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INTERGOVERNMENTAL COMMITTEE FOR THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS

**Ninth ordinary session
Paris, UNESCO Headquarters
14 - 16 December 2015**

Item 7 of the Provisional Agenda: Towards Operational Guidelines on digital issues

The Conference of Parties, adopted at its fifth ordinary session Resolution 5.CP 12, requesting the Committee to continue its work on digital issues, including the drafting of Operational Guidelines for the implementation of the Convention. Annex II of this document contains elements to inform the Committee's debates as it works towards such guidelines.

Decision required: paragraph 13.

1. Since the adoption of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Convention”) ten years ago, digital technologies have revolutionised the way in which cultural goods and services are created, produced, distributed and consumed, particularly with the arrival of a new generation of connected multimedia devices - smartphones, tablets and e-readers. New trade models have emerged to facilitate the distribution of cultural content and new online businesses represent challenges for tax and regulatory systems. In addition, many regions still do not have the necessary infrastructure (including devices, low or no connectivity), artists do not always have the technical knowledge required, the cultural industries sometimes take time to explore the potential of new trade models, and there is a lack of concrete evidence to determine whether digital technology and platforms have indeed made access to culture easier, faster and more affordable for all.

2. For three years now, the Convention's governing bodies have discussed the tremendous challenges posed by digital technology for the implementation of the Convention¹. It is against this backdrop that the Conference of Parties, during its fifth ordinary session, requested the Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Committee”) to submit draft Operational Guidelines on digital issues (Resolution 5.CP 12 §3) to its approval during its sixth ordinary session (June 2017).

3. At this session the Committee is invited to launch an initial debate on the preparation of the draft Operational Guidelines on digital issues which will be submitted to it for adoption at its next ordinary session (December 2016). At this session, the Committee is to define the format and content of the draft Operational Guidelines using as a basis for its discussions, the framework presented in Annex II.

4. The draft Operational Guidelines are to take into account the legal framework of the Convention, its provisions and the Operational Guidelines approved since 2009, in particular the principle of technological neutrality that underpins the Convention. This principle implies that its legal framework be implemented regardless of the technological environment, whether physical or virtual, in which cultural expressions are created, produced, disseminated and accessible. Parties thus retain their sovereign right to adopt public policies to support their cultural industries in the digital environment.

5. It is proposed that the Committee draw on several key articles of the Convention in its work. This includes, first and foremost, Article 6 of the Convention concerning the rights of Parties at the national level, which specifies the type of measures Parties may adopt to protect and promote the diversity of cultural expressions in their territory. The same goes for other articles, in which the rights and obligations of Parties are defined: whether at the national level (Article 7) or in their international cooperation activities (in particular Articles 12, 13, 14 and 16). Articles on education and public awareness (Article 10), civil society (Article 11), international coordination and consultation (Article 21), are also deemed relevant in the implementation of the Convention in the digital environment.

¹ See working document “Digital issues and their impact on promoting the diversity of cultural expressions” (CE/15/5.CP/12), fifth ordinary session of the Conference of Parties, June 2015; summary record of the eighth ordinary session of the Committee, CE/14/8.IGC/3, para. 305-348; working document “Current state and action to address the challenges posed by digitisation” (CE/14/8.IGC/12), eighth ordinary session of the Committee, December 2014; summary record of the seventh ordinary session of the Committee, CE/13/7.IGC/3, para. 351-358.

6. The Committee may also recall that the Operational Guidelines approved by the Conference of Parties since 2009 mention or specifically refer to digital technology and refer to new technologies for others. The specific references are made in the guidelines attached to Articles 7, 10, 13, 14 and 16 of the Convention (see Annex I). The elements contained in the latter can be taken into consideration in the process of drafting the Operational Guidelines on digital technology so as to avoid any duplication or contradictions.

7. Another element that the Committee may take into consideration concerns the main discussions and decisions of the governing bodies on this matter over the past two years. More specifically, the complexity of the challenges faced by Parties to implement the Convention in the new digital environment was raised in the debates of the seventh and eight ordinary sessions of the Committee. Overall, the trends that emerged from these exchanges can be summarized as follows²:

- Digital technologies have brought profound changes on the value chain for the creation, production, distribution and enjoyment of cultural goods, and services;
- The arrival of new digital actors in the value chain for cultural goods and services is transforming the trade channels that were hitherto specific to cultural industries and are challenging their foundations;
- The digital environment has considerably enriched the range of cultural content, where infrastructure, stable Internet connections and the necessary skills are available, thus permanently improving and simplifying the accessibility of cultural expressions;
- The digital environment calls into question the regulatory and financial (particularly tax) provisions established to ensure the availability of cultural goods and services, for which new policies and measures are required;
- Communication infrastructures need to be implemented and adapted in order to bridge digital divides and inequalities;
- The issue of freedom of expression in digital environments is a source of growing concern;
- Net neutrality.

