



WIPO/GRTKF/IC/2/7 ORIGINAL: English DATE: June 22, 2001

#### WORLD INTELLECTUAL PROPERTY ORGANIZATION

**GENEVA** 

# INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

## Second Session Geneva, December 10 to 14, 2001

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

Prepared by the Secretariat

- ◆ This questionnaire is addressed to the Member States of the World Intellectual Property Organization (WIPO) and other Members of the Intergovernmental Committee.
- ♦ Members are requested to return their responses to the questionnaire to the Secretariat of WIPO before *September 14*, 2001.
- ♦ Responses should be addressed to the Global Intellectual Property Issues Division, 34 chemins des Colombettes, 1211, Geneva, 20. Fax: +41-22-338-8120.
- ♦ This questionnaire will be available at <www.wipo.int/globalissues>, and responses may also be submitted electronically through this site.

#### INTRODUCTION

#### This Questionnaire

- Discussions during the first session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (April 30 to May 3, 2001) ("the Intergovernmental Committee") under Agenda Item 5.3 ("Protection of Expressions of Folklore") considered inter alia certain suggestions relating to the Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions, which were adopted in 1982 under the auspices of the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) ("the Model Provisions"). These suggestions included, more specifically, that the Model Provisions be updated to take into account developments and new forms of commercial exploitation that have taken place since 1982, as had been recommended in four Regional Consultations on the Protection of Expressions of Folklore organized by WIPO and UNESCO in 1999. In addition, the first session of the Intergovernmental Committee considered a suggestion that, once updated, the Model Provisions could constitute a basis for effective protection for expressions of folklore at national, regional and international levels, as had also been referred to at the Regional Consultations.<sup>2</sup>
- 2. In the course of such discussions, several Member States indicated that further information on national experiences with implementation of the Model Provisions would be desirable before further consideration could be given to the Model Provisions, including possibly updating them.<sup>3</sup>
- 3. Further information on the development and adoption of the Model Provisions, the main recommendations of the Regional Consultations and other related activities is contained below in the section headed "Background."
- This questionnaire seeks primarily, therefore, to gather legal and practical information on national experiences with the implementation of the Model Provisions. However, several Member States provide legal protection for expressions of folklore which is not necessarily based upon the Model Provisions. Other Member States may provide no form of legal protection for expressions of folklore. It is thus necessary to differentiate the questions to take into account such variances among Member States. Therefore:
  - Certain questions are addressed to those States which provide specific legal protection for expressions of folklore in their national laws, whether or not on the basis of the Model Provisions. These questions are designed to obtain

<sup>&</sup>lt;sup>1</sup> See WIPO/GRTKF/IC/1/3, paras. 92 to 101.

<sup>&</sup>lt;sup>2</sup> *Idem*, paras. 107 – 114.

<sup>&</sup>lt;sup>3</sup> See WIPO/GRTKF/IC/1/13 (Report of first session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore), paras. 156 to 175.

information on lessons learned with the implementation of provisions in national laws for the legal protection of expressions of folklore, including those based upon the Model Provisions, and with the exercise, management and enforcement of the rights they provide. These questions are clustered as questions "For Member States which provide specific legal protection for expressions of folklore."

- In respect of those Member States which do not currently provide specific legal protection for expressions of folklore, a distinct set of questions seeks general information on national policies and practices relating to the protection of expressions of folklore, and to ascertain the views of such Member States on the Model Provisions, including reasons why they have not been implemented. These questions are clustered as questions "For Member States which do not currently provide specific legal protection for expressions of folklore."
- Certain questions are addressed to all Member States, irrespective of whether they have implemented the Model Provisions, or whether they provide other forms of protection for expressions of folklore. These questions are clustered as questions "For all Member States."
- 5. 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.
- 6. The questionnaire is not exhaustive, and the questions contained in it are simply indications of the kind of information that is being sought. Respondents are requested to answer all the questions as fully as possible, and to provide, wherever possible, practical examples and lessons learned. It should be emphasized that the primary purpose of the questionnaire is to obtain practical information.
- 7. The questionnaire is addressed to the Ministries of Foreign Affairs of WIPO's Member States and other Members of the Intergovernmental Committee. The Ministries are requested to refer, if necessary, the questionnaire to the relevant national offices for copyright and related rights and for industrial property. The offices which complete the questionnaire are strongly encouraged to seek input from other relevant Government departments, agencies and offices and, where appropriate, non-governmental

stakeholders, such as indigenous and local communities, research institutions, folklore archivists, folklore documentation centres, museums and the private sector.

