit être internationale. Cependant l'absence d'identification du patrimoine culturel et le fait que plusieurs ethnies disséminées dans plusieurs états aient une appartenance culturelle et réclament autitred leur patrimoine les mêmes éléments du folklore et de ses expressions compliquent l'exercice pour les États africains surtout ceux de l'Afrique. La tenue d'assises régionales est souhaitée.

Question II.3 : Veuillez fournir toute information, observation ou donnée d'expérience supplémentaires sur les principes fondamentaux pris en considération pour l'élaboration des dispositions types.

Reponse :

Les principes de base sont l'unité nationale, l'importance du patrimoine culturel, l'attachement au folklore et à ses expressions et aussi les possibilités d'exploiter économiquement le patrimoine culturel commun qui faute de protection est pillé et exploité.

b) Expressions du folklore protégées

Question II.4 : Existe-t-il dans la législation ou la réglementation de votre pays ou un autre terme que les "expressions du folklore" pour désigner l'objet des dispositions types visé à l'article 2? Dans l'affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?
- iii) Pourquoi ce terme a-t-il été retenu?
- iv) Quel objet désignerait dans votre pays le terme "expressions du folklore"?

Réponse :

Folklore et ses expressions, par expressions on entend :  
Oeuvres littéraires et artistiques, interprétation et exécutions de ses expressions du folklore, la production d'éléments caractéristiques du patrimoine artistique, traditionnel, développé et perpétué par une communauté et comprenant les contes populaires, la poésie populaire, les chansons, la musique instrumentale populaire, les danses et les spectacles populaires ainsi que les expressions artistiques et rituelles et des producteurs d'art populaire.

Question II.5 : Dans l'application concrète de la législation et de la réglementation de votre pays, l'identification de ses expressions du folklore à protéger a-t-elle soulevé des difficultés?

Réponse :

Oui

Non

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées et quelles? Existe-t-il des répertoires, des archives et des bases de données sur le folklore)?

Réponse :

Non - inventaire du patrimoine folklore compromet gravement son évaluation. C'est dire que préalablement au stockage et à la mise à disposition un travail préalable est indispensable: recenser, inventorier, collecter et classer en vue de l'exploitation.

Question II.6 : Existe-t-il dans la législation ou la réglementation de votre pays un autre terme que les "expressions du folklore" pour désigner l'objet des dispositions types visées à l'article 2? Dans l'affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?

Réponse :

Non.

Question II.7 : Existe-t-il des "expressions du folklore" ou d'autres formes de cultures et de savoirs traditionnels qui ne sont pas protégées par les dispositions types et qui, selon vous, devraient l'être?

Le projet de loi sur le patrimoine culturel dont le folklore est un des éléments, décrit dans les détails les éléments du patrimoine folklorique. La difficulté est le recensement, la collecte et le stockage.

Question II.8 : Veuillez fournir toute information, observation ou donnée d'expérience supplémentaire concernant l'étendue des expressions du folklore protégées.

Réponse :

Le BSDA a une pratique très riche en matière de gestion collective des droits confère au folklore et à ses expressions la conscience de la valeur économique d'un patrimoine qui est mal exploité et souvent pillé. Il faut au plan international une protection minimale pour que les peuples préservent cet élément important de leur héritage culturel et qu'ils puissent tirer profit de leurs potentialités économiques.

c) Actes contre lesquels les expressions du folklore sont protégées

Question II.9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou la réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation? Les droits accordés sont-ils exclusifs?

Réponse

Selon la loi 7352 du 4 décembre 1973 dont les dispositions ont été adaptées aux nouvelles exigences et reprises dans le projet de loi, préalablement à toute exploitation du folklore, l'utilisateur est tenu d'avoir l'accord expresse et formel du BSDA. Cet accord moyennant paiement d'une redevance est la seule condition pour utiliser licitement le folklore. Toute utilisation faite en violation de ces deux conditions est une contrefaçon. Le projet de loi sur le droit d'auteur et les droits voisins contient des dispositions plus draconiennes et prévoit une peine d'emprisonnement et de fortes amendes.

Question II.10 : Quels principes sont utilisés dans la législation et la réglementation de votre pays pour déterminer les utilisations soumises à autorisation (par exemple, les principes énoncés à l'article 3 reposent sur l'intention de nuire et l'utilisation ou non de l'expression du folklore en dehors de son contexte traditionnel ou coutumier).

Réponse :

Toutes les utilisations sauf dans les cas de libre utilisation telles que prévues par les conventions internationales exigent une autorisation préalable. Aucune permission liée aux circonstances spécifiques n'est prévue. À titre exceptionnel, l'organisme de gestion collective pourrait réserver un traitement spécifique.

Question II.11 : D'après votre expérience en matière d'application de la législation et de la réglementation de votre pays, contre quelles formes d'exploitation, d'utilisation et d'action faut-il protéger les expressions du folklore? Veuillez donner des exemples concrets. Disposez-vous de données d'expérience dans l'application des dispositions pertinentes de votre législation et réglementation qui pourraient être utiles à un plus large public?

Réponse :

Dans la pratique, le non-recensement des éléments du folklore compromet gravement l'efficacité en matière de protection; des assises nationales devraient aider à régler cette difficile question. Dans le domaine de la culture, des costumes vestimentaires, des bijoux, une protection supplémentaire est souhaitée.

Question II.12 : Si la législation ou la réglementation de votre pays prévoit des droits en matière de mention de la source (tels que ceux envisagés à l'article 5 des dispositions types), veuillez indiquer, en citant des exemples concrets lorsque c'est possible, si ces droits sont révélés utiles, efficaces et concrètement applicables.

Par exemple, comment l'exigence selon laquelle l'expression du folklore doit être "identifiable" (c'est-à-dire issue d'une communauté ou d'un lieu connu) est-elle appliquée dans votre pays? Comment cette exigence est-elle appliquée s'il existe dans votre pays différentes communautés partageant des expressions de folklore similaires? Sepourrait-il également que des communautés de votre pays vivent aussi dans des pays limitrophes ou qu'elles aient adopté et développé une expression de folklore issue d'un autre pays?

Réponse :

Pour éviter toutes ces difficultés les législateurs sénégalais dans sagesse a fait du folklore un élément d'unité nationale, un patrimoine commun national quand bien même la diversité ethnique existe.

Question II.13 : La protection prévue par la législation ou la réglementation de votre pays est-elle limitée dans le temps?

Oui

Non

Dans l'affirmative, combien de temps est-elle applicable? Comment détermine-t-on le point de départ de la protection? Qu'advient-il de l'expression à l'expiration de la période de protection (tombe-t-elle par exemple dans le domaine public de sorte qu'elle peut être librement copiée et utilisée séparément sans restriction)?

Dans la négative, disposez-vous dans ce domaine de données d'expérience qui pourraient être utiles à un plus large public?

Réponse :

Le folklore étant l'âme d'une nation, il est important que les peuples puissent assurer la transmission de génération en génération dans le respect de son caractère identitaire. Il permet de lier les liens entre divers peuples ethniques et entre membres d'une même ethnique.

Question II.14 : Veuillez fournir des renseignements sur les exceptions aux droits susvisés éventuellement prévues dans la législation ou la réglementation de votre pays. Sont-elles considérées appropriées du point de vue tant des détenteurs que des utilisateurs du folklore dans votre pays?

Réponse :

Les exceptions telles que généralement admises sont prévues lorsqu'ils s'agit d'un usage privé, chaque personne ayant le droit d'utiliser sa culture. Les exceptions sont appropriées et il faut rappeler la nécessité d'encourager ceux qui concourent à la promotion de la culture. Certains utilisateurs contestent le principe du paiement des droits retenus en matière de titularité des droits et même le principe de l'exploitation économique alors qu'une telle exploitation aide à promouvoir le folklore et ses expressions. Le choix opéré pour régler le titulaire des droits pose quelques difficultés mais calme les ardeurs.

Question II.15 : Compte tenu des expressions du folklore qui existent dans votre pays, contre quelles formes d'exploitation, d'utilisation et d'action faudrait-il protéger les expressions du folklore? Veuillez donner des exemples concrets.

Réponse :

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Représentation non autorisée  
Communication au public

Question II.16 : Veuillez faire part de toute autre observation ou donnée d'expérience concernant la nature de la protection accordée aux expressions du folklore dans votre pays.

Réponse :

Les droits concernés sont les droits traditionnels reconnus au titre de la propriété littéraire et artistique.



d) Autorisation d'utilisation des expressions du folklore

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la "propriété" du pays dans son ensemble (en tant que partie du patrimoine culturel national)?

ii) la "propriété" de communautés autochtones ou locales vivant dans votre pays?

iii) la "propriété" des différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

Réponse :

Lefolklore est un élément d'unité nationale et appartient à la nation entière.

Question II.18 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant l'autorisation d'utilisation des expressions du folklore dans votre pays.

Réponse :

Avant de pouvoir faire usage du folklore, l'utilisateur doit payer une redevance au BSDA. Les sommes ainsi collectées sont utilisées pour promouvoir la culture nationale et administrées par un comité sur un fonds social et la tarification est calculée sur la base de 50% des œuvres protégées par la loi.

Question II.19 : Votre législation établit-elle une "autorité compétente" ou une "autorité de surveillance" duly visés dans les articles 9 et 10 des dispositions types?

Veillez fournir des informations sur les compétences, le financement, les missions, la composition, les responsabilités, les fonctions et les activités de ces organismes dans votre pays.

Veillez décrire la procédure d'obtention des autorisations d'utilisation des expressions du folklore.

Les utilisations des expressions du folklore sont-elles soumises à redevance et, dans l'affirmative, comment celles-ci sont-elles déterminées et à quelles fins sont-elles perçues (par exemple, pour promouvoir la culture nationale)?

D'une manière générale, quels enseignements et exemples concrets pourraient être utiles à un plus large public?

Réponse :

La collecte, le stockage du folklore. Il faut évaluer ce patrimoine culturel commun.

e) Sanctions, recours et compétence

Question II.21 : Quelles voies de recours et sanctions prévoient la législation et la réglementation de votre pays?

Réponse :

Les sanctions sont civiles et pénales ou simplement civiles.  
Dans le projet de loi des mesures complémentaires sont prévues.

Question II.22 : Veuillez indiquer toute autre observation ou don née d'expérience concernant les recours, les sanctions et la compétence.

Réponse :

Aucune spécificité en matière de reproduire n'est prévue. Les règles sont celles du droit commun.

f) Relations avec d'autres formes de protection

Question II.23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d'une protection indirecte, par exemple au titre des droits voisins ?

Réponse :

Oui

Non

Question II.24 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant les autres formes de protection dont peuvent bénéficier les expressions du folklore dans votre pays.

Réponse :

Le projet de loi sur le patrimoine culturel offre une protection sui generis.

g) Protection des expressions du folklore étranger

Question II.25 : Avez-vous connaissance de cas dans lesquels des expressions du folklore issues de votre pays ont été exploitées ou utilisées d'une autre manière à l'étranger ?

Réponse :

Oui

Non

Dans l'affirmative :

i) Veuillez fournir des précisions sur ces situations.

Réponse :

Oui, dans le domaine musical, beaucoup d'artistes qui sont de simples interprètes de folklore ou peuvent à la limite avoir des droits en tant qu'arrangeur, se déclarent auteurs dans le cadre des contrats d'édition exploités par l'éditeur un bien appartenant au patrimoine culturel. Les rites traditionnels, les cérémonies de danses et de chant sont assez souvent enregistrés et exploités à l'insu de l'auteur. Mais la grosse difficulté est l'identification.

ii) Les autorités compétentes ou les personnes lésées dans votre pays ont-elles été à même de prendre des mesures juridiques pour prévenir ou réparer cette exploitation ou utilisation? Dans l'affirmative, veuillez préciser, en indiquant la base juridique sur laquelle se fonde cette action (par exemple, sur la base de la réciprocité établie dans la législation ou la réglementation de votre pays).

Réponse :

Non.

Question II.26 : Pensez-vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Réponse :

Oui

Non

Question II.27 : Dans l'affirmative, pensez-vous que les dispositions pourraient constituer un bon point de départ pour l'élaboration d'un tel arrangement?

Réponse :

Oui

Non

Veuillez préciser votre réponse.

Réponse :

L'importance des questions liées au folklore et à ses expressions ne saurait tolérer le principe d'une protection isolée ou marginalisée. Il est certain qu'au-delà des aspects économiques une telle protection permettra aux hommes de mieux se connaître, de se respecter et de vivre en parfaite harmonie au plan économique. Les bases d'une protection sont d'une grande importance.

Question II.28 : Quelles propositions concrètes souhaiteriez-vous faire concernant les deux principaux problèmes ayant entraîné l'élaboration d'un traité international en 1984, à savoir i) l'insuffisance des sources qui permettraient l'identification des expressions du folklore à protéger et ii) l'absence de mécanisme approprié pour régler la question des expressions du folklore représentées non pas dans un seul pays mais dans plusieurs pays d'une région?

Réponse :

Il faut dans ce domaine tenir compte des spécificités entre les cultures et les peuples. Ainsi dans la sous-région Afrique de l'Ouest le folklore "mandingue" ou "Foulani" est une grosse préoccupation sur le point spécifique de la titularité des droits.

Question II.29 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant la protection des expressions du folklore étranger.

Réponse :

Dans le domaine de la danse, de la chanson, de l'art visuel et artistique, il existe de nombreuses similitudes existantes; il faut les recenser et avec la plus grande sagesse veiller à ce qu'il n'y ait pas d'éléments d'unité et non une source de conflits fratricides.

### *III. Modification ou adaptation des disposition types*

Question III.1 : Veuillez indiquer toutes suggestions de modification ou d'adaptation à apporter aux disposition types afin d'accroître leur utilité en tant que modèle de dispositions normatives nationales, régionales ou internationales.

Réponse :

Les préoccupations liées à la protection du folklore et des expressions sont prises en compte au plan juridique. Il reste simplement à créer les conditions de mise en œuvre effective des droits et surtout à faire en sorte que les droits contribuent à renforcer la paix tout en faisant un rôle essentiel dans le développement économique, culturel et social.

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF SIERRA LEONE

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*I. Application of the Model Provisions as a Whole*

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

*Yes, this aspect may have prevented implementation of the Model Provisions*

Response:

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- The definition is limited to “artistic heritage” of a community rather than the cultural heritage of the nation thereby creating confusion with regards to what can be protected.
- The conclusion that utilization even with gainful intent within the traditional or customary context is not subject to authorization from the competent authorities can (in most cases) lead to abuse of the expression of folklore.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- Another reason is the preservation of expressions of folklore. Documentation is impossible because of the lack of national registers of expressions of folklore.



*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- No. The principles are viable and will help us in preparing a legislation for the protection of expressions of folklore.

(b) Protected expressions of folklore

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Proverbs, myths, epics, jokes and rumours, childbirth songs, death songs, and songs sung during hunting, fishing etc.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Use/exploitation for financial benefits/gains;  
- Distorting expressions of folklore; and  
- Deception of the public.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

(d) Authorization of utilizations of expressions of folklore

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- Before anybody can utilize an expression of folklore, the community in which that expression of folklore is found has to be informed and permission sought from the elders or Paramount Chief.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

- Response: Yes
- No

Please provide further information on your answer.

Response:

- This will enable the communities from which expressions of folklore originate to benefit from any form of exploitation.
- It will also provide a basis for co-ordination in the protection of expressions of folklore.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- Identify all sources of expressions of folklore by using historical facts.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- Sanctions should be uniform and should extend beyond national boundaries.

[End of response of Sierra Leone]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF SRI LANKA

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- National Intellectual Property Office of Sri Lanka.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- No

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response:    Yes       

                  No       

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Code of Intellectual Property Act No. 52 of 1979

Part II Copyright Chapter II: Section 6 - Definition of “folklore.”

Section 12 – Works of Sri Lanka folklore.

Section 22 – Fields of application.

Section 12 – Works of Sri Lanka folklore:

12. (1) In the case of works of Sri Lanka folklore, the rights referred to in sections 10 and 11 (1) shall be exercised by the Minister in charge of the subject of Culture.

(2) Works of Sri Lanka folklore shall be protected by all means available under this part, without limitation in time.

(3) Copies of works of Sri Lanka folklore made abroad and copies of translations, adaptations, arrangements, or other transformations of works of Sri Lanka folklore made abroad, without the authorization of the Minister in charge of the subject of Culture, shall be neither imported nor distributed.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response:    Yes   

                  No   

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the  
Model Provisions  
has not been followed  
in our national laws  
and regulations*

Response:

The basic principles underlying the Model Provisions (see the Preamble)	<input checked="" type="checkbox"/>
The scope of “expressions of folklore” protected by the Model Provisions (section 2)	<input checked="" type="checkbox"/>
The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)	<input checked="" type="checkbox"/>
The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)	<input checked="" type="checkbox"/>
The sanctions and remedies provided for (sections 7 and 8)	<input checked="" type="checkbox"/>
The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)	<input type="checkbox"/>



If you have marked any of the boxes, please provide further information.