8. Following these exchanges, the Conference of Parties at its fifth ordinary session (June 2015), established priorities by identifying several areas of action to consider within the framework of the implementation of the Convention in the digital age:

- adapt national policies on cultural goods and services to the digital environment;
- implement international cooperation mechanisms designed to promote the diversity of cultural goods and services in the global digital environment;
- provide technical assistance for the establishment and application of policies and measures encouraging the production and dissemination of digital cultural content in developing countries;

² For more details, see Section 3 of the Annex to the working document "Digital issues and their impact on promoting the diversity of cultural expressions" (CE/15/5.CP/12), fifth ordinary session of the Conference of Parties, June 2015, p. 8.

- promote the objectives of the Convention within other international forums, particularly those responsible for trade, intellectual property rights and telecommunications;
- develop infrastructure to facilitate the access of all individuals to a wide variety of content in the digital world.

9. In order to support the discussions of the governing bodies, the Convention's stakeholders have organized a number of events in 2015. The Secretariat organized an exchange session entitled "The diversity of cultural expressions in the digital era", ahead of the fifth ordinary session of the Conference of Parties on 9 June 2015 at UNESCO Headquarters, thanks to the support of Spain. This event highlighted the opportunities, obstacles and threats posed by digital technology with regard to access, creativity, cultural industries and the participation of civil society, and provided an opportunity to reflect on the future³. The Secretariat provided support to the French National Commission for UNESCO's Conference "Les fabriques de la curiosité" at UNESCO Headquarters on 17 December 2015. Furthermore, several conferences were organized to mark the 10th anniversary of the Convention based on the theme of digital technology and the Convention. For example, the international seminar on "Culture and Development", one of the round tables focusing on the digital environment, Rio de Janeiro, Brazil, 21-23 September 2015; the international symposium on "Cultures, societies and digital technology", UQAM, 15-16 October 2015, Montreal, Canada; the celebration of the 10th anniversary of the Convention specially dedicated to digital technology at the Mons International Congress, Belgium, 25 October 2015.

10. Initiatives were undertaken by the Secretariat to raise awareness of digital technologies and the Convention. The Bangkok Field Office completed a study on the Convention and digital technology in East Asia⁴. The Secretariat has launched a similar study for Latin America in order to better understand the challenges faced within Spanish-speaking countries, thanks to the support of Spain; the results of which will be presented at the tenth ordinary session of the Committee. Furthermore, within the framework of the follow-up work on the Recommendation on the Status of the Artist (1980), the Secretariat submitted a report at the 197th session of the Executive Board and the 38th session of the General Conference, of which one of the themes was "Digital technology and the Internet"⁵. The Secretariat will continue this work on digital technology and its implications in the implementation of the Convention with the presentation at the next ordinary session of the Committee of the results relating to digital technology drawn from the consultations on Articles 16 and 21 scheduled for 2016.

11. To facilitate the Committee's discussions at this session in drafting the Operational Guidelines on digital technology, the Secretariat has prepared in Annex II a framework to be used as a basis for the Committee's discussions. To recall, the drafting of Operational Guidelines should not lead to a static text but rather to a process that may be subject to revision, as demonstrated in the past by the revisions to other Operational Guidelines, more recently Articles 9 and 18 of the Convention that take into account lessons learned through their implementation.

³ See "Report on the exchange session - The diversity of cultural expressions in the digital age", (CE/15/9.IGC/INF.6), information document presented at the ninth ordinary session of the Committee, November 2015. The video recording of the session and a concept note (in French, English and Spanish) are available: <http://fr.unesco.org/creativity/convention/r%C3%A9unions-organes-convention/cp/5os>.

⁴ See "Challenges and opportunities for the diversity of cultural expressions in the digital age in East Asia", (CE/15/9.IGC/INF.7), information document presented at the ninth ordinary session of the Committee, November 2015.