- 8. The questionnaire is divided into three main sections, being:
  - I. Application of the Model Provisions as a Whole;
  - II. Application of the Principal Provisions of the Model Provisions; and,
  - III. Modification and Adaptation of the Model Provisions.

Section II (Application of the Principal Provisions of the Model Provisions) is further sub-divided into the following sub-sections: (a) Basic principles taken into account for the elaboration of the Model Provisions; (b) Protected expressions of folklore; (c) Acts against which expressions of folklore are protected; (d) Authorization of utilizations of expressions of folklore; (e) Sanctions, remedies and jurisdiction; (f) Relation to other forms of protection; (g) Protection of expressions of folklore of foreign countries. Each sub-section is introduced by a brief explanation of the relevant provisions and issues. In each sub-section, respondents are invited to include other information not specifically requested by any of the questions.

- 9. A copy of the Model Provisions, with a commentary, is attached as Annex 1.
- 10. The responses to the questionnaire will be examined and compiled by the Secretariat of WIPO, and the results will thereafter made available to the Intergovernmental Committee.

#### Background

11. The Model Provisions were adopted in 1982 by a Committee of Governmental Experts on the Intellectual Property Aspects of the Protection of Expressions of Folklore, which had been convened by the Directors General of WIPO and UNESCO.<sup>4</sup>

12. During the course of the development of the Model Provisions, it had been agreed by a Working Group convened by WIPO and UNESCO that: (i) adequate legal protection of folklore was desirable; (ii) such legal protection could be promoted at the national level by model provisions for legislation; (iii) such model provisions should be so elaborated as to be applicable both in countries where no relevant legislation was in force and in countries where existing legislation could be further developed; (iv) the said model provisions should also allow for protection by means of copyright and neighboring rights where such forms of protection could apply; and, (v) the model provisions for national laws should pave the way for sub-regional, regional and international protection of creations of folklore.

<sup>&</sup>lt;sup>4</sup> See generally Ficsor, M., "Attempts to Provide International Protection for Folklore by Intellectual Property Rights", paper presented at the UNESCO-WIPO World Forum on the Protection of Folklore, Phuket, Thailand, April 8 to 10, 1997.

- 13. The Model Provisions were developed in response to concerns that expressions of folklore, which represent an important part of the living cultural heritage of nations, were susceptible to various forms of illicit exploitation and prejudicial actions. More specifically, as stated in the Preamble to the Model Provisions, the Expert Committee believed that the dissemination of folklore might lead to improper exploitation of the cultural heritage of a nation, that any abuse of a commercial or other nature or any distortion of expressions of folklore was prejudicial to the cultural and economic interests of the nation, that expressions of folklore constituting manifestations of intellectual creativity deserved to be protected in a manner inspired by the protection provided for intellectual productions, and that the protection of folklore had become indispensable as a means of promoting its further development, maintenance and dissemination.
- 14. As already noted, the Model Provisions were intended to pave the way for subregional, regional and international protection of creations of folklore. A number of participants stressed at the meeting of the Committee of Governmental Experts which adopted the Model Provisions that international measures would be indispensable for extending the protection of expressions of folklore of a given country beyond the borders of the country concerned. WIPO and UNESCO followed such suggestions when they jointly convened a Group of Experts on the International Protection of Expressions of Folklore by Intellectual Property, which met in Paris from December 10 to 14, 1984. The Group of Experts was asked to consider the need for a specific international regulation on the international protection of expressions of folklore by intellectual property and the contents of an appropriate draft. The discussions at the meeting of the Group of Experts reflected a general recognition of the need for international protection of expressions of folklore, in particular, with regard to the rapidly increasing and uncontrolled use of such expressions by means of modern technology, beyond the limits of the country of the communities in which they originate.
- 15. However, the great majority of the participants considered it premature to establish an international treaty since there was no sufficient experience available as regards the protection of expressions of folklore at the national level, in particular, concerning the implementation of the Model Provisions. Two main problems were identified by the Group of Experts: the lack of appropriate sources for the identification of the expressions of folklore to be protected and 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. The Executive Committee of the Berne Convention and the Intergovernmental Committee of the Universal Copyright Convention, at their joint sessions in Paris in June 1985, considered the report of the Group of Experts and, in general, agreed with its findings. The overwhelming majority of the participants was of the opinion that a treaty for the protection of expressions of folklore would be premature. If the elaboration of an international instrument was to be realistic at all, it could not be more than a sort of recommendation for the time being.
- 16. In December 1996, the WIPO Committee of Experts on a Possible Protocol to the Berne Convention and the Committee of Experts on a Possible Instrument for the

