

Position Paper of the International Publishers Association

WIPO/GRTKF/IC/9/4 Annex: Revised Provisions for the Protection of Traditional Cultural Expressions/Expressions of Folklore

The International Publishers Association (IPA) is the international federation of trade associations representing book and journal publishers worldwide. Established in Paris in 1896, it now speaks for 78 national, regional and specialised publishers associations from 66 countries. Its main goals are to promote freedom of expression and freedom to publish, to develop and defend intellectual property and to promote literacy and reading.

IPA welcomes the opportunity to submit its comments on the revised provisions for the protection of TCEs/EoF contained in the Annex to WIPO/GRTKF/IC/9/4 (the “Consultation Document”).

IPA appreciates the importance of recognising traditional cultural expressions/expressions of folklore (TCEs/EoF).

As previously outlined, publishers play a crucial role in promoting and preserving TCEs/EoF within and between cultures. They do this in many ways, for example:

- Local publishers of children’s books and school books may make reference in their works to the cultural context and environment of their readers.
- Academic publishers publish works of scientists describing ethnological observations.
- Similarly, many writers of fiction are inspired by their local customs, traditions and the social environment in which they were raised.

These examples not only delineate areas where publishing satisfies particular public needs, they also exemplify areas where the need to protect certain other public goods (e.g. freedom of expression, freedom of science and research) must be reconciled with the protection of TCEs/EoF. To ensure a balanced approach in this exercise, IPA has been actively participating in the discussions of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources (IGC) since its first session.

IPA’s retains its position as set out in its previous submissions (relating to WIPO/GRTKF/IC/7/3 and/or 5). These regard in particular the need:

- For clearer and more concise definitions (e.g. with regard to the existence and scope of possible rights, the notion of “community”, and the intended beneficiaries) for increased certainty;
- To respect the fundamental right of freedom of expression which may be unduly restricted by attempts to protect ideas or concepts, rather than specific forms of expressing ideas, and by calling for the establishment of (possibly state-controlled) authorisation mechanisms.
- Not to undermine the concept of the “public domain”, according to which content can be used freely for further creative acts once the term of protection (in the field of intellectual property laws) has expired.

- To carefully consider any notion of compulsory “benefit sharing” reducing the flexibility given to rightsholders in other legal frameworks (e.g. intellectual property law) to freely negotiate the terms of use, and which may ignore the variety of forms in which a “benefit” can manifest itself and/or the risk of the user in investing in the development of traditional content.

These concerns remain valid in particular with regard to the newly added Objective I. (iv) (“Prevent the misappropriation of TCEs/EoF”) which embodies many of our points of criticism:

- Traditions in the public domain cannot be misappropriated
- The protection of TCEs/EoF derivatives would prevent creative acts building upon existing subject-matter (whether protected or not), thereby impeding on one’s freedom of expression. Scientific observations, educational books, anthologies all could be considered such “derivatives”.
- The compulsory “equitable sharing of benefits” may ignore the risks taken by those investing in the use of traditional content, and the fact that benefits can take multiple forms.

The shortcomings of this Consultation Document as summarised above may impede publishers (from an administrative and possible also financial perspective), and make some publishing ventures impossible. We are deeply concerned that “traditional knowledge protection” can be used as a pretext to stifle scientific debate and academic dispute, for example, into tribal history or sociology, in particular in the case of critical authors, e.g. where a community can control whether or how one comments on, for example, its history (conflicts with another community). The exceptions contained in the Consultation Document in this respect are insufficient and vague.

In the light of the complexity of issues and the lack of international consensus on the aim of the IGC’s work, IPA does not believe that the time is ripe for an attempt to develop treaty language, and we therefore urge WIPO to refrain from doing so in the next consultation documents. There is not enough consensus that can already be set into legal wording. IPA suggests that the IGC continues its discussions not on the basis of a document drafted in treaty-like language like the Consultation Document, but rather with the aim of building on more easily achievable aims. Consensus can more likely be achieved when carving out the very small and restricted, elements of TCEs/EoF for immediate protection (sacred content), or when calling for recognition of the value of TCEs/EoF in the form of industry guidelines or best practices.

The above comments are preliminary and part of the ongoing consultation process IPA undertakes with its constituency. We look forward to participating in the ongoing debate about these matters and look forward to a constructive solution of the issues outlined in our submissions.

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