Response:

- Folklore is defined in Section 6.
- The protection given only attracts those in Section 10 and 11 (1) of the Act.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

- Our Act was enacted in 1979, no amendments have been made in this regard.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- This issue has not been addressed.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- No other reason.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Protected under copyright law but without time limit.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- These principles should be re-examined.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- As in copyright law.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- As in copyright law.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:

- No data available, possibly not.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

[End of response of Sri Lanka]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF SWITZERLAND

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Swiss Federal Institute of Intellectual Property of the Federal Department of Justice and Police  
- Address:  
Swiss Federal Institute of Intellectual Property  
Einsteinstrasse 2  
CH-3003 Bern  
Switzerland

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- In French (as published by WIPO/UNESCO).

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- The protection of folklore by existing forms of intellectual property rights, especially copyright, is considered to be sufficient for the protection of expressions of folklore (see also reply to question (iii) immediately below).

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

- The artists in Switzerland did not express any need for such a protection, as they considered the protection provided for by existing forms of intellectual property rights, especially copyright, to be sufficient.



*II. Application of the Principal Provisions of the Model Provisions*

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- In our view, there are a number of problems:

- 1) Certain definitions are not precise enough (i.e., for example, what is an “expression of folklore?”).
- 2) From a Swiss point of view, the fact that a government or other authority would have to decide on the use of folklore is problematic, as it might be considered to be a form of censorship by the State. Furthermore, the wide multi-culturality of Switzerland could lead to conflicts.
- 3) The relationship with copyright protection is unclear, especially for situations where an author creates a work within a certain tradition of folklore.
- 4) It should be specified that the authorization by the competent authority for the use of expressions of folklore can never be exclusive. If exclusive authorization were possible, there would be the risk that one or a few persons could monopolize certain expressions of folklore.

Question II. 3: Please provide any additional information, comments or practical experiences on the basic principles taken into account for the elaboration of the Model Provisions.

Response:

- 1) It might be necessary to distinguish between what kind of protection is needed with regard to national folklore (i.e. in Switzerland, copyright protection in combination with public domain is sufficient and works perfectly with our understanding of folklore) and the recognition of foreign systems of protection made necessary by the cultural and social situation in those countries.
- 2) The risk to hinder further development and evolution of folklore should be examined more carefully (Art. 13 of the Model Provisions is in our view too general).

(b) Protected expressions of folklore

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- Since there is no specific protection provided for expressions of folklore, there is no such term used in the Swiss legislation.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- No

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- We have no additional information, comments or practical experiences on the scope of protected expressions of folklore that we could provide.

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- In Switzerland, expressions of folklore are currently protected by copyright. Therefore, the general rules of copyright law apply.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- We have no other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore that we could provide.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input type="checkbox"/>            |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Response:

- According to the rules of copyright.

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- We have no other comments or practical experiences regarding the authorization of utilization of expressions of folklore that we could provide.

(f) Relation to other forms of protection

Question II. 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- We have no further information or practical examples to illustrate our response that we could provide.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- We have no other comments or practical experiences regarding other forms of protection afforded to expressions of folklore that we could provide.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- In our view, such an international agreement is, for the time being, premature, especially as long as the problems that are spelled out in Question II. 28 are not adequately resolved.

Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- We are unable to provide practical proposals as we have no practical experience with the specific legal protection of expressions of folklore in Switzerland.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- We have no other comments or practical experiences regarding the protection of expressions of folklore of foreign countries that we could provide.

*III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- No comment.

[End of response of Switzerland]



QUESTIONNAIRE RELATIF A L'EXPERIENCE ACQUISE AU NIVEAU  
NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DU TOGO

*Coordonnées*

Nom : Komi Amétépé Ayi  
Qualité : Directeur général  
Office/organisation : Bureau togolais du droit d'auteur (BUTODRA)  
État membre : Togo  
Mél :  
Tél. : (228) 22 18 43 – 22 18 39  
Tlcp. : (228) 22 18 39

*I. Application des dispositions types dans leur ensemble*

Question I. 1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Le Ministère chargé de la Culture  
Organisme: Bureau togolais du droit d'auteur (BUTODRA)

Question I. 2 : Les dispositions types sont elles disponibles dans la (une des) langue(s) officielle(s) de votre pays?

Réponse :

Oui.  
Les dispositions types sont elles disponibles en français au Togo.

Question I. 3 : Les “expressions du folklore”, soit telles qu’elles sont décrites dans les dispositions types, soit telles qu’on les entend dans votre pays, bénéficient-elles d’une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (que les dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Oui

Non

Dans l’affirmative :

i) Veuillez fournir des renseignements sur les instruments législatifs et réglementaires pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d’entrée en vigueur et le nom et les coordonnées du ministère, du département, de l’organisme ou de l’office chargé de leur administration.

Réponse :

La protection juridique des expressions du folklore est régie au Togo par la loi n°91-12 du 10 juin 1991 portant protection du droit d’auteur, du folklore et des droits voisins notamment dans son chapitre II intitulé : Œuvres du Folklore National

- articles : 66-72
- date d’entrée en vigueur : 10 juin 1991
- Ministère chargé de la culture  
B.P. 3193  
Tél : (228) 21 23 52 / Fax : (228) 21 42 28  
(228) 21 42 51  
Lomé – Togo

Organisme : Bureau togolais du droit d’auteur (BUTODRA)  
B.P. 14053 Tél : (228) 22 18 39 / (228) 22 18 43  
Fax : (228) 22 18 39

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\* Le questionnaire porte sur l’expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle. Il est donc question d’une protection juridique spécifique de l’ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d’une législation *sui generis* (particulière) ou des dispositions d’une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d’auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l’identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle.

ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les dispositions types?

Oui

Non

iii) Veuillez indiquer ci-dessous le ou les aspects des dispositions types qui, le cas échéant, ne sont pas pris en considération dans le cadre législatif et réglementaire de votre pays :

**Cet aspect des  
dispositions types  
ne figure pas dans  
notre cadre législatif  
et réglementaire national**

Les principes fondamentaux sur lesquels reposent les dispositions types (voir le préambule)

L'étendue des "expressions du folklore" protégées par les dispositions types (article 2)

Les actes contre lesquels les expressions du folklore sont protégées et les exceptions en la matière (articles 3, 4, 5 et 6)

Les dispositions relatives à l'autorisation des utilisations des expressions du folklore (articles 9 et 10)

Les sanctions et recours prévus (articles 7 et 8)

Les solutions proposées par les dispositions types en matière de protection des expressions du folklore étranger (article 14)

Si vous avez coché l'une des cases ci-dessus, veuillez préciser votre réponse.

Réponse :

La législation togolaise ne prévoit pas un préambule relatif au folklore du fait que la protection des expressions du folklore fait partie d'un tout.  
En ce qui concerne l'étendue des expressions du folklore, le législateur togolais utilise le mot folklore dans son assertion globale.

## *II. Application des principaux aspects des dispositions types*

### a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II. 1 : Sur quels principes repose la protection du folklore établie dans la législation ou la réglementation de votre pays?

Réponse :

La protection du folklore établie dans la législation togolaise repose sur le fait que le folklore est notre patrimoine culturel. Cette protection sert également à la pérennisation et à la promotion de la culture nationale. Il est donc nécessaire d'empêcher son exploitation illicite.

Question II. 2 : Avez-vous des observations à formuler sur les principes pris en considération dans l'élaboration des dispositions types? Pensez-vous que ces principes sont toujours applicables? Faudrait-il prendre d'autres principes en considération en cas d'adaptation des dispositions types?

Réponse :

Nous n'avons pas d'observation particulière à formuler sur les principes pris en considération dans les dispositions types. Cependant il est souhaitable que ces dispositions soient pratiques, applicables et efficaces.  
Il faudrait également que les autorisations d'utilisation des expressions du folklore soient accordées par les organismes nationaux de gestion collective du droit d'auteur et non par les communautés parce que dans la plupart des États africains le folklore appartient à titre originaire au patrimoine national.

b) Expressions du folklore protégées

Question II. 4 : Existe-t-il dans la législation ou la réglementation de votre pays un autre terme que les “expressions du folklore” pour désigner l’objet des dispositions types visé à l’article 2? Dans l’affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?
- iii) Pourquoi ce terme a-t-il été retenu?
- iv) Quel objet désignerait dans votre pays le terme “expressions du folklore”?

Réponse :

- i) Œuvre du folklore  
Éléments empruntés du folklore
- ii) Le terme œuvre du folklore est utilisé dans la législation du fait que les expressions du folklore sont assimilées aux œuvres littéraires et artistiques.
- iii) Le terme “éléments empruntés” du folklore est utilisé lorsqu’il s’agit des aspects particuliers du folklore.
- iv) Non

Question II. 5 : Dans l’application concrète de la législation et de la réglementation de votre pays, l’identification des expressions du folklore à protéger a-t-elle soulevé des difficultés?

Oui

Non

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées en tant que telles? Existe-t-il des répertoires, des archives et des bases de données sur le folklore)?

Réponse :

L’identification des expressions du folklore soulève d’énormes problèmes au Togo notamment le recensement, la collecte et la typologie des expressions du folklore. Il faut aussi noter l’absence de répertoires, d’archives et de bases de données.

Question II. 7 : Existe-t-il des “expressions du folklore” ou d’autres formes de cultures et de savoirs traditionnels qui ne sont pas protégées par les dispositions types et qui, selon vous, devraient l’être?

Réponse :

Il existe des expressions du folklore ou d’autres formes de cultures et de savoirs traditionnels qui ne sont pas protégées par les dispositions types :

- les langues
- les mythes et symboles
- les jeux
- les recettes culinaires

c) Actes contre lesquels les expressions du folklore sont protégées

Question II. 9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou la réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation? Les droits accordés sont-ils exclusifs?

Réponse :

Les actes qui sont soumis à l’autorisation en ce qui concerne l’exploitation des expressions du folklore sont :

- la représentation ou l’exécution publique du folklore national
- la reproduction par quelque procédé que ce soit du folklore national (art 69)
- l’adaptation, traduction, arrangement et autres transformation de ces œuvres
- l’importation, l’exploitation et la distribution du folklore national
- les droits accordés ne sont pas exclusifs.

Question II. 10 : Quels principes sont utilisés dans la législation et la réglementation de votre pays pour déterminer les utilisations soumises à autorisation (par exemple, les principes énoncés à l’article 3 reposent sur l’intention de lucre et l’utilisation ou non de l’expression du folklore en dehors de son contexte traditionnel ou coutumier).

Réponse :

L’autorisation préalable à l’occasion de l’utilisation de folklore est requise lorsqu’il est utilisé à des fins lucratives; dans ce cas l’autorisation est accordée moyennant le paiement d’une redevance (article 69).

Cette autorisation n’est pas requise lorsque le folklore national est utilisé par une personne publique à des fins lucratives. Toutefois, cette personne publique est tenue d’en faire une déclaration.

Question II. 11 : D'après votre expérience en matière d'application de la législation et de la réglementation de votre pays, contre quelles formes d'exploitation, d'utilisation et d'action faut-il protéger les expressions du folklore? Veuillez donner des exemples concrets. Disposez-vous de données d'expérience dans l'application des dispositions pertinentes de votre législation et réglementation qui pourraient être utiles à un plus large public?

Réponse :

- Utilisation abusive
- Exploitation illicite

Il faut protéger les expressions du folklore contre les utilisations abusives, exploitations illicites, bref contre le pillage des cultures traditionnelles.

Question II. 12 : Si la législation ou la réglementation de votre pays prévoit des droits en matière de mention de la source (tels que ceux envisagés à l'article 5 des dispositions types), veuillez indiquer, en citant des exemples concrets lorsque c'est possible, si ces droits se sont révélés utiles, efficaces et concrètement applicables.

Par exemple, comment l'exigence selon laquelle l'expression du folklore doit être "identifiable" (c'est-à-dire issue d'une communauté ou d'un lieu connu) est-elle appliquée dans votre pays? Comment cette exigence est-elle appliquée s'il existe dans votre pays différentes communautés partageant des expressions du folklore similaires? Se pourrait-il également que des communautés de votre pays vivent aussi dans des pays limitrophes ou qu'elles aient adopté et développé une expression du folklore issue d'un autre pays?

Réponse :

La législation ne prévoit pas des droits en matière de mention de la source.

Question II. 13 : La protection prévue par la législation ou la réglementation de votre pays est-elle limitée dans le temps?

Oui

Non

Question II. 14 : Veuillez fournir des renseignements sur les exceptions aux droits susvisés éventuellement prévues dans la législation ou la réglementation de votre pays. Sont-elles considérées appropriées du point de vue tant des détenteurs que des utilisateurs du folklore dans votre pays?

Réponse :

Exceptions :  
Utilisation des expressions par des personnes publiques à des fins lucratives.  
Elle paraît appropriée.

Question II. 16 : Veuillez faire part de toute autre observation ou donnée d'expérience concernant la nature de la protection accordée aux expressions du folklore dans votre pays.

Réponse :

Pas d'observation ou donnée d'expérience.

d) Autorisation d'utilisation des expressions du folklore

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la "propriété" du pays dans son ensemble (en tant que partie du patrimoine culturel national)?

oui

ii) la "propriété" de communautés autochtones ou locales vivant dans votre pays?

iii) la "propriété" des différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.



Question II. 18 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant l'autorisation d'utilisation des expressions du folklore dans votre pays.

Réponse :

Pas d'observation  
Seul le BUTODRA, l'organisme national de gestion collective est habilité à accorder l'autorisation d'utilisation des expressions du folklore.

Question II. 19 : Votre législation établit-elle une "autorité compétente" ou une "autorité de surveillance" du type visé dans les articles 9 et 10 des dispositions types?

Veuillez fournir des informations sur les compétences, le financement, les missions, la composition, les responsabilités, les fonctions et les activités de ces organismes dans votre pays.

Veuillez décrire la procédure d'obtention des autorisations d'utilisation des expressions du folklore.

Les utilisations des expressions du folklore sont-elles soumises à redevance et, dans l'affirmative, comment celles-ci sont-elles déterminées et à quelles fins sont-elles perçues (par exemple, pour promouvoir la culture nationale)?

D'une manière générale, quels enseignements et exemples concrets pourraient être utiles à un plus large public?

Réponse :

La législation togolaise prévoit une autorité compétente du type visé dans l'article 9 des dispositions types. C'est l'organisme de gestion collective : le Bureau togolais du droit d'auteur (BUTODRA); seul le BUTODRA a la qualité d'autoriser et de contrôler les exploitations des expressions du folklore.

La procédure d'obtention des autorisations d'utilisation des expressions du folklore est très simple : il suffit à l'utilisateur d'adresser une demande à la Direction générale du BUTODRA en prenant soin de préciser :

- sa qualité
- les conditions d'utilisation des expressions du folklore (caractère onéreux ou gratuit).

Si c'est à titre onéreux, l'utilisateur est tenu de payer une redevance. La redevance à payer est fixée par l'arrêté fixant le règlement de perception du BUTODRA. Elle est calculée sur les recettes brutes de l'exploitation, son taux est de 50% de celui habituellement appliqué pour les œuvres de même catégorie. Les produits de cette redevance sont gérés par le BUTODRA et sont affectés à des fins culturelles et sociales en faveur des auteurs togolais (article 69 de la loi n°91-12 du 10 juin 1991).

Question II. 20 : Si les communautés autochtones ou locales de votre pays sont légalement considérées comme les “propriétaires” de leurs formes respectives de patrimoine artistique traditionnel, comment les communautés concernées assurent-elles en pratique l’exercice, la gestion et la sanction des droits que leur confère la législation? Quels enseignements et exemples concrets pourraient être utiles à un plus large public?

Réponse :

Au Togo les expressions du folklore appartiennent à titre originaire au patrimoine national, les communautés autochtones ou locales ne sont donc pas considérées comme les propriétaires.

e) Sanctions, recours et compétence

Question II. 21 : Quelles voies de recours et sanctions prévoient la législation et la réglementation de votre pays?

Réponse :

La législation togolaise ne prévoit pas expressément les voies de recours et sanctions.

Question II. 22 : Veuillez indiquer toute autre observation ou donnée d’expérience concernant les recours, les sanctions et la compétence.

