



UNION INTERNATIONALE DES EDITEURS
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INTERNATIONAL PUBLISHERS ASSOCIATION
UNION INTERNACIONAL DE EDITORES

Position Paper of the International Publishers Association

Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions

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The International Publishers Association (IPA) is the international federation of trade associations representing publishers worldwide. Established in Paris in 1896, it now represents 78 national, regional and specialised publishers associations from 66 countries. IPA is an accredited non-governmental organisation enjoying consultative status to the United Nations. Its main goals are to promote freedom of expression and freedom to publish, to develop and defend the protection of intellectual property and to promote literacy and reading.

IPA submitted its position on the Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions ("Draft Convention") as well as a marked-up version with proposed changes to the Draft Convention after the First Intergovernmental Meeting of Experts. IPA's comments were summarised e.g. in UNESCO document CLT/CPD/2004/CONF.607/1, Part V.

Following the meeting of the Drafting Committee from 14 to 17 December 2004 and the circulation of a working document by UNESCO on the discussion process, IPA outlines below three areas of key importance that it would like to see considered during the Second Intergovernmental Meeting of Experts from 31 January to 12 February 2005.

1. Importance of Intellectual Property Protection for Safeguarding Cultural Diversity

Creative industries actively engaging in the provision and exchange of cultural goods and services incur often substantial amounts of effort, labour and costs in producing and distributing their works. By way of example, publishers – the majority of which are small or medium-sized companies – do not simply print books, but commission, compile, edit, produce, reproduce, market and distribute literary works, images and other information on paper or through other media. By doing so, they help not only sustain the existing culture, but also shape and preserve it for future generations. Publishers are not mere exploiters of cultural diversity, they form part of its very fabric.

Creative industries can only continue promoting cultural diversity in the way they do if they receive fair consideration for their work. Consideration is mainly

guaranteed through the rights conferred by intellectual property (IP) rights. Today, IP rights are enshrined in virtually all national laws and recognised in various international treaties administered by different international organisations, including UNESCO (Universal Copyright Convention), WIPO (Berne Convention, WCT) and WTO (TRIPS). These treaties deal with both the commercial aspects of IP, as well as moral rights, and provide creators with an opportunity to live from their creativity.

The Convention should expressly acknowledge IP rights as the very vehicle allowing creators to live from their works. The preservation activities of creators are dependent on strong and enforceable IP rights and this is what the Convention should recognise throughout (e.g. in Articles 7(2), and 19).

2. Cultural Diversity and Unfettered Circulation and Exchange of Cultural Goods

The Draft Convention acknowledges cultural diversity as the result of a constant exchange between cultures (preamble para. 5) and confers upon the State Parties a right to adopt measures promoting the free exchange and circulation of ideas, cultural expressions and cultural goods and services (Article 6(1)(d)). IPA strongly supports the Draft Convention and these aims.

The unfettered circulation of books is an important tenet of the international book trade. It is closely tied to the unhindered exchange of ideas, to the promotion of scientific and scholarly communication and the creation of mutual understanding among nations. Import restrictions on books have often been a thinly veiled way of excluding politically unwelcome publications.

Publishers have a long tradition of fighting for the unfettered circulation of their works, international sale of rights and cross border distribution. Such exchanges enrich local culture and therefore directly create cultural diversity. The role of books in this context has been recognised through the UNESCO Florence Agreement with its Nairobi Protocol, facilitating the importation of educational, scientific and cultural materials

Care should, therefore, be taken that no concrete business model be prescribed which could inhibit or limit the ability of publishers to distribute their cultural goods and services. The experience of the publishing industry – one of the oldest and most mature creative industries – shows that wherever cultural goods are allowed to circulate on the basis of sustainable terms, a dynamic and broad business environment is created. Such a platform for the exchange of cultural goods and services will consequently enhance cultural diversity.

In any event, the Convention should be worded so as to clarify that “free” circulation in the sense of unhindered circulation and exchange of copyright protected works is not to be equated with access without sustainable reward for the author or authorised publisher.

3. The Relationship of this Convention to other International Treaties

The Convention should build on what has been achieved. This is not the first international treaty that has, directly or indirectly, had a positive impact on the promotion and protection of cultural diversity or similar public goods, such as the unfettered exchange of ideas, the promotion of scientific and scholarly communication and the creation of mutual understanding among nations.

In the area of intellectual property rights, the UNESCO Universal Copyright Convention, the WIPO Treaties and TRIPS have been of significant importance; on a more commercial scale, the UNESCO Florence Agreement with its Nairobi Protocol are keystones for the promotion of cultural diversity.

The Convention should be drafted so as to leave no doubt concerning the continued validity of all these treaties, not only of those protecting intellectual property law (as currently suggested in Option A) but also of treaties otherwise promoting cultural diversity and similar public goods. A failure to do so would lead to uncertainty regarding the hierarchy of treaties.

The international publishing industry believes that the Convention can be very successful even if it does not take priority over existing agreements, such as WTO agreements and the UNESCO Florence Agreement.

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