Protection of the Rights of Performers and Producers of Phonograms recommended that "provision should be made for the organization of an international forum in order to explore issues concerning the preservation and protection of expressions of folklore, intellectual property aspects of folklore, and the harmonization of the different regional interests." Accordingly, the UNESCO-WIPO World Forum on the Protection of Folklore was held in Phuket, Thailand, in April 1997. This meeting adopted a "Plan of Action" which suggested *inter alia* that "Regional consultative fora should take place..."

- 17. Pursuant to the suggestion quoted immediately above, WIPO and UNESCO organized four Regional Consultations on the Protection of Expressions of Folklore in 1999.<sup>7</sup> Each of the Regional Consultations adopted resolutions or recommendations which include proposals for future work, including that the Model Provisions be updated to take into account technological, legal, social, cultural and commercial developments since 1982.<sup>8</sup> The Regional Consultations also recommended the establishment of effective national, regional and international regimes for the protection of folklore. In this respect, the Consultations indicated that the Model Provisions provide an appropriate framework and starting point for further work in this area.<sup>9</sup>
- 18. Regarding implementation of the Model Provisions, several countries have used the Model Provisions as a basis for national legal regimes for the protection of folklore. Many of these countries have enacted provisions for the protection of folklore within the framework of their copyright laws.
- 19. However, it appears that the Model Provisions have not had extensive impact on the legislative frameworks of WIPO's Member States. Several reasons have been advanced for this, such as the scope of protected expressions in the Model Provisions. In this regard, for example, it has been suggested that the Model Provisions should also cover forms of "traditional knowledge" related to traditional medicine and medicinal practices, traditional agricultural knowledge and biodiversity-related knowledge. The nature and scope of the rights granted over expressions of folklore by the Model Provisions has also been cited as a reason. It has been suggested, for example, that the Model Provisions are limited in their usefulness because of their not providing for

<sup>6</sup> The Plan of Action records that "(t)he participants from the Governments of the United States of America and the United Kingdom expressly stated that they could not associate themselves with the plan of action."

<sup>&</sup>lt;sup>5</sup> See BCP/CE/VI/16-INR/CE/V/14, par. 269.

<sup>&</sup>lt;sup>7</sup> The regional consultations were held for African countries in Pretoria, South Africa (March 1999); for countries of Asia and the Pacific region in Hanoi, Viet Nam (April 1999); for Arab countries in Tunis, Tunisia (May 1999); and for Latin America and the Caribbean in Quito, Ecuador (June 1999).

<sup>&</sup>lt;sup>8</sup> See documents WIPO-UNESCO/FOLK/AFR/99/1); WIPO-UNESCO/FOLK/ASIA/99/1; WIPO-UNESCO/FOLK/ARAB /99/1; WIPO-UNESCO/FOLK/LAC /99/1.

<sup>&</sup>lt;sup>9</sup> See documents WIPO-UNESCO/FOLK/AFR/99/1, WIPO-UNESCO/FOLK/ASIA/99/1 and WIPO-UNESCO/FOLK/ARAB /99/1.

<sup>&</sup>lt;sup>10</sup> See documents WIPO-UNESCO/FOLK/AFR/99/1, WIPO-UNESCO/FOLK/ASIA/99/1, WIPO-UNESCO/FOLK/ARAB /99/1 and WIPO-UNESCO/FOLK/LAC /99/1. See also Kutty, P. V., "Study on The Protection of Expressions of Folklore", 1999, study prepared for the World Intellectual Property Organization (WIPO), unpublished, pp. 76 and 77.

exclusive ownership-type rights over folklore. 11 In addition, as already noted, the possibility that the Model Provisions may be out of date, given technological, legal, social, cultural and commercial developments since 1982, has also been cited as a reason for the relatively low number of countries which have appear to have implemented or followed the Model Provisions. <sup>12</sup>

[Questionnaire follows]

See Kutty, *op. cit.*, pp. 76 and 77.
 See in particular WIPO-UNESCO/FOLK/AFR/99/1, WIPO-UNESCO/FOLK/ASIA/99/1 and WIPO-UNESCO/FOLK/ARAB /99/1.