Réponse :

Les voies de recours et sanctions prévues sont globales et concernent à la fois la violation des droits d’auteur, les droits voisins et l’utilisation illicite des œuvres du folklore.

f) Relations avec d’autres formes de protection

Question II. 23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d’une protection indirecte, par exemple au titre des droits voisins?

Oui

Non

Veillez fournir des renseignements supplémentaires et, si possible, des exemples concrets afin d'illustrer votre réponse.

Réponse :

Pas de renseignements supplémentaires ou d'exemples concrets.

Question II. 24 : Veuillez indiquer toute autre observation ou donnée d'expérience concernant les autres formes de protection dont peuvent bénéficier les expressions du folklore dans votre pays.

Réponse :

La loi n°90-24 du 23 novembre 1990 relative à la protection du patrimoine culturel national.  
Articles : 2 et 4

g) Protection des expressions du folklore étranger

Question II. 26 : Pensez-vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Oui

Non

Veillez préciser votre réponse.

Réponse :

Il est nécessaire d'élaborer un arrangement international sur la protection des expressions du folklore car il permettra de développer et d'assurer la protection des expressions du folklore d'une manière aussi efficace et uniforme que possible.  
Un arrangement particulier est nécessaire parce que les expressions du folklore ne peuvent être assimilées de manière classique aux œuvres littéraires et artistiques.

Question II. 27 : Dans l'affirmative, pensez-vous que les dispositions types pourraient constituer un bon point de départ pour l'élaboration d'un tel arrangement?

Oui

Non

Veillez préciser votre réponse.

Réponse :

Les dispositions types pourraient constituer un point de départ pour l'élaboration d'un tel arrangement parce qu'elles sont pertinentes et prennent en compte la plupart des aspects essentiels des expressions du folklore. L'on pourrait également envisager des dispositions relatives à l'exploitation des expressions du folklore dans l'environnement numérique. En ce qui concerne l'octroi des autorisations d'utilisation des expressions du folklore, il serait intéressant que soient habilités les communautés concernées ou les organismes de gestion collective du droit d'auteur.

Question II. 28 : Quelles propositions concrètes souhaiteriez-vous faire concernant les deux principaux problèmes ayant entravé l'élaboration d'un traité international en 1984, à savoir i) l'insuffisance des sources qui permettraient l'identification des expressions du folklore à protéger et ii) l'absence de mécanisme approprié pour régler la question des expressions du folklore présentes non pas dans un seul pays mais dans plusieurs pays d'une région?

Réponse :

Nous souhaitons :

- Qu'il y ait des consultations régionales sur les deux problèmes
- Mise en place d'un comité international de synthèse afin d'aboutir à un accord sur le plan international.

[Fin de la réponse du Togo]

QUESTIONNAIRE RELATIF À L'EXPÉRIENCE ACQUISE AU NIVEAU  
NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DE LA TUNISIE

*Coordonnées*

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Qualité : chargée de mission  
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État membre : Tunisie  
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*I. Application des dispositions types dans leur ensemble*

Question I. 1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

L'organisme tunisien de protection des droits d'auteurs, qui est un établissement public à caractère industriel et commercial, dépendant du Ministère de la culture, et ayant une personnalité civile et une autonomie financière est chargée de la protection juridique du folklore.

Question I. 2 : Les dispositions types sont elles disponibles dans la (une des) langue(s) officielle(s) de votre pays?

Réponse :

Non.

Question I. 3 : Les “expressions du folklore”, soit telles qu’elles sont décrites dans les dispositions types, soit telles qu’on les entend dans votre pays, bénéficient-elles d’une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (que les dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Oui

Non

Dans l’affirmative :

i) Veuillez fournir des renseignements sur les instruments législatifs et réglementaires pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d’entrée en vigueur et le nom et les coordonnées du ministère, du département, de l’organisme ou de l’office chargé de leur administration.

Réponse :

Le folklore est protégé en Tunisie en vertu des articles 1 et 7 de la loi n°94-36 du 24 février 1994 relative à la propriété littéraire et artistique entrée en vigueur à la date de sa publication soit le 1er mars 1994. Ces articles viennent reconduire le point 13 de l’Article 1 et l’Article 6 de la loi n°66-12 du 14 février 1966 relative à la propriété littéraire et artistique abrogée par la loi sus visée.

- L’Organisme tunisien de protection des droits d’auteurs  
37 Rue Michaël Noäïma – 1005 El Omran – Tunis  
Tel : (216 71) 840 668 – Fax : (216 71) 847 125

- Cet organisme a été créé en vertu de l’article 48 de la loi n°94-36 du 24 février 1994 relative à la propriété littéraire et artistique et sous tutelle du Ministère de la culture.

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\* Le questionnaire porte sur l’expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle. Il est donc question d’une protection juridique spécifique de l’ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d’une législation *sui generis* (particulière) ou des dispositions d’une loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d’auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l’identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle.

ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les dispositions types?

Oui

Non

*II. Application des principaux aspects des dispositions types*

a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II. 1 : Sur quels principes repose la protection du folklore établie dans la législation ou la réglementation de votre pays?

Réponse :

La protection juridique du folklore en Tunisie a été établie à travers la loi n°66-12 du 1er février 1966 et spécifiquement par l'Article 1, alinéa 12 et l'Article 6 qui donnent la définition tunisienne du folklore et fixent les modalités de son exploitation.

Cette mesure de protection a été faite en application de la résolution adoptée à Brazzaville en août 1963 à l'occasion du séminaire international sur la protection du droit d'auteur organisé conjointement par l'OMPI et l'UNESCO et auquel la Tunisie a pris part.

Conformément à la loi tunisienne le folklore est protégé en tant que composante du patrimoine culturel national et héritage légué par les ancêtres et qu'à ce titre il est indicateur de l'identité culturelle nationale et l'illustration de sa spécificité.

Ce patrimoine est perçu également comme l'expression du génie créateur de la nation dans les divers champs d'expression de la créativité (littéraire, artistique, artisanale ...) et appelle de ce fait une protection de toute exploitation abusive commerciale ou autre pouvant lui porter préjudice et le dénaturer.

b) Expressions du folklore protégées

Question II. 4 : Existe-t-il dans la législation ou la réglementation de votre pays un autre terme que les “expressions du folklore” pour désigner l’objet des dispositions types visé à l’article 2? Dans l’affirmative :

- i) Quel est ce terme?
- ii) Quel objet désigne-t-il?
- iii) Pourquoi ce terme a-t-il été retenu?
- iv) Quel objet désignerait dans votre pays le terme “expressions du folklore”?

Réponse :

- i) Les œuvres inspirées du folklore
- ii) Il désigne les œuvres issues du patrimoine artistique légué par les générations antérieures et qui est lié aux coutumes, aux traditions et à tout aspect de la création populaire.
- iii) Ce terme a été retenu parce qu’il s’agit bien d’une matérialisation du génie créateur sous une forme d’œuvre visible, audible ou palpable. C’est perçu dans la même approche que celle adoptée dans la protection du droit d’auteur ce n’est pas l’idée qui appelle la protection mais l’expression de l’idée.
- iv) Le terme expression « du folklore » transposé en langue arabe demeure vague par rapport à l’objet de la protection juridique d’où la précision apportée au texte de la loi.

Question II. 5 : Dans l’application concrète de la législation et de la réglementation de votre pays, l’identification des expressions du folklore à protéger a-t-elle soulevé des difficultés?

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées en tant que telles? Existe-t-il des répertoires, des archives et des bases de données sur le folklore)?

Réponse :

Certaines expressions du folklore en Tunisie ont été identifiées grâce à des travaux de collectes, d’enregistrement de repertoriage d’archivage qui ont abouti à la constitution de bases de données. Les premières collectes ont touché les expressions orales (musique, poésie populaire et adage). Concernant la musique, la Phonotèque nationale tunisienne qu’abrite le Centre des musiques arabes et méditerranéennes a eu un rôle fondamental dans la sauvegarde de la mémoire musicale tunisienne. Un travail similaire a été mené par l’Institut national du patrimoine sur l’habit traditionnel, les bijoux et autres.



c) Actes contre lesquels les expressions du folklore sont protégées

Question II. 9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou la réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation? Les droits accordés sont-ils exclusifs?

Réponse :

La transcription du folklore en vue de son exploitation lucrative, la production d'œuvres inspirées du folklore et la cession totale ou partielle du droit d'auteur sur une œuvre inspirée du folklore ou la licence exclusive portant sur une telle œuvre nécessitent au terme de l'article 7 de la loi relative à la propriété littéraire et artistique une autorisation du ministère de la culture moyennant le paiement d'une redevance au profit de la caisse sociale de l'organisme tunisien de protection des droits d'auteur créé en vertu de cette loi.

Question II. 13 : La protection prévue par la législation ou la réglementation de votre pays est-elle limitée dans le temps?

Oui

Non

d) Autorisation d'utilisation des expressions du folklore

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la "propriété" du pays dans son ensemble (en tant que partie du patrimoine culturel national)?

ii) la "propriété" de communautés autochtones ou locales vivant dans votre pays?

iii) la "propriété" des différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

e) Sanctions, recours et compétence

Question II. 21 : Quelles voies de recours et sanctions prévoient la législation et la réglementation de votre pays?

Réponse :

Les sanctions prévues par la législation et la réglementation de la Tunisie contre les contrevenants sont identiques à celles relatives à la violation des droits d'auteurs et qui vont de la simple amende à la peine d'emprisonnement (voir chapitre IX Procédures et sanctions loi n°94-36 du 24 février 1994 ci-annexé *en partie*).

g) Protection des expressions du folklore étranger

Question II. 26 : Pensez-vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Oui

Non

Veillez préciser votre réponse.

Réponse :

Le caractère intangible de ce patrimoine et son aspect public font qu'il demeure exposé à la violation et au trafic illicite favorisé en cela par l'absence de mécanisme de contrôle adéquat aux frontières. Par suite la protection dans les limites territoriales demeurent à elle seule insuffisante, notamment si l'on considère les retombées économiques engendrées par une exploitation réglementée de ce folklore.

Question II. 27 : Dans l'affirmative, pensez-vous que les dispositions types pourraient constituer un bon point de départ pour l'élaboration d'un tel arrangement?

Oui

Non

Veillez préciser votre réponse.

Réponse :

Les dispositions types peuvent constituer une base pour l'élaboration d'un instrument international mais gagnerait à être complété par la détermination d'une définition du folklore fédératrice des différentes acceptations de ce terme et en élargissant les champs de protection aux nouveaux supports de diffusion liés aux nouvelles technologies de l'information.

Information complémentaire mise à disposition par le pays

Les textes de loi suivants ont été joints à la réponse de la Tunisie:

Loi n° 94-36 du 24 février 1994,  
relative à la propriété littéraire et artistique

[...]

CHAPITRE I  
DISPOSITIONS GÉNÉRALES

Article premier :

Le droit d'auteur couvre toute œuvre originale littéraire scientifique ou artistique quelqu'en soit la valeur, la destination, le mode ou la forme d'expression, ainsi que sur le titre de l'œuvre. Il s'exerce aussi bien sur l'œuvre dans sa forme originale que sur la forme dérivée de l'original.

Parmi les œuvres concernées par le droit d'auteur.

- les œuvres écrites ou imprimées telles que les livres, brochures et autres œuvres écrites ou imprimées;

- les œuvres créées pour la scène ou pour la radiodiffusion (sonore ou visuelle). Aussi bien dramatique et dramatico-musicale, les chorégraphies et les pantomimes;

- les compositions musicales avec ou sans paroles;

- les œuvres photographiques auxquelles sont assimilées, aux fins de la présente loi, les œuvres exprimées par un procédé analogue à la photographie;

- les œuvres cinématographiques, auxquelles sont assimilées, aux fins de la présente loi, les œuvres exprimées par un procédé produisant des effets visuels analogues à ceux de la cinématographie;

- les œuvres exécutées en peinture, dessin, lithographie, gravure à l'acide nitrique ou sur bois, et autres œuvres du même genre;

- les sculptures de toutes sortes;

- les œuvres d'architecture, qui comportent aussi bien les dessins, les modèles et les maquettes que le mode de construction;

- les tapisseries et les objets créés par les métiers artistiques et les arts appliqués, aussi bien les croquis ou modèles que l'œuvre elle-même;

- les cartes ainsi que les dessins et les reproductions graphiques et plastiques de nature scientifique ou artistique;
- les conférences;
- les œuvres inspirées du folklore;
- les logiciels;
- les traductions et arrangements ou adaptations des œuvres sus-mentionnées.

[...]

Article 7 :

Le folklore fait partie du patrimoine national, et chaque transcription du folklore en vue de son exploitation lucrative nécessite une autorisation du ministère chargé de la culture moyennant le paiement d'une redevance au profit de la caisse sociale de l'organisme chargé de la protection des droits d'auteur créé en vertu de cette loi.

Une autorisation du ministère chargé de la culture est également exigée pour la production d'œuvres inspirées du folklore ainsi que dans le cas de cession totale ou partielle du droit d'auteur sur une œuvre inspirée du folklore ou la licence exclusive portant sur une telle œuvre.

Est considéré folklore au sens de cette loi, tout patrimoine artistique légué par les générations et à tout aspect de création populaire tel que les histoires populaires, les lettres, la musique et la danse.

[...]

## CHAPITRE VIII EXERCICE DU DROIT D'AUTEUR

Article 48 :

Il est créé aux termes de la présente loi un établissement public à caractère industriel et commercial bénéficiant d'une personnalité civile et d'une autonomie financière dénommé Organisme Tunisien de Protection des Droits d'Auteur.

Ledit organisme est placé sous tutelle du ministère chargé de la culture.  
Ledit organisme est soumis aux règles de la comptabilité commerciale dans la mesure où il n'y est pas dérogé par la présente loi.

Il a son siège à Tunis et banlieue.

Loi n° 66-12 du 14 février 1966  
relative à la propriété littéraire et artistique

CHAPITRE I

Objet, étendue et bénéficiaires du droit d'auteur.

ARTICLE PREMIER :

Le droit d'auteur porte :

- A] Sur toutes œuvres originales, littéraires, scientifiques ou artistiques quels qu'en soient la valeur, la destination, le mode ou la forme d'expression, telles que :

[....]

13°) les œuvres inspirées du folklore

[...]

ARTICLE 6 :

- 1°) Le folklore fait partie du patrimoine national;  
2°) exception faite pour les personnes morales publiques nationales, la fixation directe ou indirecte de ce folklore en vue de son exploitation lucrative, nécessite une autorisation du département chargé des Affaires culturelles qui peut exiger pour cette fixation, un droit de redevance dans des conditions qui seront déterminées par décret;  
3°) la cession totale ou partielle du droit d'auteur sur une œuvre inspirée du folklore, ou la licence exclusive portant sur une telle œuvre, n'est valable que si elle a reçu l'agrément du département chargé des Affaires culturelles.

[Fin de la réponse de la Tunisie]

QUESTIONNAIRE RELATIF À L'EXPERIENCE ACQUISE A UN NIVEAU  
NATIONAL EN CE QUI CONCERNE LA PROTECTION JURIDIQUE DES  
EXPRESSIONS DU FOLKLORE

RÉPONSE DE L'UKRAINE

*Coordonnées*

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*I. Application des dispositions types dans l'ensemble*

Question I.1 : Quel(s) ministère(s), département(s), organisme(s) et office(s) sont chargés des questions relatives à la protection juridique des expressions du folklore dans votre pays?

Réponse :

Département d'État de la propriété intellectuelle du Ministère de l'éducation et de la science  
Ministère de la culture  
Ministère de l'éducation et de la science

Question I.2 : Les dispositions types sont-elles disponibles dans la (une) langue(s) officielle(s) de votre pays?

Réponse :

Oui.

Question I.3 : Les “expressions du folklore”, soit celles qu’elles sont décrites dans les dispositions types, soit celles qu’on les entend dans votre pays, bénéficient -elles d’une protection juridique spécifique au titre de la propriété intellectuelle\* aux termes de votre législation ou réglementation nationale (que les dispositions législatives ou réglementaires en question se rapportent ou non à la propriété intellectuelle)?

Oui

Non

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\* Le questionnaire porte sur l’expérience acquise au niveau national concernant la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle. Il est donc question d’une protection juridique spécifique de l’ordre de la propriété intellectuelle pour les expressions du folklore. Cette protection peut, mais ne doit pas nécessairement, être inscrite dans la législation nationale relative à la propriété intellectuelle. Elle peut découler d’une législation *suigeneris* (particulière) ou des dispositions d’un loi relative au patrimoine culturel national, par exemple. Le questionnaire ne traite donc pas de la protection indirecte des expressions du folklore pouvant dériver de la législation sur le droit d’auteur et les droits connexes ou des lois de propriété industrielle. Il ne se rapporte pas non plus à l’identification, à la préservation, à la promotion et à la diffusion du folklore, sauf dans la mesure où ces éléments peuvent présenter une importance pour la protection juridique des expressions du folklore en tant qu’objets de propriété intellectuelle.



