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**Utilization and Safeguarding of Folk Handicraft as
Intellectual Property sui generis**

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UTILISATION AND SAFEGUARDING OF FOLK HANDICRAFT AS INTELLECTUAL PROPERTY SUI GENERIS

Apart from their internal values traditional folk culture and folklore manifestations also embody an economic value, which turns them into a commodity exposed to the play of market forces. Thus the way and methods of protection against inappropriate commercialization must follow the identification of their exploitation.

The issue of commercialization of traditional folk culture and folklore is on one hand highly diversified with regard to conditions in the particular countries while on the other hand it has turned into an international problem due to the influence of new information technologies, media, international tourism and the development of market economy.

The transition of various expressions of traditional folk culture and folklore from inter-personal communication to present technical communication has resulted in a situation in which on one hand some of those manifestations have become a part of cultural heritage, and on the other hand some of them have undergone certain "innovations", accompanied by all features typical for the development of present-day mass culture in the market economy and global information society.

Thus we can witness how traditional folk culture and folklore, as a form and part of lifestyle which develops with regard to social and historic conditions, have been changing since the second half of the 19th century: some things fade out and others go through a natural process of innovation.

The changes mentioned above helped to accelerate the process of innovation. Gradual change or even disappearance of many elements of traditional culture and folklore have become faster and faster.

What is characteristic for this period is the deliberate recording and creating of various written records and collections; thus built databases - in the context of the development of culture as a whole - are used for new cultural activities. During this period traditional folk culture and folklore, whose change is an ongoing process, have become a part of consciously protected cultural heritage of nations.

The sale and purchase of material and intellectual commodities is a natural phenomenon and also a precondition for the development of human society. This fact also concerns traditional folk culture and folklore, which, in their complexity, embody material and immaterial fruits of creative human activities as a specific area of creativity to which regulations on protection of intellectual heritage should relate, e.g. copyright and neighbouring rights.

Nevertheless, traditional folk culture and folklore is not only a heritage, which remains alive, is fostered or is becoming distorted, it also represents a source of new cultural incentives and activities and in many cases an economic factor which, for example, helps to solve the unemployment issue, increases revenues from tourism, etc...

Thus it must be emphasized over and over again that their protection is of topmost importance and should be supported. The countries should protect not only verbal, dance, musical and song works of traditional folk culture, but technologies of folk handicrafts, folk art and other forms in this unique cultural area by means of legal instruments which protect other values of intellectual property. That is also why every global decision about the further development of our society should be considered in light of its impact on the safeguarding and development of traditional folk culture and folklore.

In this connection such experience is to be highlighted that live or databased elements of traditional culture serve as inspiration to individual creative acts and thus completed new works can be commercialized.

In relation to traditional folk culture and folklore, the motivation of the people to make their everyday lives different and richer by means of tangible and intangible elements and values of traditional folk culture and folklore, i.e. to use them as tools against cultural levelling-out and globalisation and, in a certain way, as a contradiction to all-embracing sophisticated technology is obvious presently. The importance of traditional craft technologies lies not only in their economic and aesthetic functions but also in the fact that they often use materials from renewable resources and are more friendly to the environment.

We can see efforts to maintain traditional patterns and traditional processes also in cases when craftsmen try to modify "vocabulary" of their artefacts to the requirements of present consumers and make decorative products for private or public interior design and needs of tourism. Evaluating this state-of-affairs, we must remember that the development of folk crafts or at least its preservation is reasonable only if it meets current needs. Thus products can indisputably adopt modern vocabulary but at the same time they should embody signs of their ethnic, local and regional origin as for technology, materials and artistic expression and thus contribute to protection against levelling-out tendencies at least.