#### WIPO/GRTKF/IC/2/7

#### QUESTIONNAIRE

Contact Details
Name:
Title:
Office/Organization:
Member State:
Email:
Telephone:
Facsimile:
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?

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

Question I.3: Do "express	sions of folklore" either as described in the Model Provisions
	sions of folklore", either as described in the Model Provisions,
or as the term is understood	d in your country, receive specific legal protection as
or as the term is understood	
or as the term is understood intellectual property* in yo	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo are related to intellectual property.	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo are related to intellectual property.	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo are related to intellectual property.	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo are related to intellectual property.	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo are related to intellectual property.  Yes	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations
or as the term is understood intellectual property* in yo are related to intellectual property.	d in your country, receive specific legal protection as ur national laws or regulations (whether the laws or regulations

<sup>\*</sup> 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*.

	(ii) Are the relevant laws and regulations based, at least to some degree, upor Model Provisions?	the
Yes		
No		
	(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 Model Provi Model Provi has <u>not</u> been foll in our national and regula	isions lowed l laws
The b	pasic principles underlying the Model Provisions (see the Preamble)	
The s	scope of "expressions of folklore" protected by the Model Provisions on 2)	
	acts against which expressions of folklore are protected the exceptions thereto (sections 3, 4, 6 and 6)	
	provisions dealing with authorization of utilizations of expressions (klore (sections 9 and 10)	
The s	sanctions and remedies provided for (sections 7 and 8)	
	solutions offered by the Model Provisions for the protection	

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

]	(iv) Please ind Provisions may	dicate any o y not have b	ther reason een impler	(s) why cert nented in yo	tain aspects our country.	of the Mod	lel	
]	(iv) Please inc Provisions may	licate any o not have b	ther reason een impler	(s) why cert nented in yo	tain aspects our country.	of the Mod	lel	
]	(iv) Please ind Provisions may	licate any o y not have b	ther reason een impler	(s) why cert nented in yo	tain aspects our country.	of the Mod	lel	
]	(iv) Please ind Provisions may	licate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please ind Provisions may	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	licate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	licate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	
	(iv) Please inc	dicate any o	ther reason	(s) why cert	tain aspects our country.	of the Mod	lel	

	<u>If no</u> ,
	(i) Please indicate, if possible, the reasons why such protection has not been 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:
	Yes, this aspect may have
	prevented implementation of the Model Provisions
	of the Model Provisions
The bas	ic principles underlying the Model Provisions (see the Preamble)
The sco (section	pe of "expressions of folklore" protected by the Model Provisions  (2)
	s against which expressions of folklore are protected 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.

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

- II. Application of the Principal Provisions of the Model Provisions
- (a) Basic principles taken into account for the elaboration of the Model Provisions

The Model Provisions were developed in response to concerns that expressions of folklore, which represent an important part of the living cultural heritage of nations, were susceptible to various forms of illicit exploitation and prejudicial actions (see the Preamble to the Model Provisions). However, the Committee of Governmental Experts which elaborated the Model Provisions did not lose sight of the necessity of maintaining a proper balance between protection against abuses of expressions of folklore, on the one hand, and the freedom and encouragement of further development and dissemination of folklore, on the other. The Committee took into account that expressions of folklore form a living body of human culture which should not be stifled by too rigid protection. It also considered that any protection system should be practicable and effective, rather than a system of imaginative requirements unworkable in reality. Finally, it was emphasized at the meeting of the Committee of Governmental Experts that the Model Provisions did not necessarily have to form a separate law; they might constitute, for example, a chapter of an intellectual property code or of a law dealing with all aspects of the preservation and promotion of national folklore. The Model Provisions were designed with the intention of leaving enough room for national laws to adopt a system of protection best corresponding to the conditions existing in the countries concerned.

