

## Traditional Cultural Expressions/Expressions of Folklore

### Questions

#### **1.-**

In accordance with the Federal Copyright Law and the Regulations thereunder, the traditional cultural expressions (TCEs)/expressions of folklore (EoF) that should be protected are:

(i) verbal expressions such as stories, popular tales, legends, traditions, popular poetry and other similar expressions;

(ii) musical expressions such as popular songs, rhythms and instrumental music;

(iii) corporal expressions such as dances and rituals;

(iv) tangible expressions such as works of popular art or traditional craft, and in particular pictorial works or drawings, wooden carvings, sculptures, pottery, terracotta, mosaics, cabinetmaking, ironware, jewelry, basketmaking, needlework, textiles, glassware or crystal, stonework, metalwork, leather goods, typical costumes, spinning, tapestries and the like, popular or traditional musical instruments, architecture specific to each ethnic group or community and any native expression that constitutes a literary or artistic work or popular art or crafts, which can be attributed to a community or ethnic group.

#### **2.-**

The protection of traditional cultural expressions/expressions of folklore must be for the benefit of the cultural communities or ethnic groups in the region to which the traditional cultural expression/expression of folklore is specific.

#### **3.-**

Traditional cultural expressions/expressions of folklore must be protected against any distortion, mutilation or other modification made with the purpose of causing damage thereto or harm to the reputation or image of the community or ethnic group to which such expressions belong.

#### **4.-**

Any distortion, mutilation or other modification made with the purpose of causing damage to the traditional cultural expressions/expressions of folklore developed and perpetuated in a community or ethnic group, or with the aim of causing harm to the reputation or image of the community, ethnic group or region to which such expressions belong shall be considered illegal.

Also, the failure to mention the community, ethnic group or region to which traditional cultural expressions/expressions of folklore belong in any fixation, representation, publication, communication or use in any form shall be considered illegal.

**5.-**

In the measures for protection of traditional cultural expressions/expressions of folklore, the free use of such expressions shall be permitted, provided that they are not distorted, mutilated or modified so as to cause damage to the TCEs/EoF developed and perpetuated in a community or ethnic group, or to cause harm to the reputation or image of the community, ethnic group or region to which such expressions belong, provided that they are not exploited commercially.

**6.-**

If the protection is only for the moral rights of traditional cultural expressions/expressions of folklore, it is considered that the term of protection should be indefinite.

**7.-**

The Federal Copyright Law provides protection for the moral rights of popular cultures or traditional cultural expressions/expressions of folklore exclusively.

**8.-**

The Federal Copyright Law states that the fixation, representation, publication, any form of communication or use in any form of a literary and artistic work, protected as popular culture, shall constitute a copyright infringement and shall be sanctioned by the National Copyright Institute with a fine of between 5,000 and 15,000 days' minimum salary.

Similarly, an additional fine of up to 500 days' minimum salary per day shall be imposed on any person who persists with such an infringement.

**9.-**

It is considered that the protection that must be granted to traditional cultural expressions/expressions of folklore at the international level (within WIPO) should coincide with the intellectual property protection granted to such expressions at the national level, so that this protection complements the protection provided for in other international conventions and national laws, thus avoiding the duplication of unnecessary efforts and resources.

**10.-**

In view of the fact that both the Federal Copyright Law and the Berne Convention provide for the principle of national treatment, it is considered that foreign rights holders should enjoy the same rights as nationals.