



**Communication Rights in the Information Society (CRIS)
Comments on the Preliminary Draft Convention on the Protection of the
Diversity of Cultural Contents and Artistic Expressions**

11 November, 2004

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To UNESCO, Delegates, members of Civil Society:

The campaign for Communication Rights in the Information Society (CRIS) supports the UNESCO proposal for a new, binding instrument on cultural diversity.

Our position on the proposed instrument is as follows:

- First, this instrument must not be made subordinate to existing or future trade agreements. To do so would defeat its purpose;
- Second, the instrument should be designed not to only protect diversity of national and regional cultural industries, but also to protect the cultural diversity and the communication rights of all peoples within countries;
- Third, the instrument must balance any references to the protection of intellectual property rights with reference to protection of the cultural commons. Otherwise, references to intellectual property rights should be removed altogether.

We also urge explicit mention of Article 19 of the Universal Declaration of Human Rights, and we urge that references to respect for diverse value systems, traditions and beliefs be balanced by commitments in the Preamble and the Principles to the provisions of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).

According to our position, we submit the following suggestions for consideration by all delegates and the drafting committee.

SUGGESTED CHANGES

(For your convenience these changes may also be read in the context of the complete Draft Convention text, see below)

1. In the Preamble, after "Celebrating the importance ... Universal Declaration of Human Rights and other universally recognized instruments," insert:

"Emphasizing the importance of Article 19 of the Universal Declaration of Human Rights, which declares that everyone has the right to freedom of opinion and expression, including the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers."

Rationale: Explicit reaffirmation of the right to freedom of expression as defined in the Universal Declaration of Human Rights. This explicit wording on the right to freedom of expression is identical to that in Resolution 34 of the 32nd Session of the General Conference of UNESCO, 17 October 2003, which committed UNESCO to development of this Convention.

2. In the Preamble, before "Emphasizing the vital role of the creative act," insert:

"Recognising also the vital role that women play in creative expression and cultural diversity, and affirming the need for the full participation of women at all levels of policy making and implementation for the protection and promotion of the diversity of cultural expressions,"

Rationale: this is based on a very similar statement in the Convention on Biological Diversity (CBD) and is intended to ensure respect for and implementation of the provisions of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).

3. In the Preamble, change the paragraph "Emphasizing the vital role of the creative act ... intellectual property rights" to read as the following two paragraphs:

"Emphasising the vital role of the creative act, which nurtures and renovates cultural expressions, and hence the vital role of artists and others creators, whose work needs to be appropriately encouraged and rewarded, and also the vital role of the public domain and cultural commons, which need to be constantly enriched and expanded,"

"Emphasising the need for a balance between the right of all to participate freely in the cultural life of the community and to enjoy the arts, and the right of the author to the protection of his or her moral and material interests, as stated in Article 27 of the Universal Declaration of Human Rights,"

Rationale: The Action Plan of the UNESCO Universal Declaration on Cultural Diversity, paragraph 16, calls for: "Ensuring protection of copyright and related rights in the interest of the development of contemporary creativity and fair remuneration for creative work, while at the same time upholding a public right of access to culture, in accordance with Article 27 of the Universal Declaration of Human Rights."

Article 27 of the Universal Declaration of Human Rights states:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

In this way, both Declarations balance the rights of all to access, enjoy and participate in culture with the rights of authors to protect their moral and material interests. However, as currently written, especially in the use of the term 'Intellectual Property Rights,' this draft Convention suggests that the rights of the owners of cultural expressions are superior to the rights of all

people to access, enjoy, and participate in culture. We urge that this Convention reflect the balance between copyright owners and the public, in accordance with the Universal Declaration of Human Rights and the UNESCO Universal Declaration on Cultural Diversity.

4. In Article 2, after paragraph 4 insert a new paragraph as follows:

*"Principle of equal rights of men and women
The protection and promotion of the diversity of cultural expressions presupposes
recognition of the equal dignity and the equal rights of men and women."*

Rationale: this principle is intended to ensure respect for and implementation of the provisions of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) and to balance other references to "value systems and beliefs."

