

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

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

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

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

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

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

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

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

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

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

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

6. For how long should protection be accorded?

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

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

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

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

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

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

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

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

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