⁵ Implementation of standard-setting instruments, Part III, Application of the Recommendation on the Status of the Artist (1980), 197 EX/20, August 2015, §7 to 10: <http://unesdoc.unesco.org/images/0023/002340/234055f.pdf>. See the analytic report (2015) on the implementation of the 1980 Recommendation concerning the Status of the Artist, G. Neil, section 3.

12. Based on the Committee's discussions and its recommendations, the Secretariat will prepare a preliminary draft of the Operational Guidelines on digital issues to be presented at the next ordinary session of the Committee in December 2016.

13. The Committee may wish to adopt the following decision:

DRAFT DECISION 9.IGC 7

The Committee,

1. *Having examined Document CE/15/9.IGC/7 and its Annexes as well as Documents CE/15/9.IGC/INF.6 and CE/15/9.IGC/INF.7;*

2. *Recalling Resolutions 5.CP 12 paragraph 3 and 4.CP 13 paragraph 6 of the Conference of Parties, as well as Decisions 6.IGC.17 paragraph 5, 7.IGC 5 paragraph 7, 7.IGC 13 paragraphs 3 and 7 and 8.IGC 12 paragraph 7;*

3. *Requests the Secretariat to submit to it, for examination at its next session, a preliminary draft of the Operational Guidelines on digital issues that will take into account the debates of the present session;*

4. *Requests the Secretariat to continue its work on digital issues and their implications for the implementation of the Convention with the presentation at its tenth ordinary session of the study on the Convention and digital technologies in Spanish-speaking countries and the results relating to digital technology drawn from the consultations on Articles 16 and 21 scheduled for 2016.*

ANNEX I

Operational guidelines approved by the Conference of Parties since 2009 specifically mentioning digital technology or referring to new technologies

The Operational Guidelines on Article 10 concern *education and public awareness* which encourage Parties to identify the skills required for the training of professionals working in the cultural industries, "particularly related to **digital** expertise".

Within the framework of *public policies*, the Operational Guidelines on Article 7 encourage Parties to:

- adopt measures and policies aimed at promoting the diversity of cultural expressions that are best adapted to **the new technological environment**;
- foster the transfer of information and expertise to help cultural professionals and the cultural industries, with particular regard for youth, to acquire the knowledge and skills required to benefit fully from the perspectives offered by these **new technologies**.

Within the framework of *the integration of culture in sustainable development*, the Operational Guidelines of Article 13, call upon Parties to take into consideration:

- the use of **new technologies** and the expansion of **networked communication systems**.

Regarding *cooperation for development*, the Operational Guidelines on Article 14 encourage Parties to undertake activities that encourage the emergence of a dynamic cultural sector in developing countries by:

- introducing incentive measures for **technology transfer (equipment/software)** and know-how (through training programmes), in particular in the domain of cultural industries and enterprises;
- supporting the exchange of information on existing and new business models and existing and new forms of promotion and distribution mechanisms on **evolving information and communication technologies**;
- regular assessments of **evolving technological needs** in terms of both physical resources and skills development;
- the granting of fair and favourable conditions for **technology transfer** to developing countries;
- facilitating **access to new information and communication technologies** with regards to production and distribution/dissemination and encouraging their use;
- dialogue and regular exchanges between **information and communication technology experts** and governmental and non-governmental actors of the cultural sector;
- taking appropriate measures to facilitate **joint development of technology** for the benefit of developing countries;
- introducing measures, in particular, fiscal incentives to increase the contribution of the private sector to the development of **technological innovations** in the cultural sector.

Within the framework of preferential treatment, the Operational Guidelines on Article 16 encourage Parties to put in place legal and institutional frameworks, including bilateral, regional and multilateral agreements and programmes which:

- provide technical assistance, including the acquisition of equipment, **technology transfer and expertise** in order to facilitate the circulation of cultural goods and services of developing countries to the markets of developed countries.