Dans l'affirmative :

i) Veuillez fournir des enseignements sur les instruments législatifs et réglementaires pertinents, notamment leur titre complet, les articles ou alinéas applicables, leur date d'entrée en vigueur et les coordonnées du ministère, du département, de l'organisme ou de l'office chargé de leur administration.

Réponse :

La législation ukrainienne ne prévoit que la protection des adaptations du folklore, des exécutions et des interprétations du folklore.

La loi ukrainienne "Sur la modification de la Loi ukrainienne "Sur le droit d'auteur et droits voisins"

*SECTION II Droit d'auteur.*

*Article 8. Les objets du droit d'auteur*

Les objets du droit d'auteur dans le domaine littéraire, scientifique et artistique sont les suivants:

13). Les adaptations scéniques des œuvres mentionnées au point 1 de cette partie et les adaptations du folklore pour l'exécution scénique;

15). Les recueils de œuvres, les recueils des adaptations du folklore.

*SECTION III Droits voisins.*

*Article 35. Les objets des droits voisins.*

Les objets des droits voisins sans différence de destination, du contenu, du mérite de manière et de la forme d'expressions sont les suivants:

a). les exécutions ou les interprétations des œuvres littéraires, dramatiques, musicales, dramatico-musicales, des œuvres du folklore.

Entrée en vigueur : 5 septembre 2001

Responsables : Ministère de l'éducation et des sciences

ii) Les instruments législatifs ou réglementaires pertinents sont-ils fondés, dans une certaine mesure au moins, sur les dispositions types?

Oui

Non

iii) Veuillez indiquer ci-dessous les aspects des dispositions types qui, le cas échéant, ne sont pas pris en considération dans le cadre législatif et réglementaire de votre pays :

Cet aspect des  
dispositions types  
ne figure pas dans  
notre cadre législatif  
et réglementaire national

Les principes fondamentaux sur lesquels reposent les dispositions types  
(voir le préambule)

L'étendue des "expressions du folklore" protégées par les dispositions types  
(article 2)

Les actes contre lesquels les expressions du folklore sont protégées  
et les exceptions en la matière (articles 3, 4, 5 et 6)

Les dispositions relatives à l'autorisation des utilisations des expressions  
du folklore (articles 9 et 10)

Les actions et recours prévus (articles 7 et 8)

Les solutions proposées par les dispositions types en matière de protection  
des expressions du folklore étranger (article 14)

Si vous avez coché l'une des cases ci-dessus, veuillez préciser votre réponse.

Réponse :

Dans la législation ukrainienne il n'y a pas de définition de "l'expression du folklore". On utilise "l'adoption du folklore", "l'exécution du folklore", "les œuvres du folklore". "Folklore" est considéré comme les œuvres d'art populaire. Aucune autorité n'est sensée autoriser ou interdire l'utilisation du folklore car il est considéré que les œuvres du folklore sont dans le domaine public. Les adaptations du folklore, l'exécution et les interprétations du folklore sont protégées par le droit d'auteur et les droits voisins.

iv) Veuillez indiquer toute autre raison pour laquelle certains aspects de disposition types ne seraient pas pris en considération dans votre pays.

Réponse :

Selon la pratique et la législation "folklore" est dans le domaine public.  
La loi ukrainienne "Sur la modification de la Loi ukrainienne "Sur le droit d'auteur et droits voisins"

*Article 10. Les objets qui ne sont pas protégés.*

Ne sont pas les objets du droit d'auteur:

b) les œuvres d'art populaire (folklore)

ii) Veuillez indiquer ci-dessous quel(s) aspect(s) des disposition types peuvent avoir empêché leur application dans votre pays :

Oui, cet aspect peut avoir  
entravé l'application  
des disposition types

Les principes fondamentaux sur lesquels reposent les disposition types  
(voir le préambule)

L'étendue des "expressions du folklore" protégées par les disposition types  
(article 2)

Les actes contre lesquels les expressions du folklore sont protégées  
et les exceptions en la matière (articles 3, 4, 5 et 6)

Les dispositions relatives à l'autorisation des utilisations des expressions  
du folklore (articles 9 et 10)

Les sanctions et recours prévus (articles 7 et 8)

Les solutions proposées par les disposition types en matière de protection  
des expressions du folklore étranger (article 14)

Si vous avez coché l'une des cases ci-dessus, veuillez préciser votre réponse.

Réponse :

*Article 11 de la Constitution ukrainienne:*

L'état contribue au développement de la nation ukrainienne, sa conscience historique, des traditions et de la culture, le développement de l'originalité ethnique, culturelle, linguistique et religieuse des peuples indigènes et des minorités nationales d'Ukraine.

Conformément au Décret du Cabinet des Ministres du 26 juin 1997 №676.

Le développement de la culture ukrainienne est basé sur les principes suivants:

- Préserver et protéger l'héritage culturel de la nation qui est le fondement de la culture de la nation
- Veiller sur le développement des cultures traditionnelles et ethniques.

## *II. Application des principaux aspects des dispositions types*

### a) Principes fondamentaux pris en considération dans l'élaboration des dispositions types

Question II.1 : Sur quels principes repose la protection du folklore établie dans la législation ou l'réglementation de votre pays?

Réponse :

Selon notre législation le "folklore" doit être préservé comme l'héritage culturel.

### b) Expressions du folklore protégées

Question II.4 : Existe-t-il dans la législation ou l'réglementation de votre pays un autre terme que les "expressions du folklore" pour désigner l'objet des dispositions types visé à l'article 2? Dans l'affirmative :

- Que est ce terme?
- Quel objet désigne-t-il?
- Pourquoi ce terme a-t-il été retenu?
- Quel objet désignerait dans votre pays le terme "expressions du folklore"?

Réponse :

On utilise les termes suivants:

“folklore”, “les exécutions du folklore” ou “les interprétations du folklore”, “les adaptations du folklore”.

“Folklore” cesont les œuvres de l’art populaire.

“Les exécutions du folklore” ou “les interprétations du folklore” sont les objets des droits voisins.

“Les adaptations du folklore” sont les œuvres dérivées.

“Expression du folklore” comprend les œuvres du folklore , les adaptations du folklore, les exécutions et les interprétations du folklore.

Question II.5 : Dans l’application concrète de la législation et de la réglementation de votre pays, l’identification des expressions du folklore à protéger a-t-elle soulevé des difficultés?

Oui

Non

Veillez fournir des précisions et, si possible, des exemples. Comment les expressions du folklore sont-elles identifiées dans votre pays (par exemple, sont-elles enregistrées etant quelles? Existe-t-il des répertoires, des archives et des bases de données sur le folklore)?

Réponse :

Dans la définition du “folklore” il n’y a pas d’énumération exhaustive des œuvres du folklore. Nulle part on ne dit que les inventions, les bases de données et les archives sont les œuvres du folklore. En même temps, nulle part n’est-il dit qu’ils ne peuvent pas être les œuvres du folklore.

c) Actes contre lesquels les expressions du folklore sont protégées

Question II.9 : Veuillez fournir des renseignements sur la nature de la protection sur les expressions du folklore prévue par la législation ou la réglementation de votre pays. Par exemple, quels actes sont soumis à autorisation? Les droits accordés sont-ils exclusifs?

Réponse :

Pour utiliser les œuvres du folklore il ne faut pas avoir une autorisation spéciale.  
Les exécutions et les interprétations du folklore sont protégées comme les objets des droits voisins.

Les adaptations du folklore sont protégées comme les objets du droit d'auteur, notamment comme les œuvres dérivées.

Question II.10 : Quels principes sont utilisés dans la législation et la réglementation de votre pays pour déterminer les utilisations soumises à autorisation (par exemple, les principes énoncés à l'article 3 se rapportent à l'intention de nuire et l'utilisation ou non de l'expression du folklore en dehors de son contexte traditionnel ou coutumier).

Réponse :

L'utilisation des objets du droit d'auteur et des droits voisins n'est autorisée qu'en vertu du contrat d'auteur (l'article 32, point 1 de la Loi ukrainienne "Sur la modification de la Loi ukrainienne 'Sur le droit d'auteur et des droits voisins'") sauf quelques exceptions (Articles 21 - 25).

Question II.12 : Si la législation ou la réglementation de votre pays prévoit des droits en matière de mention de la source (tels que ceux envisagés à l'article 5 des dispositions types), veuillez indiquer, en citant des exemples concrets lorsque c'est possible, si ces droits sont révélés utiles, efficaces et concrètement applicables.

Par exemple, comment l'exigence selon laquelle l'expression du folklore doit être "identifiable" (c'est-à-dire issue d'une communauté ou d'un lieu connu) est-elle appliquée dans votre pays? Comment cette exigence est-elle appliquée? Il existe dans votre pays différentes communautés partageant des expressions du folklore similaires? Serait-il également que des communautés de votre pays vivent aussi dans des pays limitrophes ou qu'elles aient adopté et développé une expression du folklore issue d'un autre pays?

Réponse :

Dans la législation ukrainienne il n'y a aucune disposition qui identifie les expressions du folklore.

Question II.13 : La protection prévue par la législation ou la réglementation de votre pays est-elle limitée dans le temps?

Dans l'affirmative, combien de temps est-elle applicable? Comment détermine-t-on le point de départ de la protection? Qu'advient-il de l'expiration de la période de protection (tombe-t-elle par exemple dans le domaine public de sorte qu'elle peut être librement copiée et utilisée par chacun sans restriction)?

Dans la négative, disposez-vous dans ce domaine de données d'expérience qui pourraient être utiles à un plus large public?

Réponse :

“Folklore” (les œuvres d'art populaire) est dans le domaine public.

Les exécutions et les interprétations du folklore sont protégées pendant 50 ans à partir du premier enregistrement de l'exécution ou de l'interprétation.

Question II.16 : Veuillez faire part de toute autre observation ou donnée d'expérience concernant la nature de la protection accordée aux expressions du folklore dans votre pays.

Réponse :

En Ukraine les monuments historiques d'architecture sont parmi les œuvres d'art populaire. Ces monuments sont protégés et maintenus par l'État.

d) Autorisation d'utilisation de ses expressions du folklore

Question II.17 : Les expressions du folklore sont-elles considérées dans votre pays comme étant :

i) la “propriété” du pays dans son ensemble (entière ou partie du patrimoine culturel national)?

ii) la “propriété” de communautés autochtones ou locales vivant dans votre pays?

iii) la “propriété” de différents artistes dont les œuvres sont fondées sur les traditions folkloriques?

iv) autre. Veuillez préciser.

Question II.18 : Veuillez indiquer toute autre observation ou donné(e) d'expérience concernant l'autorisation d'utilisation de expressions du folklore dans votre pays.

Réponse :

Selon l'ordre de la douane ukrainienne de 31.12.1991, №9 "L'exportation des oeuvres de l'héritage culturel de valeur historique, scientifique et culturelle n'est possible qu'avec l'autorisation du Ministère de l'agriculture.

Question II.20 : Si les communautés autochtones ou locales de votre pays sont légalement considérées comme les "propriétaires" de leurs formes respectives de patrimoine artistique traditionnel, comment les communautés concernées assurent-elles en pratique l'exercice, la gestion et la sanction des droits que leur confère la législation? Quels enseignements et exemples concrets pourraient être utiles à un plus large public?

Réponse :

Dans la législation ukrainienne en matière de minorités nationales, ni les peuples indigènes ni les autres collectivités locales ne sont reconnues directement comme ayant des droits de expressions du folklore. Mais le droit de préserver et de maintenir la culture est reconnue aux minorités nationales, peuples indigènes, autres collectivités locales.

f) Relations avec d'autres formes de protection

Question II.23 : Existe-t-il des cas où des expressions du folklore ont bénéficié dans votre pays d'une protection indirecte, par exemple à titre de droits voisins?

Oui

Non

Veuillez fournir des renseignements supplémentaires et, si possible, des exemples concrets afin d'illustrer votre réponse.

Réponse :

La nouvelle loi ukrainienne "Sur la modification de la Loi ukrainienne 'Sur le droit d'auteur et les droits voisins'" définit dans l'Article 11 l'artiste-interprète ou exécutant comme l'acteur (du théâtre, du cinéma, etc.), l'artiste, le musicien, le danseur ou la personne qui joue, chante, déclame, récite, représente ou exécute de toute autre manière une œuvre littéraire, artistique ou une œuvre d'art populaire, un numéro de variété, de cirque ou de marionnettes...



g) Protection des expressions du folklore étranger

Question II.26 : Pensez-vous qu'un arrangement international sur la protection des expressions du folklore soit nécessaire?

Oui

Non

Réponse :

Il est évident que la protection des expressions du folklore au niveau international est indispensable.

Leur protection par les moyens de droits d'auteur est parfois contradictoire aux théories même du droit d'auteur.

Comment régler par exemple la question de la durée de protection, à part                   ir de quelle date il faut compter la durée de protection?

Qui sont les auteurs? Dans la plupart des cas les auteurs sont inconnus ou on prend pour les auteurs les minorités nationales ou les peuples indigènes. Mais comment définir s'ils ont vraiment créé les œuvres ou si ils protègent et maintiennent uniquement tout ce qui était créé par les anciennes générations.

La question avec lesexécutantsetlesinterprétationsdufolkloresembleplussimple.Cesontles exécutantsetlesinterprètesmêmequidoiventautoriserouinterdirechaqueutilisationdeleurs exécutionsouinterprétations.

Peut-être faudrait-il prévoir dans la législation internationale sur le droit d'auteur les droits voisins que les droits d'auteur peuvent être reconnus non seulement aux auteurs ou aux autres ayants droits (par lesquel on vise les successeurs ou les héritiers) mais aussi aux individus ou aux collectivités qui protègent et maintiennent les expressions du folklore qui font des recherches pour rétablir par exemple des traditions pour les faire renaître. Assez souvent le travail fait par eux est colossal mais ils n'ont aucun droit pour interdire ou autoriser l'exploitation du fruit de leur travail.

Question II.27 : Dans l'affirmative, pensez-vous que les dispositions types pourraient constituer un bon point de départ pour l'élaboration d'un tel arrangement?

Oui

Non

Réponse :

Un traité international basé sur "les disposition types" peut être une bonne alternative à la protection du folklore par les moyens de la propriété intellectuelle.

Question II.28 : Quelles propositions concrètes souhaiteriez-vous faire concernant les deux principaux problèmes ayant trait à l'élaboration d'un traité international en 1984, à savoir i) l'insuffisance des sources qui permettraient l'identification des expressions du folklore à protéger et ii) l'absence de mécanisme approprié pour régler la question des expressions du folklore représentées non pas dans un seul pays mais dans plusieurs pays d'une région?

Réponse :

"Folklore" – les œuvres de la littérature et des arts populaires .

### *III. Modification ou adaptation des disposition types*

Question III.1 : Veuillez indiquer toutes suggestions de modification ou d'adaptation à apporter aux dispositions types afin d'accroître leur utilité en tant que modèle de dispositions normatives nationales, régionales ou internationales.

Réponse :

On propose de prévoir dans les "disposition types" la disposition suivante: Le droit d'autoriser ou d'interdire l'exploitation du folklore doit être reconnue aux personnes, collectivités locales ou même à l'État qui préservent et maintiennent les œuvres de la littérature et des arts populaires. Ceux qui jouissent de l'exploitation commerciale du folklore doivent payer la redevance appropriée aux personnes ou collectivités locales (afin de stimuler des recherches et de payer le travail mené) ou à l'État qui à son tour peut verser cette redevance aux fonds de soutien de la culture.

[Find the answer of Ukraine]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE UNITED KINGDOM

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

- Primary responsibility rests with Copyright Directorate at The Patent Office, an Executive Agency of the Department of Trade and Industry. However, other government departments having an interest in this area include the Department for Culture, Media and Sport and the Department for International Development.

Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes.

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

- There is no evidence of any demand in the United Kingdom for such specific national legal protection for folklore.

## II. *Application of the Principal Provisions of the Model Provisions*

### (b) Protected expressions of folklore

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- “Expressions of folklore” is the most commonly used generic term but “cultural heritage” and “traditional culture/knowledge” also feature. “Traditional” is also used in specific contexts such as “traditional music/narrative/customs/beliefs/medicine” etc.