#### For Member States which provide specific legal protection for expressions of folklore

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

<u>Question II. 2</u> : 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?
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
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
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
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
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
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
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
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
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
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
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

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

#### (b) Protected expressions of folklore

The Model Provisions do not offer any definition of folklore. Section 2 provides that "expressions of folklore" are understood as productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community in the country or by individuals reflecting the traditional artistic expectations of such a community. This definition also embraces the results of individual development of the traditional artistic heritage, since the generally applied criterion of "impersonal" creativity does not always correspond to reality in the evolution of folklore. The personality of the artist is often an important factor in folklore expressions, and individual contributions to the development and maintenance of such expressions may represent a creative source of enrichment of inherited folklore if they are recognized and adopted by the community as expressions corresponding to its traditional artistic expectations.

The Model Provisions use the words "expressions" and "productions" rather than "works" to underline the fact that the provisions are *sui generis*, rather than part of copyright. It is another matter that expressions of folklore may, and often do, have the same artistic forms as "works."

Only "artistic" heritage is covered by the Model Provisions. This means that, among other things, traditional beliefs, scientific views (e.g., traditional cosmogony) or merely practical traditions as such, separated from possible traditional artistic forms of their expression, do not fall within the scope of the proposed definition of "expressions of folklore." On the other hand, "artistic" heritage is understood in the widest sense of the term and covers any traditional heritage appealing to our aesthetic sense. Verbal expressions, musical expressions, expressions by action and tangible expressions may all consist of characteristic elements of the traditional artistic heritage and qualify as protected expressions of folklore.

The Model Provisions also offer an illustrative enumeration of the most typical kinds of expressions of folklore. They are subdivided into four groups according to the forms of the "expressions," namely expressions by words ("verbal"), expressions by musical sounds ("musical"), expressions "by action" (of the human body) and expressions incorporated in a material object ("tangible expressions"). The first three kinds of expressions need not be "reduced to material form," that is to say, the words need not be written down, the music need not exist in musical notation and the dance need not exist in choreographic notation. On the other hand, tangible expressions by definition are incorporated in a permanent material, such as stone, wood, textile, gold, etc. The Model Provisions also give examples of each of the four forms of expressions. The words "architectural forms" appear in the Model Provisions in square brackets to show the hesitation which accompanied their inclusion, and to leave it up to each country to decide whether or not to include such forms in the realm of protected expressions of folklore.

For Member States which provide specific legal protection for 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?

No

- (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?

Question II. 5: In the pra	ctical application	of your nation	al laws and re	oulations has	
				guiations, nas	
identification of the folkle	ore to be protecte	a presentea an	y difficulties?		
Yes					
168					

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?)

xpressions	<u>of folklore</u>
Duestion II.	6: Is a term other than "expressions of folklore" usually used in your
Ouestion II.	
Ouestion II. Ountry to des:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If
Ouestion II. Ountry to des:	6: Is a term other than "expressions of folklore" usually used in your
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to d	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If
Question II. country to do ves:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do ves:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do ves:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do ves:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do ves:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do ves:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do es:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do es:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. ountry to d es: (i)	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?
Question II. country to do ves:	6: Is a term other than "expressions of folklore" usually used in your lescribe the subject matter referred to in Section 2 of the Model Provisions? If What is the term?

#### For all Member States

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?

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

#### (c) Acts against which expressions of folklore are protected

There are two main categories of acts against which, under the Model Provisions, expressions of folklore are protected: "illicit exploitation" and "other prejudicial actions" (Section 1).

"Illicit exploitation" of an expression of folklore is understood in the Model Provisions as any utilization made both with gainful intent and outside the traditional or customary context of folklore, without authorization by a competent authority or the community concerned. This means that a utilization—even with gainful intent—within the traditional or customary context should not be subject to authorization. On the other hand, a utilization, even by members of the community where the expression has been developed and maintained, requires authorization if it is made outside such a context and with gainful intent. See Section 3.

An expression of folklore is used in its "traditional context" if it remains in its proper artistic framework based on continuous usage of the community. For instance, to use a ritual dance in its "traditional context" means to perform it in the actual framework of the respective rite. On the other hand, the term "customary context" refers rather to the utilization of expressions of folklore in accordance with the practices of everyday life of the community, such as selling copies of tangible expressions of folklore by local craftsmen. A customary context may develop and change more rapidly than a traditional one.