ANNEX II

Towards preliminary draft Operational Guidelines on measures aimed at implementing the Convention in the digital environment

General considerations

1. In accordance with their sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions, Parties shall address the challenges and opportunities posed by digital technologies in the implementation of the Convention, in particular in the changes in the value chain of cultural goods and services and the consequences on public policies relating to the cultural industries.
2. The changes in the modes of creation, production and dissemination of cultural goods and services, as well as the way in which they are accessed, may require concerted action from Parties at local, national and international levels so that the opportunities offered by digital technologies can be seized, that the obstacles presented can be surmounted, and that the threats can be overcome.
3. In this context, the importance of partnerships and consultations between Parties, international governmental organisations and civil society is vital to ensure that the digital age contributes to ensuring that cultural expressions are diverse and that artists and cultural professionals can be remunerated fairly for their work.
4. The objective of Operational Guidelines on digital issues is to provide a general and strategic framework to implement the Convention in the digital environment. The digital environment refers to an environment in which the production, distribution, dissemination, access and storage of cultural goods and services involves the digitalization of cultural content.
5. The Operational Guidelines on digital issues are interpreted and applied in relation to the Convention as a whole. Parties should seek complementarity and synergies with all of the relevant provisions of the Convention¹ and Operational Guidelines that refer to digital issues and new information and communication technologies.

Key principles of the Convention in the digital age

6. The provisions of the Convention aimed at protecting and promoting the diversity of cultural expressions apply regardless of the means and technologies used for the creation, production and dissemination of cultural goods and services and their access (technological neutrality).
7. Parties have the sovereign right to formulate and implement their cultural policies and adopt measures to protect and promote the diversity of cultural expressions in the digital environment.
8. The recognition of the dual nature of cultural goods and services (cultural and economic) extends to digitised cultural expressions or those produced with digital tools.

¹ Particularly Articles 5, 6 and 7 on national policies, Article 10 on education and awareness, Article 11 on civil society, Articles 12, 13, 14, 16 and 21 which call for a new form of international cooperation.

9. Parties shall protect and promote human rights and the freedom of expression, information and communication on the Internet. This includes protecting and promoting artistic freedom as a corollary to freedom of expression, including the rights of artists and cultural professionals working in a digital environment as well as access to their work by all citizens. It also means supporting the Internet Universality principles that promote a human Rights-based, Open internet, which is Accessible to all and characterized by Multistakeholder participation (R.O.A.M). Private sector cultural and creative industries, including Internet intermediaries, also have a responsibility to respect these guiding principles of the Convention and in accordance with the United Nations Guiding Principles on businesses and human rights.
10. Creation, production and distribution of digital cultural expressions of developing countries, including opportunities to access and enjoy them, should be encouraged in the context of international solidarity and cooperation that surrounds the Convention, particularly through preferential treatment.

Guidelines

At national level

11. In accordance with Articles 5, 6, and 7 of the Convention concerning the rights and obligations of Parties at the national level, policies and measures to protect and promote the diversity of cultural expressions in the digital environment shall:
 - 11.1 aim to support the value chain of cultural goods and services in the digital environment, from creation to access and enjoyment so that each of the actors in the chain receives equitable remuneration for their activities;
 - 11.2 complement the approved Operational Guidelines, particularly that of Article 7 (para. 1.5 and 3) which refers to the technological environment and new technologies, by including *digital* technologies;
 - 11.3 be adopted, and/or if necessary, update existing public policies on cultural industries concerning issues of access, distribution, and co-production channels, the distribution of cultural goods and services, and the mobility of artists;
 - 11.4 aim, more specifically to:
 - 11.4.1 at the stage of *creation*, support artists through training and awards in digital arts as well as the development of incubators and laboratories for digital creation; support spaces dedicated to digital arts and innovation that allow for artistic experimentation and collaboration; set up training programmes, networks and research and development programmes specifically designed for artists and entrepreneurs working in the digital sector; produce and implement an online archiving and legal deposit system;
 - 11.4.2 at the stage of *production*, support the digitalization and modernization of cultural and creative industries; consolidate the development of emerging and local digital markets;
 - 11.4.3 at the stage of *distribution/dissemination*, ensure multiple suppliers of cultural goods and services, in particular cultural industry companies representing three intermediary types (Internet service providers, search engines, and social networking platforms) in order to achieve diverse digital environments; provide opportunities for local and domestic digital content; guarantee diversity of media, in particular through public service broadcasting; encourage the implementation of new means of electronic payment;

- 11.4.4 at the stage of *access*, ensure that the digital mechanisms (recommendation algorithms) that determine the content available provide a range of diverse digital cultural expressions by introducing greater transparency and readability of indexing modes and content referencing; ensure technology transfer to develop and provide greater access, particularly in developing countries; invest in telecommunications infrastructures, particularly in developing countries and rural areas; guarantee the interoperability and compatibility of user formats.