\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(c) Acts against which expressions of folklore are protected

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- See the response to Question I.3 above.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

- The concept of “property” seems rather at odds with the nature of the traditional culture under consideration, i.e. material in the public domain. However, each of the three specific categories set out above could have relevance to particular types or instances of folkloric expression in the United Kingdom. In addition, there are many societies and organizations specifically concerned with documenting, preserving and safeguarding (and in some cases developing) folklore for the benefit of current and future generations.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response:    Yes   

                      No   

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Copyright may protect an original transcription or arrangement of a traditional tune and there may be rights in performances and the fixations of performances.

- Section 169 of the UK Copyright, Designs and Patents Act 1988 closely follows Article 15(4) of the Berne Convention and provides for recognition of the authority of the designated folklore bodies of countries of the Berne Union to enforce copyright in folklore.

- Section 61 of the UK Act facilitates the collection and preservation of anonymous unpublished songs, eg folksongs. This section allows the recording of performances of folksongs subject to the making of the recording not infringing any other copyright nor being prohibited by the performer. Statutory Instrument (1989) No. 1012 designates various non-profit making bodies for which such sound recordings may be made for the purpose of including them in archives maintained by the bodies. The designated bodies may make and supply copies without infringing copyright in either the recording or the works included in it, provided that the copies are for research or private study and only one copy is supplied to any one person.

(g) Protection of expressions of folklore of foreign countries

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response:    Yes   

                      No

Please provide further information on your answer.

Response:

- The UK has always been ready to participate constructively in discussions on international initiatives in this area. We remain sympathetic to the aims of some countries to establish a proper international protection regime, but as earlier discussions failed, feel caution and flexibility from all concerned is needed. The basic questions should be addressed first: what is folklore and what are the gaps in existing protection? Other relevant questions are: what acts should be protected and who should benefit (given culture spans national boundaries)?

[End of response of the United Kingdom]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE UNITED REPUBLIC OF TANZANIA

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*I. Application of the Model Provisions as a Whole*

Question I. 1: Which Government ministry (ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

1. Ministry of Industry and Trade  
- Copyright Society of Tanzania.
2. Ministry of Education and Culture  
- Department of Culture Development  
- The National Arts Council
3. Ministry of Natural Resources and Tourism  
- The National Museum of Tanzania



Question I. 2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

- Yes

Question I. 3: Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property\* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State’s intellectual property laws. It may be provided for by *sui generis* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

If yes:

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- The Copyright and Neighbouring Rights Act No. 7 of 1999, with effect from 31<sup>st</sup> December 1999 *vide* Government Notice No. 452 of 31 December 1999. Part III, sections 24 to 30.

(ii) Are the relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

Response:

*This aspect of the  
Model Provisions  
has not been followed  
in our national laws  
and regulations*

The basic principles underlying the Model Provisions (see the Preamble)

The scope of “expressions of folklore” protected by the Model Provisions (section 2)

The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)

The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)

The sanctions and remedies provided for (sections 7 and 8)

The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)

If you have marked any of the boxes, please provide further information.

Response:

- Not applicable.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principles taken into account for the elaboration of the Model Provisions

Question II. 1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Same as mentioned in the Model Provisions but well stated in the Tanzania Cultural Policy of 1999.

Question II. 2: Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- No comments because the Copyright Act has not yet been put into practice.

(b) Protected expressions of folklore

Question II. 4: Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

- No.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response:

- Not applicable, see reply to Question II.2.

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

- Not applicable.

Question II. 6: Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

- Not applicable.

Question II. 7: Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

- Yes, e.g., traditional knowledge of medicine.

Question II.8: Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

- Not applicable, see reply to Question II.2.

(c) Acts against which expressions of folklore are protected

Question II. 9: Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

- Under section 25 (a) and (b) the following utilizations of expressions of folklore require authorization:

- (i) Any application, reproduction and distribution of copies of expressions of folklore.
- (ii) Any communication to the public of expressions of folklore.

Question II. 10: Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

- Utilizations which are made both with gainful intent and outside their traditional or customary context.
- Identical to Section 3 of the Model Provisions.

Question II. 11: Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

- Not applicable, see reply to Question II.2.

Question II. 12: If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

- Section 27 of the Act provides for acknowledgement of source but also see reply to Question II.2.

Question II. 13: Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)



If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response

- Not applicable. See reply to Question II.2

Question II. 14: Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the view point of both the custodians of folklore and users in your country?

Response:

- The exceptions are provided for under section 26 of the Act. No practical experience based on practice.

Question II. 15: Taking into account the expressions of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

- Not applicable.

Question II. 16: Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

- No other comments.

(d) Authorization of utilizations of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input checked="" type="checkbox"/> |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input type="checkbox"/>            |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II. 18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

- Preparations are being made for the practical implementation of the Copyright and Neighbouring Rights Act, 1999.

Question II. 19: Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Response:

- Yes.

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Response:

- The National Arts Council and the Ministry of Industries and Trade.
- The National Arts Council is a body corporate established under the National Arts Council of Tanzania Act No. 23 of 1984.

Please describe the procedure for obtaining authorizations to use expressions of folklore.

Response:

- Preparations are being made.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

Response:

- Preparations are being made.

In general, what practical lessons and examples would benefit a wider audience?

Response:

- Not applicable. See reply to Question II.2.

Question II. 20: If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

- Not applicable.

(e) Sanctions, remedies and jurisdiction

Question II. 21: Which remedies and sanctions are provided for in your national laws and regulations?

Response:

- Civil Remedies: Sections 36-39 of the Act.
- Criminal Remedies: Section 42 of the Act No. 7 of 1999.

Question II. 22: Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

- Sections 36-39 of the Act provide for civil remedies.
- No practical experience on remedies, sanctions, etc.

(f) Relation to other forms of protection

Question II 23: Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

- Not applicable.

Question II. 24: Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

- None.

(g) Protection of expressions of folklore of foreign countries

Question II. 25: Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response: Yes

No

If yes:

- (i) Please provide details of these cases.

Response:

1. A song called "MALAIKA"
2. Piracy in folk art e.g., carvings.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nationals of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action was taken (for example, on the basis of reciprocity established in your national laws and regulations).

Response:

- Action is being taken through UNESCO.

Question II. 26: Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- The international agreement will regulate trade on folklore expressions across national borders.

Question II. 27: If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No



Question II. 28: What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- It is proposed that two international committees should tackle (i) and (ii) and bring up agreed proposals to a WIPO Diplomatic Conference.

Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- These should be protected by bilateral agreements or international convention.

### *III. Modifications or Adaptations to the Model Provisions*

Question III. 1: Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- WIPO should provide facilities for regional meetings to discuss the Model Provisions.

Additional Information Provided by the United Republic of Tanzania

The completed questionnaire submitted by the United Republic of Tanzania enclosed the following copy of the National Arts Act, 1984:

No. 23                                          National Arts                                          1984

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THE UNITED REPUBLIC OF TANZANIA  
No. 23 of 1984

1 ASSENT  
J.F. NYRERERE,  
President  
14<sup>th</sup> January, 1985

AN Act to reconstitute the National Arts Council by amalgamation of the National Arts Council and the National Music Council; to repeal the National Arts Council Act, 1974 and the National Music Council Act, 1974 and the provide for matters connected with those purposes

(.....)

ENACTED by the Parliament of the United Republic of Tanzania.

- |                                                                                                                                                                |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 1. This Act may be cited as the National Arts Act, 1984 and shall come into operation on such date as the Minister may, by notice in the Gazzette, appoint.    | Short title and commencement |
| 2. In this Act, unless the context otherwise require-“artistic work” means a work, irrespective of its artistic quality of any of the following descriptions:- |                              |
| (a) Arts and crafts, which includes;                                                                                                                           |                              |
| (i) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;                                                                               |                              |
| (ii) maps, plans and diagrams;                                                                                                                                 |                              |
| (iii) works of sculpture;                                                                                                                                      |                              |
| (iv) photographs not comprised in cinematograph film;                                                                                                          |                              |
| (v) works of architecture in the form of buildings or models;                                                                                                  |                              |

- (vi) works of artistic craftsmanship, and also, includes pictorial woven tissues and articles of applied handicraft and industrial art;
- (b) Music which may be vocal, instrumental, recorded or written composition and which includes, jazz bands, taarab music, choir, orchestra brass music, folk music, musical repertoire, dancing, opera or playwriting;
- (c) Theatre and drama, which consists of stage craft and design, costume design, make up ornamentations and accessories, dance and choreography, audio visual effects, circus mime and acrobatic performances.

“Council” means the National Arts Council established by section 3;

“Financial year of the Council” means a year commencing on the first day of July and ending on the next following thirtieth day of June;

“Member” in relation to the Council means a member of the Council and includes the Chairman and Vice-Chairman;

“Minister” means the Minister for the time being responsible for the matters relating to national culture;

“Secretary” means Secretary of the Council, appointed under section 5.

3-(1) There is hereby established a body to be known as the National Arts Council which shall have official seal and shall:-

Establishment of the Council

- (a) be a body corporate with perpetual succession and an official seal;
- (b) in its corporate name be capable of suing and being sued and
- (c) be capable of holding, in purchasing and otherwise acquiring and disposing of any property movable, for the purposes of carrying out the functions conferred on the Council by this Act.

- (2) The provisions of the schedule to this Act shall have effect as to the constitution and proceedings of, and otherwise in relation to, the council.
- (3) Save in the case of matters relating to the office and appointment of the chairman and Secretary of the Council, the Minister may, by order published in the Gazzette, amend, add to, vary or replace and of the schedule to this Act.

(4)-(1) The functions of the council shall be:-

Function of the Council

- (a) to assume responsibility for the revival and to promote the development and production of artistic works including the production and use of indigenous and traditional musical instruments, songs, poetry, and traditional dancing with a view of reviving and promoting Tanzania Culture.
- (b) to carry out research in the development and production of artistic works and marketing of such works, including the standard and quantity of artistic works produced in Tanzania.
- (c) to provide advisory services and technical assistance necessary for or incidental to the proper development of enterprises for the production of artistic works to parastatal organization and other person, engaged in such enterprises;
- (d) to plan and co-ordinate the activities of persons engaged in the production of artistic works in Tanzania;
- (e) to advise the Government on all matters relating to the development and production of artistic works in Tanzania.
- (f) to provide and promote training facilities for persons engaged in or employed or to be employed in enterprises for the production of artistic works.
- (g) to undertaking or assist any institution or person in the undertaking of production, importation, exportation and sale of artistic works for any matter appertaining to artistic works;

- (h) to stimulate the development of artistic works by preparing and arranging exhibitions, displays, performances, workshops, seminars and competitions between different artists.
  - (i) to provide by-laws published in the Gazette and in such manner as the Council may approve a system of registration of persons engaged for gain in giving public musical performances, production of musical instruments, the recording of gramophone records or magnetic tapes for play-back or otherwise in any manner with any matter relating to music.
- (2) The Council shall have the power, in its capacity as a body corporate, for the purpose of carrying out its functions to do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with the carrying out of its functions or to be incidental or conducive their proper discharge and may carry on any activities in that behalf either alone or in association with any other person or body (including the Government) whether within or outside the United Republic.
- (3) The Minister may give the Council directions of a general or specific character and the Council shall give effect to every such direction.
- (1) There shall be a Secretary of the Council who shall be appointed by the President. Secretary of the Council
- (2) The Secretary shall be the chief executive officer of the Council and shall carry out all the day to day activities of the Council.
- (3) In the exercise of the power vested in him by this section or delegated to him by the Council, the Secretary shall comply with any direction or policy given to him by the Minister or Council.
6. The Council may, from time to time, appoint on such terms and conditions as it may think fit, such number of officers and servants as it may think necessary for carrying out its functions under this Act.

7. The funds and resources of the Council shall consist of:-
- Funds of the Council
- (a) such sums as may be provided by Parliament.
  - (b) any loan granted to the Council by Government or any other person with the approval of the Minister;
  - (c) any sums or property which may in any manner become payable to or vested in the Council in respect of any matter incidental to the carrying out of its functions;
  - (d) any sums or property which may be donated to be Council:
- Provided that the Council shall not be obliged to accept a donation for a particular purpose unless it approved of the terms and conditions attached to the donation.
8. With the prior approval of the Minister, the Council may, from time to time, invest any part of its funds as are not for the time being required for the purposes of its business in any investment authorized by the Trustee Investment Act, 1967 for the investment of any trust fund.
- Investment Acts,  
1961  
No. 33
9. (1) The Council shall cause to be provided and kept proper books of accounts and record with respect to:
- Accounts and Audit
- (a) the receipt and expenditure of moneys by, and other financial transaction of the Council;
  - (b) the assets and liabilities of the Council, and shall cause to be made out for every financial year a balance sheet and a statement showing details of the income and expenditure of the institute and all its assets and liabilities.
- (2) Not later than six months after the close of every financial year the accounts including the balance sheet of the Council respect of that financial year shall be audited by the Tanzania Audit Corporation established by the Tanzania Audit Corporation Act, 1968.

- (3) Every audit balance sheet shall be placed before a meeting of the Council and, if adopted by the Council and, if adopted by the Council, shall be endorsed with the certificate that it has been adopted.
- 10 – The Council shall within six months after the close of the financial year cause to be prepared and submitted to the Minister a report dealing generally with the activities and operations of the Council during that year and accompanied by:-
- Annual Statement on accounts & report to be submitted to the Minister
- (a) a copy of the audited accounts of the Council;
  - (b) a copy of the auditors report on the accounts; and
  - (c) such other information as the Minister may direct.
- 11 - The Minister shall as soon as practicable, and in any case not later than eight months after the close of the financial year or such longer period as the National Assembly may, by resolution approve in the behalf, lay before the National Assembly the following documents in relation to the financial year:-
- Annual Statement and report to be laid before the National Assembly
- (a) a copy of the audited statement of accounts of the Council
  - (b) a copy of the auditors report, if any, and
  - (c) a copy of the report by the Council
- 12 - (1) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Council:-
- Execution of documents
- (a) If sealed with the seal of the Council and signed by the Secretary and the Chairman of the Council;
  - (b) If executed in that behalf by one member of the Council and a member of the staff of the Council both of whom have been appointed by the Council for that purpose.

(2) A deed, instrument, contract or other document executed accordance with subsection (1) shall, subject to any exception that may be taken the on any ground other than that of competence of the party executing the same on behalf of the council, be effectual in law to bind the Council and its successors and may be varied or discharged in like manner as that in which it was executed.

13 - The members of the Council shall be entitled to such remuneration, fees or allowances for expenses as the Minister may upon recommendation of the Council, prescribe from time to time;

Remuneration of  
member of Council

Provided that no remuneration, fees or allowances, except such allowances for expenses as may be expressly authorized by the Minister shall be paid to any member of the Council who is a public officer.

14 - (1) Subject to the provisions of subsection (6) the Council may from time to time, by writing under the official seal of the Council appoint Committees of the Council and may delegate, subject to such terms, conditions and restrictions as it may specify, to any committee of the Council or to any employee of the Council, all or any of the functions, powers and duties conferred or imposed by or under this Act on the Council, and where any delegation is so made the delegated function, power or duty may be performed or exercised by delegate subject to the terms, conditions and restrictions specified by the Council.

Delegation of  
powers by the  
Council

(2) No delegation made under this section shall prevent the Council from itself performing or exercising the function, power or duty delegated.

(3) The Council shall not have power under this section to delegate:-

(a) its power of delegation; or

(b) its power to approve the annual budget or any supplementary budget, the annual balance sheet or any statement of accounts.



- 15 - (1) With the consent of the Minister, the Council may make regulations for the better carrying out of the purposes and provisions of this Act, and without prejudice to the generality of this subsection, may make regulations:-
- Regulations
- (a) prescribing the conditions and terms upon which any specified facilities or services or categories of facilities or services within the stage of the functions of the Council shall be provided to the public and other persons;
  - (b) providing for the proper management, control and administration of this Council;
  - (c) providing any regulating discipline amongst employees of the Council and disciplinary proceedings against them.
  - (d) prescribing fees, rates and other charges in connection with the provision by the Council of any services of facilities;
  - (e) providing for a system of registration of associations of persons engaged in artistic works;
  - (f) prescribing anything which may be prescribed under this act.
  - (g) prescribing forms to be used for any purpose under this act;
  - (h) providing for any matter which, in the opinion of the Council, is necessary to provide for the efficient performance of the functions for the Council.
- 16 - (1) The National Arts Council Act, 1974 is repealed.
- Repeals Acts, 1974  
No. 6
- (2) The National Music Council Act, 1974 is repealed.
- Acts, 1974  
No. 7

- 17 - (1) Notwithstanding the provisions of Section 16 all the assets and liabilities of the National Arts Council established by the National Arts Council Act, 1974 and of the National Music Council established under the National Music Council Act, 1974 hereinafter referred to as the “former Council” shall, by virtue of this section and without further assurance, be deemed to have been vested in the Council as from the date when this Act comes into operation (hereinafter referred to as the “effective date”).
- (2) Every person who, immediately before the effective date was managing the affairs and business of the former Council shall upon the enactment of this Act, do all things that are necessary or desirable for the effectual vesting in accordance with the provisions of this Act of the assets and liabilities of former Councils subsisting immediately before the effective date.
- (3) Where before the enactment of this Act any person who, immediately before the effective date, was responsible for the management of the affairs and business of the former Council did, or purported to do any lawful act in relation to the assets and liabilities of the Council which if done after the enactment of this Act would have been necessary or desirable for the more effectual vesting of the assets and liabilities of the former Councils in the Council, such lawful act shall be deemed to have been done under this Act, and its performance by that person shall not be called into question in any court by reason only of that act having done before the enactment of this Act.
- 18 - (1) Every person employed by any of the former Councils before the effective date shall be deemed to have become employed by the Council as from the effective date and, as from the enactment of this Act, shall be employed by the Council.
- Transfer of Assets and Liabilities
- Employees the former Council

- (2) Where any person who, pursuant to the provisions of subsection (1) is deemed to have become an employee of the Council as from the effective date becomes an employee of the Council after enactment of this Act, the terms and conditions of service applicable to him in his employment with the Council shall be not less favourable than those which were applicable to him before the effective date.