5. In Article 2, paragraph 6, change "viable at the national and international levels" to read:

"viable at the local, national, and international levels."

Rationale: The Convention should encourage the strengthening of local cultural expression, as well as national and international cultural expression.

6. Change Article 4, paragraph 4 (c) to read:

*"they generate, or may generate, a material reward for their creators, whether or not
they are subject to existing intellectual property legislation."*

Rationale: The use of the term 'Intellectual Property Rights' here again emphasizes the rights of the owners of cultural expressions over the rights of all people to enjoy culture. Our proposed

change retains the original intent of indicating that cultural goods and services may generate material rewards for creators, without skewing the balance of rights described in UDHR Article 27.

7. In Article 6, after paragraph 2 (e) insert:

"(f) measures which encourage and support public service and community media;
(g) measures which limit vertical and horizontal consolidation and cross-ownership in the cultural industries;
(h) measures to promote equitable employment in terms of gender, race, class, caste, ethnicity, sexual orientation, physical disability, and other axes of social inequality, at all levels in the cultural industries;
(i) measures which guarantee diversity of ownership, including limitations on foreign ownership, of cultural industries."

Rationale: suggested additions to the Rights of States Parties (f), (g), (h), and (i) are all legitimate measures that States may choose to employ in order to protect and promoting the diversity of cultural expressions within its territory, and as such deserve explicit mention here.

8. In Article 7, at the end of paragraph 1(a) add:

"and including access to and participation in public service and community media."

Rationale: It would be valuable to strengthen the obligations of States Parties to support public service and community media. As it stands these provisions are only implied by the content of Annexes 1 and 2.

9. In Article 7, paragraph 2 (b), revise to read as follows:

"(b) that the role of the public domain and the cultural commons are fully recognised, in making freely available to all the essential raw material for cultural creativity;"

"(c) that copyright and related rights are fully respected and enforced, with an appropriate balance between the right of authors to their moral and material interests, and the right of all to freely participate in the cultural life of the community and to enjoy the arts."

Note: It is especially important to delete the phrase: "particularly through the development or strengthening of measures against piracy" from paragraph 2 (b).

Rationale: As we have expressed above, this change reflects the need to to balance the rights of authors and the rights of the public, in accordance with the UDHR and the UNESCO Universal Declaration on Cultural Diversity.

10. Rewrite Article 11 to read as follows:

"States shall encourage and foster civil society in its efforts to protect and promote the diversity of cultural expressions, and shall provide the means necessary to ensure that civil society is an active participant in the design and implementation of policy in this regard."

Rationale: The current wording fails to clearly involve civil society as an active participant in policy design and implementation.

11. In Article 12, paragraph 2(a): change "consolidation" to "extension," i.e. paragraph 2(a) would read:

"(a) support the creation or extension of cultural production capacities, particularly in developing countries, countries in transition and least developed countries;"

Rationale: Reword for clarity, since 'consolidation' has another meaning in terms of mergers of cultural industry firms.

12. In Article 16 (e), after "International Fund for Cultural Diversity" add "resourced by innovative means such as a charge on commercial use of public commons e.g. radio spectrum," so that Article 16 (e) reads:

"(e) other forms of financial and technical assistance, such as the establishment of an International Fund for Cultural Diversity, resourced by innovative means such as a charge on commercial use of public commons e.g. radio spectrum, the modalities of which would be determined by the Intergovernmental Committee, or the provision of low-interest loans and grants to stimulate and support creativity;"

Rationale: Adds a reference to a possible mechanism for sustained funding of the proposed International Fund for Cultural Diversity.

13. Article 19 - Relationship to other instruments.

We strongly support a modified version of Option A over Option B. Paragraph 2 of Option A should become the full text of Article 19, as follows:

"The provisions of this Convention shall not affect the rights and obligations of any State Party deriving from any existing international instrument, except where the exercise of those rights and obligations would cause serious damage or threat to the diversity of cultural expressions."

