

NORWAY

Traditional Cultural Expressions/Expressions of Folklore

Issues

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

Traditional cultural expressions and expressions of folklore may include any artistic or traditional expressions, tangible or intangible, that are the results of individual or communal creativity, and that are characteristics of a community's cultural and social identity and cultural heritage, and that is maintained, used or developed by such a community. There should be considerable room for further specifics to be determined at the national level.

In our opinion the discussions in the IGC as well as the IGC documents provide an extensive basis for the understanding of what expressions should be protected.

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

The beneficiaries should be the custodians (the bearers of the tradition) of the particular TCE/EoF; ie the collective groups - the indigenous peoples or local communities - that has maintained, used and developed the expressions and which still continue to do so. Local customs may provide guidance when identifying the appropriate custodians and their representatives.

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

In Norway's opinion the main objectives of protection in regard of TCEs/EoF are:

- to prevent misappropriation
- to preclude the granting of unauthorized IP rights

Furthermore, protection should seek to:

- ensure prior informed consent and exchanges based on mutually agreed terms
- promote equitable benefit-sharing
- promote conservation and sustainable use

By providing protection, one also secures recognition and respect of the intrinsic value of TCE/EoF.

The rationale behind Norway's view is further elaborated in document WIPO/GRTKF/IC/9/12 paragraphs 21 – 24.

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

A common understanding on what constitutes misappropriation is essential to obtain an adequate and effective protection against such misappropriation and unfair use.

Unacceptable behavior includes at least all:

- unauthorized exploitation for economic gain
- exploitation that does not acknowledge the source of the TCE/EoF
- offensive use

A common, core understanding of at least these three elements are necessary.

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

Taking inspiration from traditional intellectual property law, limitations on the protection of TCEs/EoF should be examined. In particular the possibility of non-commercial and respectful use including use in education and research, should be considered. Measures aiming to safeguard the protection and preservation of cultural and traditional heritage should also be developed. Any such public interest measures should ensure that the TCE/EoF in question are treated with respect.

6. For how long should protection be accorded?

Protection should be provided for as long as the criteria for protection are fulfilled, and thus not necessarily be limited in time.

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

Existing IPRs (as i.e. regulated in treaties under the auspices of WIPO) already provides varying degrees of protection, depending on the circumstances. For instance the 1996 WPPT protects performers of expressions of folklore.

However, the traditional IPRs are not targeted to protect TCE/EoF. Therefore, the specific characteristics and needs are not necessarily appropriately addressed. Furthermore, the protection accorded is fragmented, varies between different jurisdictions and types of TCE/EoF and does not necessarily recognize TCE/EoF as eligible for protection.

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

Appropriate and effective sanctions should be provided for in national law depending upon the infringement in question. Part III of the Trips Agreement provides guidance in this respect.

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

The core elements should be dealt with internationally, thus providing a minimum standard of protection. However, the need for flexibility should also be recognized. One system of protection does not necessarily fit all and different concerns locally or related to the specific subject matter should also be taken into account.

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

With regard to the custodian's economic and moral rights, as provided for in accordance with the proposed recommendation set out in document WIPO/GRTKF/IC/9/12 paragraph 38 national treatment and MFN should be granted, with the possibility for reciprocity provisions.