SCHEDULE  
Section 3 (2)  
Constitutions and Proceedings of the Council

1. (1) The Council shall consist of-

Constitution of  
Council

    - (a) a Chairman who shall be appointed by the President; and who shall hold office for a period of three years and not exceeding six years unless it is necessary or desirable to do so.
    - (b) twenty-nine other members who shall be appointed by the Minister.
  - (2) A member of the Council shall, unless his appointment is sooner terminated by the Minister or he otherwise ceases to be a member hold office for such period as the Minister may specify in his appointment or, if no such period is specified for a period of three years from the date of his appointment, and shall be eligible for reappointment.
  - (3) Any member of the Council may at any time resign by giving notice in writing to the Minister and from the date of the receipt by the Minister of the notice, he shall cease to be a member of the Council.
  - (4) If any member of the Council is without the permission of the Council absent from more than four consecutive meetings of the Council or without such permission is absent from the United Republic for a period exceeding one year he shall cease to be a member of the Council.
2. Where any member of the Council ceases to be a member before the normal expiration of his term of office, the Minister after consulting the Council may appoint another person in his stead to hold office until such first named person's term of office would have expired had he not ceased to be a member as aforesaid.

Casual Vacancies
  3. The council shall elect from amongst its members a Vice-Chairman who shall hold office for one year but shall be eligible for re-election.

Vice-Chairman

- 4 - (1) The Council shall meet at such times as may be necessary or expedient for the transaction of business. Quorum and procedure
- (2) At any meeting of the Council fifteen members thereof shall constitute a quorum.
- (3) At any meeting of the Council, the Chairman shall preside or, in the absence of the Chairman, the Vice-chairman shall preside or if the Vice-Chairman is also absent the members shall present at the meeting shall elect one of their number to be Chairman for that meeting.
- (4) In the event of an equality of votes, the Chairman of the meeting shall have a casting vote in addition to his deliberative vote.
- (5) Minutes in proper form of each meeting of the Council shall be kept and shall be confirmed by the Council at the next meeting and signed by the Chairman of that meeting.
- (6) Subject to the provision of paragraph 4 relating to a quorum, the Council may act notwithstanding any vacancy in the membership therefore and no act or proceeding of the Council shall be invalid by reason only of some defect in the appointment of a person who purpotes to be a member thereof. Vacancies etc. not to invalidate proceeding.

Posed in the National Assembly on the First Day of November, 1984.

[End of response of the United Republic of Tanzania]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF THE UNITED STATES OF AMERICA

*Contact Details*

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*I. Application of the Model Provisions as a Whole*

Question I.1 : Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

The United States Patent and Trademark Office, the U.S. Copyright Office, the American Folklife Center of the Library of Congress and the Department of the Interior/Bureau of Indian Affairs are the primary agencies with folklore responsibilities.

Question I.2 : Are the Model Provisions available in (one of) the official languages of your country?

Response:

Yes.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes :

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or office responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

The United States provides specific legal protection through national laws intended both to protect and preserve cultural heritage and to prevent commercial interests from falsely associating their goods or services with indigenous peoples. Such legislation includes the Indian Arts and Crafts Act, P.L. 101 -644, 104 Stat. 4662, 18 U.S.C. 1159, 25 U.S.C. 305 et. seq. (1990), which protects Native American artisans by assuring the authenticity of Indian artifacts under the authority of the Indian Arts and Crafts Board, Department of the Interior. The Trademark Law Treaty Implementation Act, Pub.L. 105 -330, Sec. 302, 112 Stat. 3071 (1998) required the United States Patent and Trademark Office (USPTO) to complete a study on the protection of the official insignia of federally and state -recognized Native American tribes. As a direct result of this study, on August 31, 2001 the USPTO established a Database of Official Insignia of Native American Tribes. The United States also provides protection for expressions of folklore through its intellectual property laws, such as its copyright and trademark laws. The U.S. Copyright Law is contained in Title 17 of the United States Code. State common law copyright can also protect works/performance not fixed in a tangible medium of expression. The Federal trademark statute is the Trademark Act of 1946, as amended, 15 U.S.C. §§ 1051 -1127. In the United States, trademark rights generally arise from use, rather than from registration, and some are asserted as common law rights.

\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are there relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response:    Yes      
                  No   

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are not followed in your national laws and regulations:

*This aspect of the Model Provisions has not been followed in our national laws and regulations*

Response:

The basic principles underlying the Model Provisions (see the Preamble)	<input checked="" type="checkbox"/>
The scope of "expressions of folklore" protected by the Model Provisions (section 2)	<input checked="" type="checkbox"/>
The acts against which expressions of folklore are protected and the exceptions thereto (sections 3, 4, 6 and 6)	<input checked="" type="checkbox"/>
The provisions dealing with authorization of utilizations of expressions of folklore (sections 9 and 10)	<input checked="" type="checkbox"/>
The sanctions and remedies provided for (sections 7 and 8)	<input checked="" type="checkbox"/>
The solutions offered by the Model Provisions for the protection of expressions of folklore of foreign countries (section 14)	<input checked="" type="checkbox"/>

If you have marked any of the boxes, please provide further information.

Response:

The Model Provisions have not been formally evaluated in the United States. It should be noted, however, that certain aspects of various U.S. laws and regulations may coincide with the principles and language of the Model Provisions.



(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

To date, the U.S. has implemented legislation specific to our national concerns regarding the protection of expressions of folklore.

*II. Application of the Principal Provisions of the Model Provisions*

(a) Basic principle taken into account for the elaboration of the Model Provisions

Question II.1: What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

The United States believes that proper balance must be maintained between the needs of particular communities and the promotion of individual creation, development of a living culture and freedom of expression. Flexibility must be maintained so that the needs and concerns of various communities may be addressed. The principal means of protecting expressions of folklore should be conventional intellectual property legislation, supplemented, as necessitated by the conditions/needs of local communities, by specific laws that address specific problems. The balance inherent in intellectual property laws may be thus incorporated into the protection of expressions of folklore.

Question II.2: Do you have any comments on the principle taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

No.

Question II.3 : Please provide any additional information, comments or practical experiences on the basic principle taken into account for the elaboration of the Model Provisions.

Response:

Not applicable.

(b) Protected expressions of folklore

Question II.4 : Is a term other than “expressions of folklore” used in your national laws or regulation to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

(i) Some of the terms used in lieu of expressions of folklore include “works,” “collective marks,” “certification marks,” and “Indian products,” and “official insignia of Native American tribes.”

(ii) The term “works” covers original works of authorship fixed in any tangible medium of expression. A “collective mark” serves to identify and distinguish the goods or services of members of a collective group or organization, such as an indigenous community. The term “certification mark” describes a mark owned by an individual, either natural or juridical, to certify - among other things - the quality or origin of the goods or services of others. “Indian products” refer to any art or craft product made by an American Indian, as defined in the Indian Arts and Crafts Act. “Official insignia of Native American tribes” means the flag or coat of arms or other emblem or device of any federally or state - recognized Native American tribe, as adopted by tribal resolution and notified to the United States Patent and Trademark Office.

(iii) With respect to the wording “Official insignia of Native American tribes,” this phraseology is taken directly from Public Law 105 - 330. The entire study completed by the USPTO is available for review, most immediately by downloading it from the USPTO’s website at <http://www.uspto.gov/web/menu/current.html> (click on entry dated “30 Nov 99”). The public comments - both oral and written - submitted in response to two Federal Register notices and three public hearings are also available for review at the USPTO’s website. These comments, together with the final study, explain how the USPTO determined what might be considered an “official insignia” of a Native American tribe.

(iv) This term is not defined under U.S. law. However, to the extent that expressions of folklore meet the definitions of copyrightable works or trade marks, they would be protected under those laws.

Question II.5 : In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response: Yes

No

Please provide further information and, if possible, examples. How are expressions of folklore identified in your country (for example, are they registered as such? Are there folklore inventories, archives and databases?)

Response:

As stated above, the USPTO established a Database of Official Insignia of Native American Tribes in August 2001. The database is for notice purposes, and relies on self-certification. The Archive of Folk Culture at the American Folklife Center, Library of Congress, was established in 1928 and today maintains a multi-format, ethnographic collection that includes over two million photographs, manuscripts, audio recordings and moving images. The other major government repository for ethnographic material is the Center for Folklife and Cultural Heritage at the Smithsonian Institution. Established in 1967, its archive holds over 1.5 million photographs, manuscripts, audio recordings and moving images.

Question II.6 : Is a term other than “expressions of folklore” usually used in your country to describe the subject matter referred to in Section 2 of the Model Provisions? If yes:

- (i) What is the term?
- (ii) What subject matter does it cover?

Response:

Not applicable

Question II.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

Not applicable

Question II.8 : Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

As is evident from the answers provided, the United States has taken an intellectual property approach to protection of expressions of folklore. The intellectual property framework is particularly suitable as it provides protection against exploitation, even where the folklore is not being marketed (or otherwise commercially promoted) by the relevant indigenous population. For example, under Section 2(a) of the Trademark Act, 15 U.S.C. 1052(a), a proposed trademark may be refused registration or cancelled (at any time) if the mark consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute. Thus, even a graphic reference to, say, a respected tribal elder could form the basis for refusal to register a trademark.

(c) Acts against which expressions of folklore are protected

Question II.9 : Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusiverights?

Response:

Provided to a copyright owner under 17 U.S.C. 106 are the exclusiverights “to do and to authorize” reproduction, adaptation, distribution, performance and display. Section 106A of the Copyright Law provides a right of integrity to the author of a work of visual art. A third party may not, without authorization from a trademark owner, use a confusingly similar mark on similar goods. The U.S. Patent and Trademark Office may refuse a proposed mark which falsely suggests a connection with an indigenous tribe or belief held by that tribe. The Database of Official Insignia of Native American Tribes may be searched and thus prevent the registration of a mark confusingly similar to an official insignia. The intent of the Indian Arts and Crafts Act is to prevent the “passing off” of inauthentic reproductions of Indian goods by ensuring that all arts and crafts marketed as Indian be produced by legitimate members or certified artisans of an Indian tribe.

Question II.10 : Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

With respect to the trademark regime, only the owner of a trademark may assert rights in a trademark. As noted above in response to Question II(8), trademark principles would apply with respect to use in commerce of a proposed mark. *Mens rea* might be relevant to the issue of damages or a finding of willful infringement as opposed to unintentional infringement, but is not relevant to the issue of ownership. With respect to Indian arts and crafts, the principle is that of truth-in-advertising. Only an enrolled member of a federally recognized tribe may offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States.

Question II.11 : Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

The Indian Arts and Craft Act (IACA) is a truth-in-marketing law which prohibits misrepresentation in marketing of Indian arts and crafts products within the United States. Only an enrolled member of a federally recognized tribe may offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States. It has been the experience of Native American tribes that many commercial enterprises, both in the United States and in other countries, essentially attempt to counterfeit Native American arts and crafts and/or falsely indicate some association between the non-Indian product and a Native American tribe. In fact, many counterfeit products of Indian arts and crafts products are both made and sold outside of the United States, but the United States of course has no ability to stop trafficking in such counterfeit products. Within the United States, the IACA empowers the Indian Arts and Crafts Board (IACB), a federal agency, to refer violation to the Federal Bureau of Investigation. The IACB may independently recommend to the Attorney General of the United States that criminal proceedings be instituted. The IACB may also recommend that the Secretary of the Interior refer a matter to the Attorney General for civil enforcement action. The criminal and civil penalties for violating the IACA are harsh and punitive. First time individual offenders are subject to fines of up to \$250,000 or five years' imprisonment; businesses are subject to fines of up to \$1,000,000; subsequent violation expose individual offender to fines of up to \$1,000,000 or fifteen years' imprisonment, while business offenders face up to \$5,000,000 in fines.

Question II.12 : If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

Section 106A of the Copyright Law provides a right of attribution to the author of a work of visual art. The Indian Arts and Crafts Act prevents the marketing of products as “Indian made” when the products are not made by Indians as they are defined by the Act. The Trademark Act of 1946, as amended, provides the statutory basis for protecting folklore aspects of Native American tribes – as well as those of other indigenous peoples worldwide. For example, under Section 2(a) of the Trademark Act, 15 U.S.C. 1052(a), federal trademark application Serial No. 75 -265350, [“ZIA SYSTEMS” with the Zia Sun Symbol design, for “stationery, computer software products and packaging, and advertising,”] was refused registration on the basis of likely false association with the Pueblo of Zia. Similarly, application Serial No. 75 -447770 [“ZIA” with Zia Sun Symbol design, for “cocktail mixes”] was refused registration on the dual bases of likely false association with the Pueblo of Zia and possible disparagement of the tribe and its beliefs.

Question II.13 : Is the protection afforded by your laws and regulations limited in time?

Response: Yes

No

If yes, for how long? How is the starting point of protection determined? What happens to the expression of folklore after the expiry of the period of protection (for example, does it fall into the public domain so that it may be freely copied and used by anyone without restriction?)

If no, are there any national experiences in this respect that may be helpful for a wider audience?

Response:

Protection provided under copyright law is limited in time. The duration of protection runs for the life of the author plus 70 years, for 95 years from the date of publication or for 120 years from creation. Protection provided under trademark law continues as long as the mark is properly used as a trademark. It should be noted that a trademark may be cancelled at any time if it is demonstrated that the mark is disparaging or falsely suggests a connection, under Section 2(a) of the Trademark Act. See *Suzan Shown Harjo, et al v. Pro-Football, Inc.*, 50 USPQ2d 1705 (TTAB1999)

[In 1999, the Trademark Trial and Appeal Board of the United States Patent and Trademark Office ordered cancellation of the trademark registration issued in the 1930's for "REDSKINS," on the ground that the mark is disparaging to Native Americans under Section 2(a).]

Question II.14 : Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the viewpoint of both the custodians of folklore and users in your country?

Response:

Sections 107 to 122 cover the exceptions to the copyright owner's exclusive rights.

Question II.16 : Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

The United States has found that the most effective means of protection of expressions of folklore is to address the specific concerns that have arisen in this country. As is the case of all nations, members of Indian tribes and Alaskan natives have full access to elected representatives who are in the position to propose legislation to meet their particular needs. Accordingly, we have not felt that a one-size-fits-all approach is desirable or appropriate.

(d) Authorization of utilization of expressions of folklore

Question II.17: Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The "property" of the country as a whole (as part of the national cultural heritage)?      | <input type="checkbox"/>            |
| (ii) As the "property" of indigenous or other local communities within your country?           | <input checked="" type="checkbox"/> |
| (iii) As the "property" of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Question II.18: Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

There are a number of practical scenarios that have arisen with respect to obtaining authorization for use of expressions of folklore. One such scenario is that an informant may give expressions of folklore to a collector that may actually "belong" to someone else in the community, to a specific group within the community, or to a group outside the informant's community. Getting a release form signed by the informant may not allow further use of the folklore if there is such a tradition of ownership that extends beyond the informant, and a user may have to acquire further permissions. Another scenario is that an informant may impart expressions of folklore to a collector with the understanding that performing or using that expression of folklore should occur only under specific conditions: a season of the year, only among men or women, only in conjunction with a specific ritual. This makes the use of the folklore in a publication or other mass-mediated production difficult or impossible, since control of the use of the folklore would no longer be possible. Finally, an informant may impart an expression of folklore to a collector with the understanding that only that collector may use the material. This leaves open to question how much control the collector should exercise in the subsequent use of the folklore by others, since the collector will probably not be aware of the implications of ownership past the original informant.