Rationale: First, it is imperative that option A be adopted over Option B. Option B fundamentally undermines the purpose of this instrument and is unacceptable.

Next, paragraph 1 of option A should be deleted because

- It fails to promote a balance between the rights of the public and the rights of copyright owners, as expressed in Article 27 of the Universal Declaration of Human Rights and in the UNESCO Universal Declaration on Cultural Diversity,
- The impact of intellectual property rights on cultural diversity is in fact contested, for example as evidenced by current debates within the World Intellectual Property Organisation (WIPO) where Brazil, Argentina, and other States, strongly supported by civil society, have proposed to review the effectiveness of present IP regimes in meeting the interests of developing countries. Such constructive moves could be reinforced by a more balanced treatment here of the relationship between intellectual property rights and cultural diversity. Certainly it would be better for the draft Convention to be neutral on the issue rather than to reinforce and strengthen the existing regime.
- There is strong precedent for the wording we support for the clause on relationship to other instruments, most notably Article 22.1 of the 1992 Convention on Biological Diversity (CBD), which states:

“The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.”

For these reasons, we emphatically urge delegates and the drafting group to reject Option B, and adopt paragraph 2 of Option A as the full text of Article 19.

14. In Article 21, amend paragraph 3 (g) as follows:

"(g) to establish procedures and other mechanisms for consultation, including consultation with representatives of civil society, aimed at promoting the principles and objectives of this Convention in other international arenas"

Rationale: Need to explicitly include civil society in consultations.

15. In Article 21, revise paragraph 3 (h), to read as follows:

"(h): to determine, in consultation with international financial institutions, development banks, specialised agencies of the United Nations, donors, civil society organisations, and others as relevant, innovative and far-reaching mechanisms for financing international cooperation in favour of the diversity of cultural expressions."

Rationale: Need to explicitly include civil society in developing innovative financial mechanisms.

16. In Annex II, paragraph 1, suggested addition, just before "promoting culture among young people:"

"Protecting and extending the cultural commons: policies that protect and encourage the enriching of the cultural commons; copyleft, General Public License; Creative Commons licenses; policies that protect the public domain; policies that encourage collaborative rather than competitive forms of cultural production; etc."

Rationale: explicit recognition of policies that protect and extend the cultural commons, including innovative forms of copyright.

17. In Annex II, paragraph 2, just before "Arts Education," suggested addition of reference to:

"Cultural commons: free/libre open source software; creative commons licenses; support for the public domain, etc."

Rationale: explicit recognition of the need for cultural policies explicitly designed to guard and extend the cultural commons, with mention of several successful existing legal mechanisms.

Respectfully,

The campaign for Communication Rights in the Information Society (CRIS)

& supporters (list of signatories follows)

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Agencia Za Informiranje	Croatia
Agenda NFA	Netherlands
Asociación Latinoamericana de Educación Radiofónica (ALER: www.aler.org.ec)	America Latina
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Assemblea per la Comunicacio Social (ACS)	Paisos Catalans
Association for Progressive Communications (APC)	South Africa
Bits of Freedom	Netherlands
Buy Nothing Day Japan	Japan
Bytes for All	South Asia
C & F Editions	France
Carrefour mondial de l'internet citoyen / World Forum on Community Networking	Canada
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Civil Media Development Institute	Thailand
Coalition for Cultural Action	Republic of Korea
Comedia - the Swiss media union	Switzerland
Community Communications Online	Australia
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Comunica	Uruguay
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Consumer Project on Technology (CPTech)	USA
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Centre of Community Networking and Information Policy Studies (CCNS)	Russian Federation
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EMA RTV (Asociación de Radio y TV)	España
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Focus 7	UK
Foundation for Media Alternatives	Philippines
Free Press (www.freepress.net)	USA

Fundacion Cultural de la Amazona	Colombia
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Media Solidarity	Republic of Korea
MediACT	Republic of Korea

Mistica/Funredes	R. Argentina
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Netzwerk Neue Medien e.V.	Germany
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Radio Ada	Ghana
Reclaim the Media	United States
Recuperando Futuros	Peru
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RISE	Pakistan
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World Catholic Association for Communication (SIGNIS: www.signis.net)	Belgium
Society for Public Information Spaces	France
Squinch Labs	Canada
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The Inha Democratic Legal Studies Association	Republic of Korea
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COMPLETE TEXT WITH SUGGESTED CHANGES

The following is our suggested revision of CLT/CPD/2004/CONF-201/2, Paris, July 2004.

