

THE RUSSIAN FEDERATION

The following comments were received through a communication from the Russian Federation

The Russian Federation supports stated in document WIPO/GRTKF/IC/7/3 (“The Protection of Traditional Cultural Expressions/Expressions of Folklore: Overview of Policy Objectives and Principles”) approaches to a problem of the protection of traditional cultural expressions/expressions of folklore (TCEs/EoF), policy objectives and core principles for the protection TCEs/EoF.

We consider that the document is a good basis for the further work on development of legal instruments for the protection of TCEs.

We strongly support the “Principle of flexibility and comprehensiveness” and the statement that “Protection should allow sufficient flexibility for national authorities to determine the appropriate means of achieving the objectives of protection” and also support principles “balance and proportionality”, “respect for and cooperation with other international and regional instruments and processes”.

The Committee’s efforts should be directed towards achieving results that were balanced and proportional to the nature of the problem in this sphere. Any scheme for addressing TCEs/EoF should not conflict with or compromise existing IP rights.

“Universal international template” may not be able to achieve the objective of the comprehensive protection of TCEs/EoF in a manner that suits the national priorities, legal and cultural environment and needs of traditional communities in all countries.

- For comprehensive protection of TCEs/EoF special laws at a national level are needed (in the Russian Federation there is a number of the laws establishing legal principles of guarantees of original social and economic and cultural development of indigenous peoples of the Russian Federation, of protection of their traditional environment, a traditional way of life, managing and crafts (for example, the Federal Law of the Russian Federation “On National Cultural Autonomy” of 17.06.96 N 74 -FL). The rights given by these laws, concern preservation of TCEs., but not protection of IPR. Protection may draw on a comprehensive range of options, such as cultural heritage laws, customary laws, contract law, criminal law, and soon.

Beneficiaries of protection (B.3):

Beneficiary of protection may be: communities, indigenous peoples, the state (for example, the Russian legislation determines “the authorized representatives of indigenous minority peoples” - the Federal Law of the Russian Federation “On General Principles of Organization of Communities of Indigenous Minority Peoples of the North, Siberia and the Far East of the Russian Federation” of 20.07.2000 N 104 -FL). But it is necessary to analyse this matter deeper because often the communities are not located on the territory of just one State because of its traditional lifestyle and because of its economic background. It should be taken into account and it should be taken into account.

Concerning principle B.7 on the “Term of Protection”:

We agree that it could be difficult to apply the same term of protection to all TCEs. The diversity and variety of expressions should be taken into account. We agree with the approach: “Protection of any TCE/EoF should endure for as long as the TCE/EoF continues to be maintained and used by, and is characteristic of the cultural identity and traditional heritage of the relevant indigenous people or traditional or cultural community” and might be considered as “a trademark-like emphasis on current use, so that once the community that the TCE identifies no longer uses the TCE or no longer exists as a defined entity protection for the TCE would lapse.” (analogous to abandonment of a trademark).

The Russian Federation supports the preparation of the Practical Guide as indicated in paragraph 28 of WIPO/GRTKF/IC/7/3, especially if the Guide is based upon the ‘Practical Steps’ (see document WIPO/GRTKF/IC/6/3).

For example, in the Russian legislation there are “Standard Regulations on Artistic Expert Council on Folk Artistic Crafts” and the Rules for registration of the samples of articles of folk artistic crafts with recognized artistic merits (the Decree of the Government of the Russian Federation of 18.01.2001 N 35).

We hope, that the Secretariat on the basis of the received comments will develop the further project of the purposes and principles for protection TCEs which will be considered by Committee at the eighth session.

The ultimate conclusion of the Committee’s work should also be flexible and comprehensive, allowing Member States to leave effective customary laws in place, while fully addressing the scope of problems.