Another new problem is that informants may have signed release forms allowing the general use of their folklore before the electronic age, and may object to the widespread use of the information on the internet. How does one interpret permissions in light of changing technologies? Under U.S. practice, an informant may mandate the destruction of a recording some years after it was made because of unease about ownership and use issues after he/she dies, or may "will" the recording or the information to someone else. In the first case, the collector or repository will have to decide between honoring the wishes of someone within the culture that produced the folklore or honoring the mandate to "collect and preserve" demanded by the state. In the second case, permissions may have to be renegotiated with the heir to the folklore.



Question II.19 : Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorization to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

The Indian Arts and Crafts Board was established in 1935. It operates as an agency within the Department of the Interior and administers the Indian Arts and Crafts Act. The Board interprets potentially unlawful conduct for enforcement purposes. It can, for example, refer complaints of criminal violations to the Federal Bureau of Investigation and recommend to U.S. Attorney General that criminal proceedings be instituted.

Under the copyright and trademark laws, the rightholder is the relevant competent authority.

Question II.20 : If indigenous or other local communities within your country are regarded by your laws as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

Complaints about protected products alleged to be offered or displayed for sale or sold in a manner that falsely suggests that they are Indian products may be made to the Indian Arts and Crafts Board for action under the Indian Arts and Crafts Act. Civil suit may also be pursued. The IACA invests an Indian tribe with the standing to bring civil suit on behalf of itself, an Indian who is a member of the tribe, or on behalf of an Indian arts and crafts organization. The Database of Official Tribal Insignia enables a tribe recognized at the federal or state level to record and thus protect its official insignia.

As a practical matter, the ability of Native American tribes in the United States to use a variety of legal tools enhances protection of their traditional artistic heritage. The aggressive penalties levied against those found guilty of misrepresentation under the Indian Arts and Crafts Act serve as a deterrent to such misrepresentation. The Federal government also takes steps to educate consumers, to help them avoid counterfeit arts and crafts products. See for example, the Federal Trade Commission website at <http://www.ftc.gov/bcp/online/pubs/products/indianart.htm>

(e) Sanctions, remedies and jurisdiction

Question II.21 : Which remedies and sanctions are provided for in your national laws and regulations?

Response:

Statutory penalties are established for criminal copyright infringement where it is done willfully. The penalties for criminal infringement include prison sentences of up to five years and \$250,000 for a first-time offender. Statutory penalties are also established for trafficking in counterfeit goods or services. The maximum penalty for a trademark violation is imprisonment for a year and a fine of \$2,000,000 for a first-time violator. For a first-time corporate defendant, the maximum fine is \$5,000,000. Criminal penalties under the IACA sentence an individual to up to \$250,000 in fines or up to five years in prison. A corporate entity, "a person other than an individual" can be fined up to \$1,000,000.

A private right of action exists in both copyright and trademark infringement cases, as well as under the IACA. Much of the enforcement of copyright in the United States takes place in the form of civil actions in federal court brought by the copyright owner. Several types of provisional measures and final remedies are available in a civil action, including both actual and statutory damages. The maximum statutory damage award may be increased from \$30,000 to \$150,000 in cases of "willful" infringement. Plaintiffs claiming violation of a registered trademark or a violation under the Trademark (Lanham) Act may seek both injunctive relief and final remedies, including actual damages and defendant's profits. It should be noted that, as stated above, trademark rights arise out of the common law, and that actions may be brought in both state and federal courts. Under the IACA, suit may be brought for injunctive relief for recovery of the greater of treble damages and "in the case of each aggrieved individual Indian, Indian tribe, or Indian arts and crafts organization, not less than \$1,000 for each day on which the offer or display for sale or sale continues."

Question II.22 : Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

Not applicable.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

U.S. law does not make a distinction between copyright and neighboring rights. The fixation on a sound recording of a folktale, or a folksong, can be protected under copyright. The United States protects performers of folklore through copyright law. Their recorded, or fixed, performances are protected under the category of sound recordings.

Question II.24 : Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

Not applicable.

(g) Protection of expressions of folklore of foreign countries

Question II.25 : Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:

Not applicable.

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

It is unclear whether it is possible or even desirable to establish a comprehensive, uniform set of rules at the international level to govern the protection of expressions of folklore. At this point, it appears premature to begin such activity before individual countries have, in collaboration with the communities within their borders, established their own fledgling national regimes for protection within their borders and have gained useful experience in the application and effect of that protection.

Question II.28 : What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

The U.S. has no practical proposals at this time.

Question II.29 : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

Not applicable.

*ModificationsorAdaptationstotheModelProvisions*

QuestionIII.1 :Pleaseprovideanysuggestions formodificationsoradaptationsthat couldbemadetothemodelProvisionsinorderthattheymaybemoreusefulasamodel fornational,regionalorinternationalallawsandstandards.

Response:

Notapplicable.

[EndofresponseoftheUnitedStatesofAmerica]

CUESTIONARIOSOBREEXPERIENCIASNACIONALESENLA PROTECCIÓN  
JURÍDICADELASEXPRESIONESDELFOLCLORE

RESPUESTADEVENEZUELA

*Informacióndecontacto*

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*I. AplicacióndelconjuntodeDisposicionesTipo*

PreguntaI.1 :¿Quéministerio(s),departamento(s),organismo(s)yoficina(s) gubernamental(es)desupaíseocupa(n)delascuestionesrelativasalaprotecciónjurídica de lasexpresionesdelfolclore?

Respuesta:

Elorganismo responsabledecoordinartod asaquellascuestionesrelativasalaprotecciónjurídica delasexpresionesdelfolcloreasícomoproponeydesarrollariniciativaslegislativastendientes asupromocióneselServicioAutónomodelaPropiedadIntelectual(SAPI)quienesresponsable deadministraryejecutarlaspolíticassobreestamateria.

PreguntaI.2 :¿DisponendelasDisposicionesTipoen(unode)losidiomasoficialesdesu país?

Respuesta:

Si(Español)

PreguntaI.3 :¿Recibenlas“expresionesdelfolclore”,yaseacomosedefinenenlas DisposicionesTipo,ocomoseentiendaeseterminoensupaís,unaprotecciónjurídica específicacomopropiedadintelectual \*ensulegislaciónnacional(estédichalegislación relacionadaconlapropiedadintelectualono)?

Respuesta:

Sí

No

ii) ¿Se basa legislación pertinente, al menos en cierta medida, en las Disposiciones Tipo?

Respuesta:

Sí

No

Respuesta:

Actualmente no existe legislación vigente, no obstante existe un proyecto el cual está bajo estudio por el Ejecutivo Nacional conjuntamente con el Poder Legislativo.

iii) Sírvase indicar a continuación qué aspecto(s), de haberlo(s), de las Disposiciones Tipo no siguen en su legislación nacional:

*Este aspecto de las  
Disposiciones Tipo  
no se ha seguido en  
nuestra legislación  
nacional*

Respuesta:

Los principios básicos en los que se basan las Disposiciones Tipo (véase el Preámbulo)

El alcance de las “expresiones del folclore” protegidas por las Disposiciones Tipo (Artículo 2)

Los actos contra los cuales se están protegiendo las expresiones del folclore y las excepciones al respecto (Artículos 3, 4, 6 y 6)

Las disposiciones que se ocupan de la autorización de los usos de las expresiones del folclore (Artículos 9 y 10)

Las sanciones y los recursos previstos (Artículos 7 y 8)

Las soluciones que ofrecen las Disposiciones Tipo para la protección de las expresiones del folclore de países extranjeros (Artículo 14)

Si se ha señalado al menos uno de los cuadros, sírvase facilitar más información.

Respuesta:

Todo estos aspectos han sido recogidos en el proyecto de ley objeto de estudio.

iv) Indique otra(s) razón(es) por la(s) que determinados aspectos de las Disposiciones Tipo no se han aplicado en su país.

Respuesta:

Estas consideraciones se encuentran en estudio.

## II. *Aplicación de las disposiciones principales de las Disposiciones Tipo*

Pregunta II.1 : ¿En qué principios se basa la protección del folclore en su legislación nacional?

Respuesta:

Básicamente en las Disposiciones Tipo.

Pregunta II.2 : ¿Tiene alguna observación con respecto a los principios tenidos en cuenta en la elaboración de las Disposiciones Tipo? ¿Cree que los principios siguen siendo viables? ¿Existen otros principios adicionales que deberían tomarse en cuenta en cualquier modificación de las Disposiciones Tipo?

Respuesta:

En líneas generales las Disposiciones Tipo han sido de gran ayuda para el diseño y estructura del proyecto que actualmente se encuentra en estudio. No obstante han saltado algunas consideraciones que merecen ser revisadas, en particular el tiempo de duración y la delimitación de la zona geográfica.

Pregunta II.3 : ¿Sirva para facilitar información, o observaciones o experiencias prácticas nuevas sobre los principios básicos tomados en consideración para la elaboración de las Disposiciones Tipo.

Respuesta:

Hasta el momento no se tienen experiencias prácticas nuevas sobre los principios básicos tomados en consideración para la elaboración de las Disposiciones Tipo.



Pregunta II.4 :¿Se utiliza un término distinto de “expresiones del folclore” en su legislación nacional para describir el objeto a que se hace referencia en el Artículo 2 de las Disposiciones Tipo? Encaso afirmativo :

- i)¿Cuáles es el término?
- ii)¿Cuáles es el objeto que abarca?
- iii)¿Por qué fue elegido el término?
- iv)¿Qué objeto abarcaría el término “expresiones del folclore” en su país?

Respuesta:

No se utiliza un término distinto de “expresiones del folclore” en su legislación nacional para describir el objeto a que se hace referencia en el artículo 2 de las Disposiciones Tipo.

Pregunta II.5 :En la aplicación práctica de su legislación nacional,¿se han planteado dificultades al determinar el folclore que debe protegerse?

Respuesta:

Sí

No

Pregunta I I.6 :¿Se utiliza en su país normalmente un término distinto de “expresiones del folclore” para describir el objeto al que se hace referencia en el Artículo 2 de las Disposiciones Tipo? Encaso afirmativo:

- i)¿Cuáles es el término?
- ii)¿Cuáles es el objeto que abarca?

Respuesta:

No.

Pregunta II.7 :¿Existen “expresiones del folclore” u otros ejemplos o formas de cultura y conocimiento tradicionales que no queden protegidos por las Disposiciones Tipo, y que considere que deberían estarlo?

Respuesta:

No, dado que el artículo 2 contiene una norma de forma general y un desarrollo ejemplificativo.

Pregunta II.11 : Tomando como base la experiencia en la aplicación de la legislación de su país, ¿contra qué formas de explotación, utilización y acciones en relación con las expresiones del folclore se debería otorgar protección? Proporcione ejemplos prácticos. ¿Existe alguna experiencia práctica relacionada con la aplicación de las disposiciones pertinentes de la legislación de su país que pudiera servir de ayuda a un público más amplio?

Respuesta:

Actualmente no existe experiencia práctica ya que la consideración sobre las formas de explotación, utilización y acciones relacionadas con las formas del folclore se encuentran en estudio.

Pregunta II.12 : Si la legislación de su país prevé derechos en relación con la mención de la fuente (como los previstos en el Artículo 5 de las Disposiciones Tipo), indique, haciendo referencia en la medida lo posible a ejemplos prácticos, si esos derechos han sido útiles, eficaces y viables en la práctica.

Por ejemplo, ¿cómo se aplica en su país el requisito de que la expresión del folclore sea “identificable” (que proceda de una comunidad o lugar conocidos)? ¿Cómo se aplica este requisito en el caso de que en su país haya varias comunidades que compartan expresiones del folclore similares? ¿O en el caso de que en su país haya comunidades que vivan también en países vecinos, y/o comunidades que hayan adoptado y desarrollado una expresión del folclore que proceda de otro país?

Respuesta:

Actualmente no existe experiencia práctica ya que la consideración sobre las formas de explotación, utilización y acciones relacionadas con las formas del folclore se encuentran en estudio.

Pregunta II.13 : ¿Tiene algún límite temporal a la protección que proporciona la legislación de su país?

Respuesta:

Sí

No

PreguntaII.14 :Proporcioneinformacióndelasexcepciones,silashay,quepreveala legislacióndesupaísalosderechosmencionadosanteriormente.¿Opinanlostudiosdel folcloreylosusuariosdesupaísesqueonadecuadas?

Respuesta:

SeencuentranbajoestudiolasexcepcionesestablecidasenlasDisposicionesTipo,noobstante sehatenidomuchaprecauciónconestasconsideraciones.

PreguntaII.16 :Facilitecualquieroinformaciónoexperienciaprácticarelacionadaconla naturalezaadelaprotecciónque seconcedealasespresionesdelfolcloreensupaís.

Respuesta:

Actualmentenoexisteexperienciaprácticayaquelasconsideracionessobrelasformasde explotación,utilizaciónyaccionesrelacionadasconlasformasdelfolcloreseencuentranen estudio.

PreguntaII.17 :Ensupaís,¿seconsideraquelasexpresionesdelfolcloreson:

Respuesta:

i)“Propiedad”delpaísensuconjunto(formanpartedelpatrimoniocultural nacional)?

ii)“¿Propiedad”delascomunidadesindígenasuotrascomunidadeslocalesdesu país?

iii)¿“Propiedad”deartistasindividualescuyasobrasebasanentradiciones folclóricas?

iv)Ningunadelastres.Proporcioneinformaciónadicional.

PreguntaII.18: Facilitecualquieroinformaciónoexperienciaprácticarelacionadaconla autorizacióndeutilizacióndeexpresionesdelfolcloreensupaís.

Respuesta:

Actualmentenoexisteexperienciaprácticayaquelasconsideracionessobrelasformasde explotación,utilizaciónyaccionesrelacionadasconlasformasdelfolcloreseencuentranen estudio.

PreguntaII.19 :¿Establecelalegislacióndesupaísuna“autoridadcompetente”y/ouna“autoridadsupervisora”talcomofiguraenlosArtículos 9y 10delasDisposicionesTipo?

Respuesta:

Dentroelproyectobajoestudio,sehanconsideradoestableceruna“autoridadcompetente”talcomolorecomiendalosartículos9y10delasDisposicionesTipo.

PreguntaII.20 :Silalegislacióndesupaísconsideraquelascomunidadesindígenasuotrascomunidadeslocalesdesupaísson“titulares”desformasrespectivasdepatrimonioartísticotradicional,¿cómoponenenpráctica,gestionanyejercensusderechoslascomunidadesconcernidasdeconformidadconlalegislación?¿Quéleccionesyejemplosprácticospodríanserútilesparaunpúblicomásamplio?

Respuesta:

ElEstadoreconocealascomunidadeslocalesypueblosindígenaselderechoquelesasisteanegarsuconsentimientoparaautorizarlarecolección dematerialesbióticosygenéticos,elaccesoalosconocimientostradicionalesylosplanesyproyectosdeíndolebiotecnológicaensusterritorios,sinhaberobtenidopreviamentelainformaciónsuficientesobreelusoylosbeneficiosdetodoello.

PreguntaII.21 :¿Quérecursosysancionesprevélalegislacióndesupaís?

Respuesta:

Todosaquellosrecursosysancionesprevistasdentrodenuestroordenamientojurídicoasícomoaccionespordañoyperjuiciosuotrosrecursoscivilesquecorrespondan.

PreguntaII.23: ¿Existealgúnejemploensupaísdeexpresionesdelfolclorequehayanobtenidoprotecciónpormediosindirectostalcomolos derechosconexos?

Respuesta:

Sí

No

PreguntaII.25 :¿Existealgúncasoenelqueelfolclororiginaldesupaíssehayaexplotado outilizadoenunpaísextranjero?

Respuesta:

Sí

No

Encasoderespuestaafirmativa :

- i) Proporcioneinformacióndetalladadeesoscasos.
- ii) ¿Pudieronlasautoridadespertinentesy/olaspersonasafectadasdesupaís emprenderalgunaacciónlegalparaimpediresaexplotaciónoutilizaciónopara u obtenerindemnizaciónalrespecto?Encaso derespuestaafirmativa facilite informacióndetalladaenlaqueseincluyalabasejurídicasobrelaqueseemprendiótal acciónlegal(porejemplo,labasedelareciprocidadestablecidaenlaleislacióndesu país).

Respuesta:

No.

PreguntaII.26 :¿Cons ideraqueesnecesarioestablecerunacuerdointernacionalparala proteccióndelasexpresionesdelfolclor?

Respuesta:

Sí

No

PreguntaII.27 :Encasoderespuestaafirmativa,¿opinaquelasDisposicionesTipopodrían serunpunto depar tidaadecuadoparaeldesarrollodeeseacuerdo?