With regard to international cooperation

12. In accordance with Articles 12, 13, 14, and 16 of the Convention concerning the obligations of Parties at the international level and Article 21 on international consultation and coordination, policies and measures to protect and promote the diversity of cultural expressions in the digital environment shall:

- 12.1 complement the approved Operational Guidelines, particularly that of Articles 14 (para. 6.3.1 and 6.3.2) and 16 (para. 2.1 b)), which refer solely to information and communication technologies, by paying greater attention to *digital* technologies;

- 12.2 also aim to:

- 12.2.1 adopt new or revise cultural cooperation agreements to take into consideration digital tissues;

- 12.2.2 ensure transparency in bilateral, regional and multilateral trade negotiations on the treatment of digital cultural goods and services and seek close cooperation between national authorities responsible for culture and trade, as well as with other concerned public authorities;

- 12.2.3 introduce cultural clauses in bilateral, regional and multilateral trade agreements, focusing particularly on the status of electronic commerce and digital cultural goods and services;

- 12.2.4 introduce preferential treatment clauses in international trade agreements which ensure the mobility of artists and cultural professionals in developing countries working in the digital sector and the exchange of digital cultural goods and services from countries of the global South;

- 12.2.5 incorporate culture into international cooperation strategies aimed at sustainable development taking into account digital technologies, the development and expansion of networked infrastructures that promote creation, distribution and access to digitised cultural content and taking into account the needs of women and various social groups as mentioned in Article 7 of the Convention;

- 12.2.6 support capacity building activities, as well as the transfer of knowledge, technology and infrastructure;

- 12.2.7 ensure equitable access to resources and digital cultural content through educational and public awareness activities on the uses of the Internet and digital tools;

12.2.8 envisage and develop new forms of cooperation based on the online creation and the co-production and co-creation of networked works, unaffected by distances between creators;

12.2.9 invest in creativity by contributing regularly to the International Fund for Cultural Diversity which supports artists and cultural professionals in countries of the global South working in the digital sector.

Contribution of civil society

13. In light of Article 11 and its Operational Guidelines, the contribution of civil society organisations is vital, and can take the form of:

13.1 an awareness-raising role on the opportunities provided by digital technologies through the use of digital platforms (social networks, mobile applications, online discussion spaces) as well as through the organization of events and production of communication tools (blogs, electronic newsletters);

13.2 consultations between cultural actors to reflect on digital issues and communicate the results of these consultations to the governing bodies of the Convention through the submission of written documents (information documents) as well as active participation from professional organisations in the creative and cultural industries in the sessions of the Conference of Parties and of the Committee;

13.3 active contribution to the drafting of Parties' quadrennial periodic reports, by providing evidence of the opportunities and challenges brought about by digital issues for artists and cultural professionals.

Collection and sharing of information and good practices

14. In light of Articles 9 and 19 of the Convention, Parties could:

14.1 systematically include information on the opportunities and challenges related to the promotion of the diversity of cultural expressions in a digital environment in their quadrennial periodic reports²;

14.2 actively participate in the biannual consultations launched by the Secretariat within the framework of Articles 16 (Preferential Treatment) and 21 (International Consultation and Coordination) by providing relevant information on digital issues;

14.3 encourage the development of mapping and compilation of statistics on the uses, practices and markets of digital cultural expressions, in cooperation with international institutions already working in data collection, such as the UNESCO Institute for Statistics and the International Telecommunication Union (ITU);

² "Parties shall describe the key objectives and priorities of their current cultural policy and the impact the Convention has had in their formulation or reformulation. They will also report on the opportunities and challenges to promote the diversity of cultural expressions in a *digital environment*." (Italics added).

- 14.4 strengthen dialogue and cooperation with other international actors concerned by digital issues, particularly those responsible for the trade, competition, intellectual property and telecommunications sectors in order to raise their awareness of the Convention and share this information with other Parties;
 - 14.5 create an interministerial group on digital technologies and the Convention which would bring together representatives of the Ministries of Culture, Trade, Telecommunications, and Competition and include the Convention's contact point as well as civil society representatives;
 - 14.6 facilitate the participation of civil society actors in the debates of the governing bodies.
15. In accordance with Article 19, the Secretariat facilitates the collection and distribution of information through the global Report to monitor the implementation of the Convention and the Knowledge Management System. In doing so, it also compiles and disseminates good practices by consulting Parties, international governmental organisations and those of civil society with interests and activities in areas of the Convention.