Section 1 of the Model Provisions specifies the acts of utilization which require authorization where the circumstances described above exist. It distinguishes between cases where copies of expressions are involved and cases where copies of expressions are not necessarily involved. In the first category of cases, the acts requiring authorization are publication, reproduction and distribution; in the second category of cases, the acts requiring authorization are public recitation, public performance, transmission by wireless means or by wire and "any other form of communication to the public."

Section 4 of the Model Provisions determines four special cases regarding the acts restricted under Section 3. In those cases, there is no need to obtain authorization, even if the use of an expression of folklore is made against payment and outside its traditional or customary context. The third case is where an expression of folklore is "borrowed" for creating an original work by an author. This important exception serves the purpose of allowing free development of individual creativity inspired by folklore. The Model Provisions do not want to hinder in any way the creation of original works based on expressions of folklore.

"Other prejudicial actions" detrimental to interests related to the use of expressions of folklore are identified by the Model Provisions, as four cases of offenses subject to penal sanctions (Section 6). Firstly, the Model Provisions provide for the protection of the "appellation of origin" of expressions of folklore. Section 5 requires that, in all printed publications, and in connection with any communication to the public, of any identifiable expression of folklore, its source be indicated in an appropriate manner by mentioning the community and/or geographic place from where the expression utilized has been derived. Under Section 6, non-compliance with the requirement of acknowledgment of the source is a punishable offense.

Continued on next page.

#### Continued from previous page.

Secondly, any unauthorized utilization of an expression of folklore where authorization is required constitutes an offense. It is understood that such an offense may also be committed by using expressions of folklore beyond the limits of, or contrary to, the conditions of an authorization obtained. Thirdly, misleading the public by creating the impression that what is involved is an expression of folklore derived from a given community when, in fact, such is not the case is also punishable. This is essentially a form of "passing off." Fourthly, it is an offense if, in the case of public uses, expressions of folklore are distorted in any direct or indirect manner "prejudicial to the cultural interests of the community concerned." The term "distorting" covers any act of distortion or mutilation or other derogatory action in relation to the expression of folklore.

All four acts mentioned above only qualify as offenses if they are committed willfully. However, as regards non-compliance with the requirement of acknowledgment of source and the need to obtain authorization to use an expression of folklore, the Model Provisions also refer to the possibility of the punishment of acts committed negligently. This takes account of the nature of the offenses concerned and the difficulties involved in proving willfulness in cases of omission.

#### For Member States which provide specific legal protection for expressions of folklore

<u>Question II. 9</u>: 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?

<u>Question II. 10</u>: 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.)

constant of control of
<u>Question II. 11</u> : 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?
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
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
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
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
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
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
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
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
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
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
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
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
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
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

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?

Overtion II 12. Is the man	testion offended by years laws and nearlations limited in times?
Question II. 13: Is the pro-	tection afforded by your laws and regulations limited in time?
Yes	
165	
No	
No	

<u>If yes</u>, 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?)

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

<u>Question II. 14</u>: 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?

For Member States which do not provide specific legal protection for expressions of <u>folklore</u>

<u>Question II. 15</u>: 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.

11.7
r all Member States
r all Member States
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding
estion II. 16: Please provide any other comments or practical experiences regarding

#### (d) Authorization of utilizations of expressions of folklore

When the Model Provisions determine the entity entitled to authorize the utilization of expressions of folklore, they alternatively refer to "competent authority" and "community concerned," avoiding the term "owner." They do not deal with the question of the ownership of expressions of folklore since this may be regulated in different ways from one country to another. In some countries, expressions of folklore may be regarded as the property of the nation, while in other countries, a sense of ownership of the traditional artistic heritage may have developed in the communities concerned. Countries where aboriginal or other traditional communities are recognized as owners fully entitled to dispose of their folklore and where such communities are sufficiently organized to administer the utilization of the expressions of their folklore, authorization may be granted by the community itself. In other countries, where the traditional artistic heritage of a community is considered a part of the cultural heritage of the nation, or where the communities concerned are not prepared to adequately administer the use of their expressions of folklore, "competent authorities" may be designated to give the necessary authorizations in the form of decisions under public law.