Respuesta:

Sí

No

[FindelarespuestadeVenezuela]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF VIETNAM

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*I. Application of the Model Provisions as a Whole*

Question I.1: Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-In Vietnam, the Ministry of Culture and Information and its related departments (such as the Department of Conservation and Museology, Department of Copyright, the Institute of Research of Traditional Culture) deal with questions concerning the legal protection of expressions of folklore.

Question I.2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

-Yes, the Model Provisions are available in one of the official languages in Vietnam.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response:    Yes   

                              No   

If yes :

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or officer responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

- Article 748 of the Civil Code of the Socialist Republic of Vietnam of October 28, 1995, part six, Intellectual property and technology transfer, Chapter I, Copyright, provided the protection on folk arts and folk literature;

- The Cultural Heritage Law No. 28/2001 - QIII was adopted on June 29, 2001. The Cultural Heritage law will be effected on January 1, 2002.

- The Ministry of Culture and Information and its related departments (such as the Department of Conservation and Museumology, Department of Copyright, the Institute of Research of Traditional Culture) are responsible for administering the law and regulations.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.

(ii) Are there relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

## II. Application of the Principal Provisions of the Model Provisions

### (a) Basic principles taken into account for the elaboration of the Model Provisions

Question II.1 : What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

In Vietnam, the Cultural Heritage Law No. 28/2001 - QIII was adopted on June 29, 2001, in which the following principles are taken into account:

- Prior Authorization for exploitation of expressions of folklore belonging to the national cultural heritage;
- Development and protection of the creation and dissemination of folklore;
- Prevention of the illicit exploitation and other prejudicial actions.

Question II.2 : Do you have any comments on the principles taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principles that should be taken into account in the any further development of the Model Provisions?

Response:

- In Section 2, definition is limited to "artistic heritage" of a community is not consistent. It could be limited to "the cultural heritage of nation";
- Section 13 of the Model Provisions is too general.
- We believe that the principles are still current and viable.



(b) Protected expression of folklore

Question II.4 : Is a term other than “expression of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expression of folklore” cover in your country?

Response:

-In Vietnam, the term “traditional culture” and its various creative is used in our National Law to describe the kind of subject matter referred to in section 2 of the Model Provisions.

Question II.7 : Are there “expression of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

-Historical and archaeological sites, ceremonies, traditional medicinal practices, secrets of crafts, textile designs, eating culture etc., are forms of traditional culture which the Model Provisions can protect.

(c) Acts against which expression of folklore are protected

Question II.9 : Please provide information on the nature of the protection granted in respect of expression of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

-In Vietnam, the rights granted in respect of expression of folklore are the economic and moral rights, and generally also exclusive rights. The government recognizes collective and personnel property.

Question II.10 : Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

-The authorization is required when the expressions of folklore are used for commercial purposes and/or outside traditional and customary context.

Question II.11 : Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

-In practice there was the use of Hoi An name (it's a well-known place in Vietnam) on the Internet and in connection with unauthorized reproductions of the Hoi An works.

Question II.12 : If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be "identifiable" (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

-Our law provides rights in respect of acknowledgement of source.

Question II.14 : Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the viewpoint of both the custodians of folklore and users in your country?

Response:

-In Vietnam, there are exceptions for the expressions of folklore that are similar to those applicable to copyright works.

(d) Authorization of utilizations of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

Response:

- (i) The “property” of the country as a whole (as part of the national cultural heritage)?
- (ii) As the “property” of indigenous or other local communities within your country?
- (iii) As the “property” of individual artists whose works are based upon folkloric traditions?
- (iv) Neither (i), (ii) or (iii). Please provide further information.

Response:

-In Vietnam, expressions of cultural heritage of which the authors are unknown belong to the country as a whole. They are the property of their authors only when the authors are known.

Question II.18 :Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

-The Department of Conservation and Museumology is responsible for governmental management of cultural heritage;

-The Institute of Research of the Traditional Culture is responsible for researching and collecting tangible folkloric arts as well as tapes of songs, oral histories.

Question II.19 :Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorization to use expressions of folklore.

Are any fees payable for utilizations of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

-The Ministry of Culture and Information and its Departments are responsible for supporting and assisting the works of folklore museums, folklore researchers, and protecting, disseminating national folklore works.

(e) Sanctions, remedies and jurisdiction

Question II.21 : Which remedies and sanctions are provided for in your national laws and regulations?

Response:

-Article 69 -72, Chapter VI of the Cultural Heritage Law: Comment and Judgement of infringing items. The various civil and criminal remedies and sanctions would be applied and depend on the property and the extent of the infringement

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

-The protection can be provided by means of the copyright and related rights legislation.

(g) Protection of expressions of folklore of foreign countries

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Question II.27 : If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

*III. Modifications or Adaptations to the Model Provisions*

Question III.1 : Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- To include within the scope of the Model Provision traditional medicinal practices, secretsof crafts, textile designs, eating culture.

[End of response of Viet Nam]

QUESTIONNAIRE ON NATIONAL EXPERIENCES WITH THE LEGAL  
PROTECTION OF EXPRESSIONS OF FOLKLORE

RESPONSE OF ZIMBABWE

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*I. Application of the Model Provisions as a Whole*

Question I.1: Which Government ministry(ies), department(s), agency(ies) and office(s) in your country deals with questions concerning the legal protection of expressions of folklore?

Response:

-Ministry of Justice, Legal and Parliamentary Affairs, Office of the Controller of Patents, Trade Marks, Industrial Designs and Copyright.

Question I.2: Are the Model Provisions available in (one of) the official languages of your country?

Response:

-No, these are not readily available for the public.

Question I.3 : Do “expressions of folklore”, either as described in the Model Provisions, or as the term is understood in your country, receive specific legal protection as intellectual property \* in your national laws or regulations (whether the laws or regulations are related to intellectual property or not)?

Response: Yes

No

If yes :

(i) Please provide information on the relevant laws and regulations, such as their full titles, the relevant sections or paragraphs, dates of coming into force and the name and details of the Ministry, department, agency or officer responsible for administering the laws and regulations. *Please provide the WIPO Secretariat with copies of the laws and regulations.*

Response:

-Currently there are no legal provisions for the protection of works of folklore. There is however a Bill which has been passed by Parliament on Copyright and Neighboring Rights. This law may come into effect any time as it only awaits the President's approval. If this legislation comes into law, it has specific provisions for folklore protection. I have to emphasize that this has not yet been assented to by the President. Sections 80 through to 86 of the new Act provide for the protection of and remedy for infringement of folklore.

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\* The questionnaire concerns national experiences with the legal protection of expressions of folklore as intellectual property. This means specific legal protection of an intellectual property nature for expressions of folklore. Such protection may, but need not be, provided for in a State's intellectual property laws. It may be provided for by *suigeneris* (of its own kind) legislation, or as part of a law dealing with national cultural heritage, for example. The questionnaire is, therefore, not concerned with indirect, or incidental, protection for expressions of folklore, such as may be provided in certain cases by copyright, related rights or industrial property laws. It is also not concerned with the identification, preservation, promotion and dissemination of folklore, save to the extent that these may be relevant to the legal protection of expressions of folklore as intellectual property.



(ii) Are there relevant laws and regulations based, at least to some degree, upon the Model Provisions?

Response: Yes

No

(iii) Please indicate below which aspect(s), if any, of the Model Provisions are followed in your national laws and regulations: not

If you have marked any of the boxes, please provide further information.

Response:

-Not applicable.

(iv) Please indicate any other reason(s) why certain aspects of the Model Provisions may not have been implemented in your country.

Response:

Not applicable.

If no,

(i) Please indicate, if possible, the reasons why such protection has not been established.

Response:

-Not applicable.

(ii) In relation specifically to the Model Provisions, please indicate below which aspect(s) of the Model Provisions may have prevented their implementation in your country:

Response:

-Not applicable.

(iii) Please indicate any other reason(s) why the Model Provisions have not been implemented in your country.

Response:

-Not applicable.

## *II. Application of the Principal Provisions of the Model Provisions*

### (a) Basic principle taken into account for the elaboration of the Model Provisions

Question II.1 : What are the principles underlying the protection of folklore in your national laws or regulations?

Response:

- Not applicable.

Question II.2 : Do you have any comments on the principle taken into account in elaborating the Model Provisions? Do you believe that the principles are still viable? Are there any additional principle that should be taken into account in the any further development of the Model Provisions?

Response:

-The provisions of the Model are still valid. Our new Act is based on these provisions.

Question II.3 : Please provide any additional information, comments or practical experiences on the basic principle taken into account for the elaboration of the Model Provisions.

Response:

-No applicable.

(b) Protected expressions of folklore

Question II.4 : Is a term other than “expressions of folklore” used in your national laws or regulations to describe the kind of subject matter referred to in Section 2 of the Model Provisions? If yes :

- (i) What is the term?
- (ii) What subject matter does it cover?
- (iii) Why was that term selected?
- (iv) What subject matter would the term “expressions of folklore” cover in your country?

Response:

Not applicable.

Question II. 5: In the practical application of your national laws and regulations, has identification of the folklore to be protected presented any difficulties?

Response:

-Not applicable.

Question II.7 : Are there “expressions of folklore” or other examples or forms of traditional culture and knowledge which the Model Provisions do not protect, and which you believe ought to be protected?

Response:

-Traditional herbal cures could also be protected. It is not fair to leave traditional herbal medicine to be protected under the patenting system. The patenting system has provisions which makes it impossible to protect the herbal medicines. Things like novelty, and the need to analyze the chemical composition of medicines for disclosure purpose exclude traditional herbal medicines from being patentable. The owner of a patent also excludes others from using the medicines.

Question II.8 : Please provide any additional information, comments or practical experiences on the scope of protected expressions of folklore.

Response:

-On the ground that Zimbabwe has not had any protection of folklore. I however believe that free use, though exploitative on the communities concerned, has helped to preserve folklore in the absence of any legal provisions. Folklore has not died down because of this use.

(c) Acts against which expressions of folklore are protected

Question II.9 : Please provide information on the nature of the protection granted in respect of expressions of folklore in your laws or regulations. For example, which acts require authorization? Are the rights granted exclusive rights?

Response:

-Not applicable.

Question II.10 : Which principles are used in your laws and regulations to determine which utilizations require authorization (for example, in Section 3 of the Model Provisions, the principles are whether or not there is gainful intent, and whether or not the utilization occurs outside the traditional or customary context.)

Response:

-Not applicable.

Question II.11 : Based upon your experiences with implementing your national laws and regulations, against which forms of exploitation, uses and actions in respect of expressions of folklore should protection be granted? Please provide practical examples. Are there any practical experiences with implementing the relevant provisions in your laws and regulations that would be helpful for a wider audience?

Response:

-Not applicable.

Question II.12 : If your laws or regulations provide rights in respect of acknowledgment of source (such as those envisaged in Section 5 of the Model Provisions), please indicate, referring to practical examples where possible, whether such rights have been useful, effective and workable in practice.

For example, how is the requirement that the expression of folklore be “identifiable” (as being derived from a known community or place) implemented in your country? How is this requirement implemented if in your country there may be various communities sharing similar expressions of folklore? Or perhaps communities in your country also live in neighboring countries, and/or communities in your country may have adopted and developed an expression of folklore that originated in another country?

Response:

-Not applicable.

Question II.13 : Is the protection afforded by your laws and regulations limited in time?

Response:

-Not applicable.

Question II. 14 : Please provide information on the exceptions, if any, to the rights referred to immediately above in your laws or regulations. Are they regarded as adequate from the viewpoint of both the custodians of folklore and users in your country?

Response:

-Not applicable.

Question II.15 : Taking into account the expression of folklore in your country, against which forms of exploitation, uses and actions may protection for expressions of folklore be necessary? Please provide practical examples.

Response:

-All illicit exploitation of works of folklore should be discouraged. Unauthorized exploitation of works of folklore should be especially discouraged.

Question II.16 : Please provide any other comments or practical experiences regarding the nature of the protection afforded to expressions of folklore in your country.

Response:

-Nil

(d) Authorization of utilization of expressions of folklore

Question II.17 : Are expressions of folklore regarded in your country as:

Response:

- |                                                                                                |                                     |
|------------------------------------------------------------------------------------------------|-------------------------------------|
| (i) The “property” of the country as a whole (as part of the national cultural heritage)?      | <input type="checkbox"/>            |
| (ii) As the “property” of indigenous or other local communities within your country?           | <input type="checkbox"/>            |
| (iii) As the “property” of individual artists whose works are based upon folkloric traditions? | <input checked="" type="checkbox"/> |
| (iv) Neither (i), (ii) or (iii). Please provide further information.                           | <input type="checkbox"/>            |

Response:

-Until the new operation comes into effect, individual artists have enjoyed unhindered claim to ownership of works of folklore incorporated into their works. Because of the absence of the legislative provisions, artists could not be accountable to the communities from where the folklore originated.

Question II.18 : Please provide any other comments or practical experiences regarding the authorization of utilization of expressions of folklore in your country.

Response:

-None.

Question II.19 : Does your law establish a “competent authority” and/or “supervisory authority” as referred to in Sections 9 and 10 of the Model Provisions?

Please provide information on the powers, funding, mandates, composition, responsibilities, functions and activities of such bodies in your country.

Please describe the procedure for obtaining authorization to use expressions of folklore.

Are any fees payable for utilization of folklore, and, if so, how are they determined and to which purposes are the fees applied (for example, for promotion of national culture)?

In general, what practical lessons and examples would benefit a wider audience?

Response:

-Not applicable.

Question II.20 : If indigenous or other local communities within your country are regarded by your law as “owners” of their respective forms of traditional artistic heritage, how in practice do the communities concerned exercise, manage and enforce their rights under the law? What practical lessons and examples would benefit a wider audience?

Response:

-Not applicable.

(e) Sanctions, remedies and jurisdiction

Question II.21 : Which remedies and sanctions are provided for in your national laws and regulations?

Response:

-Not applicable.

Question II.22 : Please provide any other comments or practical experiences regarding remedies, sanctions and jurisdiction.

Response:

-Not applicable.

(f) Relation to other forms of protection

Question II.23 : Are there instances in which expressions of folklore have received protection in your country by indirect means, such as under related rights?

Response: Yes

No

Please provide further information, and, where possible, practical examples to illustrate your response.

Response:

-Individuals who have incorporated works of folklore into their work have claimed copyright protection and enjoyed royalties on these works.

Question II.24 : Please provide any other comments or practical experiences regarding other forms of protection afforded to expressions of folklore in your country.

Response:

-The above scenario is unhealthy since individuals benefit at the expense of communal ownership. It is immoral to claim copyright to things one did not produce but just copied.

(g) Protection of expressions of folklore of foreign countries

Question II.25 : Have there been instances in which folklore originating in your country has been exploited or otherwise utilized in a foreign country?

Response:

-Not applicable.

- (ii) Was it possible for any legal action to be taken by the relevant authorities and/or the affected nation also of your country to prevent, or seek redress for, such exploitation or utilization? If yes, please provide details, including the legal basis for such action that was taken (for example, on the basis of reciprocity established in your national laws and regulations).



Response:

-Not applicable.

Question II.26 : Do you believe that an international agreement for the protection of expressions of folklore is necessary?

Response: Yes

No

Please provide further information on your answer.

Response:

- Illicit trade in works of folklore across borders can only be stopped if an international agreement is signed. Illicit traders of folklore normally benefit from exporting these works.

Question II.27 : If yes, do you believe that the Model Provisions could serve as an adequate starting point for the development of such an agreement?

Response: Yes

No

Please provide further information on your answer.

Response:

- The Model will provide guidelines for a harmonized legal framework in all member countries. This will make it possible to have common ground for an agreement.

Question II.28 : What practical proposals do you have regarding the two main problems that prevented the development of an international treaty in 1984 ((i) the lack of appropriate sources for the identification of the expressions of folklore to be protected and (ii) the lack of workable mechanisms for settling the questions of expressions of folklore that can be found not only in one country, but in several countries of a region.)

Response:

- The setting up of national committees on cultural heritage can help in identifying expressions of folklore. Professional consultants who can undertake surveys in the communities can also be hired.  
- On the question of lack of workable mechanism for settling questions of folklore found in more than one country, the proceeds could be ploughed into projects of common interest by both countries instead of trying to share them.

Question II.29 : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

Response:

- Nil.

### *III. Modifications or Adaptations to the Model Provisions*

Question III.1 : Please provide any suggestions for modifications or adaptations that could be made to the Model Provisions in order that they may be more useful as a model for national, regional or international laws and standards.

Response:

- The definition of expressions of folklore should include traditional medicines and charms. The term should rather be "works of folklore" rather than expressions of folklore.

[End of response of Zimbabwe]