Creation of new legal instruments for protection in this cultural field assumes thorough expert evaluation of existing enforced national legislations in the individual countries. The evaluation must also cover legal provisions concerning copyright, interpreter's rights, it means protection of intellectual property in light of their scope, i. e. whether they really serve for protection of works, performances, authors and interpreters of traditional folk culture and folklore and if so, whether they are really employed for the protection of works and performances from various areas of traditional folk culture and folklore. This assessment carried out in the individual countries should also take into consideration the globalisation of information structures (including media), since advanced technology also requires legal protection dealing with intellectual property related to traditional folk culture and folklore, as well as the protection of particular databases.

Special protection of databases mapping a particular area of traditional folk culture and folklore is not always clearly defined in the meaning of the regulations on intellectual property protection. To be more specific, there is not an organization authorised to take care of copyright control, which would be specialized on those issues and would monitor their use, even when their use is for free.

The European Community Commission issued the Green Book in 1995, which dealt with copyright and neighbouring rights in the global information society, pointing out the need for close international co-operation since digital technologies make unconstrained dissemination of an inconceivable amount of information possible. It emphasizes that this development has significant impact on copyright and neighbouring rights related to scientific and art works and also on database author protection.

The Guideline of the European Parliament and the Council of European Community dtd. 11. 03. 1996 inquires into the database author protection. As to this Guideline, not only the natural but also the legal persons can be identified as roght bearers. The Agreement on trade-related aspects of Intellectual Property Rights

(TRIPS) is dealing with the database protection as well.

Building an effective European information infrastructure, in which intellectual property rights play a crucial role, a comprehensive set of cultural identity and language difference issues must be scrutinized. Elements of traditional culture and folklore are very important players in this process as well.

This also implies that should society be able to administrate and control rights of a growing number of eligible entities, the organization for mass administration of copyright and neighbouring rights is required to build and maintain effective supervision over the use of the works and performances and keep registrations.

To be able to protect traditional technologies of folk handicrafts, folk art and other forms in this unique culture this United Nations Conference on Trade and Development should recommend the following principles:

- developing and regularly updating an identification system of traditional folk culture and folklore elements;
- that specific features of traditional folk culture and folklore can be taken into consideration with better insight while drafting legal provisions protecting intellectual property;
- using full potential of legal provisions protecting traditional folk culture and folklore, including those related to industrial property aspects which ensures the protection of traditional handicrafts technologies and patterns;
- establishing organisations for public administration of copyright and neighbouring rights which would deal with traditional folk culture and folklore expressions, or if need be to extend powers of the existing ones to cover that area as well;
- making the creators of traditional folk culture (folk artists, performers, craftsmen, etc.) aware of their rights in the area of intellectual property. These issues should be also communicated to associations of folk craftsmen and possibly the dealers of their works;
- fostering establishment of civic associations for traditional folk culture and folklore which would in co-operation with organisations for public administration of copyright and neighbouring rights pay heed to whether elements of traditional folk culture and folklore considered by copyright protection law as right-free works, are used in a way which corresponds to their value;
- supporting museum and archives associations, which own traditional folk culture and folklore collections and databases, in their efforts to monitor how the collections and databases are used for present interpretation or production purposes in their respective countries;
- encouraging efforts in all-around protection of collections and databases against abuse and devaluation and emphasizing their cultural and educational benefit to general public;
- encouraging educational institutions, mainly schools, to introduce classes in traditional folk culture and folklore for children and youth and use this subject as a means for education towards tolerance

Due to rich diversification it is obvious that there are not universal guidelines for the protection of the various forms against inappropriate commercialization. Nonetheless, on the basis of the analyses carried out several principals, whose implementation seems to be highly topical and feasible, can be developed. The first one is undoubtedly educational activity since protection of traditional folk culture can be exercised if we use at least those instruments which are currently available. It comprises mainly nationally and internationally adopted regulations on protection of intellectual property which definitely covers or should cover many works of traditional folk culture and folklore.

Citizen`s education in understanding regularity of the folk customs development so that the public is able to recognise imitations from folk craft originals, authentic expression from derived one is also important.