Section 9 of the Model Provisions provides for the designation of a competent authority, where that alternative is preferred by the legislator. The same Section also provides, in a second paragraph in square brackets, for designation of a "supervisory authority," if this should become necessary owing to the adoption of certain subsequent alternative provisions as regards activities to be carried out by such an authority (see below). "Authority" is to be understood as any person or body entitled to carry out functions specified in the Model Provisions. It is conceivable that more than one competent or supervisory authority may be designated, corresponding to different kinds of expressions of folklore or utilizations thereof. Authorities may be already existing institutions or newly established ones. The tasks of the competent authority (provided such an authority has been designated) are to grant authorizations for certain kinds of utilizations of expressions of folklore (Section 3), to receive applications for authorization of such utilizations, to decide on such applications and, where authorization is granted, to fix and collect a fee – if required by law – (Sections 10.1 and 10.2). The Model Provisions also provide that any decision by the competent authority is appealable (Section 10.3 and Section 11.1).

The Model Provisions offer the possibility (in square brackets, that is, as an option) of providing in the law that a supervisory authority shall establish tariffs payable for authorizations of utilizations or shall approve such tariffs (without indication in the Model Provisions as to who will, in such a case, propose the tariffs, although it was understood by the experts adopting the Model Provisions that the competent authority would propose the tariffs) (Section 10), and that the supervisory authority's decision may be appealed to a court (Section 11.1).

Where the community as such is entitled to permit or prevent utilizations of its expressions of folklore subject to authorization, the community would act in its capacity of owner of the expressions concerned and would be free to decide how to proceed. There would be no supervisory authority to control how the community exercises its relevant rights. However, the Committee of Governmental Experts was of the opinion that, if it was not the community as such, but a designated representative body thereof, which was entitled by legislation to give the necessary authorization, such a body would qualify as a competent authority, subject to the relevant procedural rules laid down in the Model Provisions. As regards the process of authorization, it follows from Section 10.1 of the Model Provisions that an authorization must be preceded by an application submitted to the competent authority. The Model Provisions allow oral applications too, by placing the words "in writing" within square brackets. They also imply that the authorizations to be applied for may be "individual" or "blanket" authorizations, the first meaning an ad hoc authorization, and the second intended for customary users such as cultural institutions, theaters, ballet groups and broadcasting organizations. The Model Provisions (Section 10.2) allow, but do not make mandatory, collecting fees for authorizations. Authorizations may be granted free of the obligation to pay a fee. Even in such cases, the system of authorization may be justified since it may prevent utilizations that would distort expressions of folklore. The Model Provisions also offer choices regarding the purpose for which the collected fees must be used.

#### For all Member States

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.	

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

For Member States which provide specific legal protection for expressions of folklore

<u>Question II. 19</u>: 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?

garded by yow in practic	O: If indigend our law as "or ce do the come? What practi	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
garded by yow in practic	our law as "o	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in practic	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by yow in praction	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by y ow in praction	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts
egarded by y ow in praction	our law as "or ce do the com	wners" of the munities co	heir respe oncerned e	ctive forms exercise, m	s of tradition	onal artist enforce tl	ic herita; heir righ	ge, ts

#### (e) Sanctions, remedies and jurisdiction

Sanctions should be provided for each type of offense determined by the Model Provisions, in accordance with the penal law of each country concerned. The two main types of possible punishments are fines and imprisonment. Which of these sanctions should apply, what other kinds of punishment could be provided for, and whether the sanctions should be applicable separately or in conjunction, depends on the nature of the offense, the importance of the interests to be protected and the regulations adopted in a given country concerning similar offenses. Consequently, the Model Provisions do not suggest any specific punishment; they are confined to the requirement of penal remedy, leaving it up to national legislation to specify its form and measure. As regards seizure and other similar measures, the Model Provisions are somewhat more explicit. Section 7 providing for such measures applies, in the case of any violation of the law, to both objects and receipts. "Object" is understood as meaning "any object which was made in violation of this [law]," while the receipts are "receipts of the person violating it [that is, violating the law]"; typical examples are the receipts of the seller of an infringing object and the receipts of the organizer of an infringing public performance.

It should be noted that seizure and other similar measures are not necessarily considered under the Model Provisions as confined to sanctions under penal law. They may be provided as well in other branches of the law, such as the law on civil procedure. Seizure should take place in accordance with the legislation of each country.

