

22 January 2024

World Intellectual Property Organization (WIPO) Intergovernmental Committee (IGC)  
Discussions on Traditional Cultural Expressions

Written Comments of CreativeFuture  
to the United States Patent and Trademark Office (USPTO)

Docket No. PTO-C-2023-0019

CreativeFuture is a nonprofit coalition of over 500 companies and organizations and over 300,000 individuals devoted to promoting the value of creativity in the digital age.

Our members come from across the industry, from coast to coast and around the world. Many of us are Academy Award®, Emmy®, and Golden Globe® nominees and winners. We are film producers; crew, craftsman, and leadership from the International Alliance of Theatrical Stage Employees (IATSE); television producers; and actors and leaders from the Screen Actors Guild - American Federation of Television and Radio Arts (SAG-AFTRA). We are directors and leaders from the Directors Guild of America (DGA), writers, singers and songwriters, photographers, and more.

In all, almost ten million Americans make their living in the broader core copyright industries – from film, television, music, book publishing, video games, and photography. Our nation’s creative economy, the world’s best, is a global industry. We are proud to tell authentic stories of cultures from nations around the globe, creating films and television shows that bring visibility and awareness to native cultures, stories, and traditions.

At CreativeFuture, we believe in the inherent value of creativity, and we seek to raise awareness of threats to the livelihoods of the millions of Americans who work in the creative community. We write to you today because the details of the World Intellectual Property Organization’s (WIPO) discussions within the Intergovernmental Committee (IGC) on protection for Traditional Cultural Expressions (TCEs) give us and our community reason for concern.

The proposal for a new exclusive right for TCEs that is currently under discussion in the WIPO IGC raises many questions and ambiguities. Our community goes to great lengths to work with local and indigenous communities and cultures to tell stories as realistically, respectfully, and authentically as possible. We work to ensure that stories bringing other cultures to life on screen are mindful of local sensibilities and desires.

However, the vague contours of the IGC’s proposed text and the creation of a new exclusive right to authorize the use of TCEs threatens to undermine both the ability of local and indigenous communities to protect TCEs and the ability for creativity to flourish and creatives to thrive.

America is home to the world’s greatest creative and cultural industries. Erecting barriers of vagueness, confusion, and bureaucracy, all in the context of granting broad new exclusive rights, will not only limit the ability of creatives to tell their stories, but will also ensure that fewer stories are told about the local and indigenous communities the IGC’s proposals are intended to protect.

These concerns are only amplified by the fact that, unlike copyright, which is limited to a term of years that can vary by country but that is subject to existing WIPO treaties, the IGC proposal would create a new and perpetual right generally.

Further, there would be inevitable conflict between existing rights like copyright and any newly created rights. Existing rights and a TCE right would differ in fundamental ways including duration, the scope and parameters of such rights, the holders of such rights, the nature of unenumerated penalties, and the hierarchy and relationship of existing and conflicting rights. The resulting ambiguity would chill creativity and hurt creatives – both of which run contrary to the stated objectives of the TCE treaty drafts.

Instead of creating an entirely new system of rights, WIPO should enhance its assistance efforts for implementation of existing WIPO treaties around the world, particularly with respect to its Internet Treaties. Since current copyright norms are well-defined and well-understood worldwide, protecting TCEs through existing copyright treaties would not only promote harmony but would also ensure efficiency.

Focusing on the current intellectual property system would also avoid conflicts between the existing system and any newly proposed norms governing TCEs, since there would be no overlap and ambiguity. The current copyright system is mutually beneficial – not just for TCEs but for all copyright holders. This would avoid many challenges resulting from the vague language currently set out in the IGC proposal.

We are grateful for the USPTO’s ongoing and constructive engagement with American creatives and to the Office’s commitment to protecting copyright around the world.

We look forward to continuing to engage with the USPTO to collaboratively resolve this critical issue in a way that benefits freedom of expression while protecting the creativity of valuable indigenous cultures from around the world.

Thank you for your consideration.

Sincerely,



Ruth Vitale  
CEO, CreativeFuture