Section 8 of the Model Provisions states that the sanctions provided for in Sections 6 and 7 are without prejudice to damages or other civil remedies that may be applied. Section 11 deals with certain jurisdictional questions.

#### For Member States which provide specific legal protection for expressions of folklore

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

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

#### (f) Relation to other forms of protection

In the case of many important categories of expressions of folklore, "neighboring rights" (related rights) may be used as a fairly efficient means of indirect protection. Folk tales, folk poetry, folk songs, instrumental folk music, folk dances, folk plays and similar expressions actually live in the form of regular performances. Thus, if the protection of performers is extended to the performers of such expressions of folklore—which is the case in many countries—the performances of such expressions of folklore also enjoy protection. The same can be said about the protection of the rights of producers of phonograms and broadcasting organizations in respect of their phonograms and broadcasts, respectively, embodying such performances.

However, there is a slight problem just in respect of the key notion of "performers" (and the notion of "performances" following indirectly from the notion of "performers") as determined in the International Convention for the Protection of Performers, the Producers of Phonograms and Broadcasting Organizations, 1961 (the "Rome Convention"). Under Article 3(a) of the Rome Convention, ""performers' means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise *perform literary or artistic works*" (emphasis added). As expressions of folklore do not correspond to the concept of literary and artistic works proper, the definition of "performers" in the Rome Convention does not seem to extend to performers who perform expressions of folklore. More recently, however, the WIPO Performances and Phonograms Treaty, 1996 provides that the definition of performer includes the performer of an expression of folklore.

#### For all Member States

	tances in which expressions of folklore have received indirect means, such as under related rights?
Yes	
No	

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

	·		
	·		
Question II. 24: Please pother forms of protection	provide any other commer n afforded to expressions o	nts or practical experi of folklore in your co	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer n afforded to expressions o	nts or practical experi of folklore in your co	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer n afforded to expressions o	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer n afforded to expressions o	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer  afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other comments afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other comments afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer n afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other comments afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other comments afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other comments afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other commer afforded to expressions of	nts or practical experi	ences regarding untry.
Question II. 24: Please pother forms of protection	provide any other comments afforded to expressions of the comments of the comm	nts or practical experi	untry.
Question II. 24: Please pother forms of protection	provide any other comments of afforded to expressions of the comments of the c	nts or practical experion folklore in your control folklore in your con	untry.

#### (g) Protection of expressions of folklore of foreign countries

The Model Provisions were adopted with the intention of paving the way for regional and international protection, since many countries consider it of paramount importance to protect expressions of folklore also beyond the frontiers of the countries in which they originate. Of course, national legislation on the protection of expressions of folklore could also provide an appropriate basis for protecting expressions of folklore of communities belonging to foreign countries. By extension of their applicability, national provisions might contribute for promoting regional or international protection. Thus, in order to further such a process, the Model Provisions provide for their application as regards expressions of folklore of foreign origin either subject to reciprocity or on the basis of international treaties (Section 14). Reciprocity between countries already protecting their national folklore may be established and declared more easily than mutual protection by means of international treaties. However, a number of participants stressed at the meeting of the Committee of Governmental Experts which adopted the Model Provisions that international measures would be indispensable for extending the protection of expressions of folklore of a given country beyond the borders of the country concerned. An attempt to establish an international treaty in 1984 failed, however. Two main problems were identified at that time: the lack of appropriate sources for the identification of the expressions of folklore to be protected and 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.

For Member States which provide specific legal protection for expressions of folklore

	Have there been instances in which folklore originating in your country ed or otherwise utilized in a foreign country?
Yes	
No	
i) P	lease provide details of these cases.

(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). For all Member States 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.

	·			
	you believe that the Model Provisions could serve as an the development of such an agreement?			
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.)

Overtion II 20. Places may ide any other comments on mostical experiences according
Question II. 29: Please provide any other comments or practical experiences regarding
<u>Question II. 29</u> : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
<u>Question II. 29</u> : Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.
Question II. 29: Please provide any other comments or practical experiences regarding the protection of expressions of folklore of foreign countries.

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

#### For all Member States

<u>Question III. 1</u>: 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.

0.6.1.15
[Model Provisions
and commentary follow]
and commentary ronow]