Original: French and English. "Preliminary draft of a convention on the protection of the diversity of cultural contents and artistic expressions." Suggestions appear in italics.

PREAMBLE

The General Conference of the United Nations Educational, Scientific and Cultural Organization, hereinafter referred to as UNESCO, meeting in Paris from xxx to xxx at its xxx session,

Affirming the fundamental right of all individuals and societies to share in the benefits of diversity and dialogue as primary features of culture, as the defining characteristics of humanity,

Being aware that cultural diversity, the common heritage of humanity, is a mainspring of sustainable development, and that it is thus as vital for humankind as biological diversity is for living organisms,

Being aware that cultural diversity, flourishing within a framework of democracy, tolerance and social justice, is indispensable for peace and security at the national and international levels,

Celebrating the importance of cultural diversity for the full realization of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,

(SUGGESTED ADDITION TO PREAMBLE): "Emphasizing the importance of Article 19 of the Universal Declaration of Human Rights, which declares that everyone has the right to freedom of opinion and expression, including the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers."

Recognizing that cultural diversity is nurtured by constant exchanges between cultures, and that it has always been a result of the free flow of ideas by word and image,

Reaffirming that freedom of thought, expression and information, and its corollary, pluralism of the media, ensure that cultural expressions may flourish within societies, and that the greatest possible number of individuals may have access thereto,

Recognizing that the diversity of cultural expressions, which illustrates the plurality of identities, is an enriching factor for peoples and individuals because it allows them to express and to share with others their ideas, values and imaginaries,

Recognizing the fundamental right of social groups and societies, in particular of members of minorities and indigenous peoples, to create, disseminate and distribute their cultural goods and services, including their traditional cultural expressions, to have access thereto, and to benefit therefrom for their own development,

(SUGGESTED ADDITION TO PREAMBLE): "Recognising also the vital role that women play in creative expression and cultural diversity, and affirming the need for the full participation of women at all levels of policy making and implementation for the protection and promotion of the diversity of cultural expressions,"

Emphasizing the vital role of the creative act, which nurtures and renovates cultural expressions, and hence the vital role of artists and other creators, whose work needs to be endowed with appropriate intellectual property rights,

(SUGGESTED CHANGE TO PREAMBLE): change the previous paragraph to read as the following two paragraphs:

"Emphasising the vital role of the creative act, which nurtures and renovates cultural expressions, and hence the vital role of artists and others creators, whose work needs to be

appropriately encouraged and rewarded, and also the vital role of the public domain and cultural commons, which need to be constantly enriched and expanded,"

"Emphasising the need for a balance between the right of all to participate freely in the cultural life of the community and to enjoy the arts, and the right of the author to the protection of his or her moral and material interests, as stated in Article 27 of the Universal Declaration of Human Rights,"

Being convinced that cultural goods and services are of both an economic and a cultural nature, and that because they convey identities, values and meanings, they must not be treated as ordinary merchandise or consumer goods,

Noting that while the processes of globalization, which have been facilitated by the rapid development of information and communication technologies, afford unprecedented conditions for enhanced interaction between cultures, these same processes also constitute a threat to diversity and carry with them a risk of impoverishing cultural expressions,

Being aware of the specific mandate that UNESCO has to ensure respect for the “fertile diversity of culture” and to recommend “such international agreements as may be necessary to promote the free flow of ideas by word and image”,

Referring to the provisions of the international instruments promulgated by UNESCO relating to cultural diversity and the exercise of cultural rights, and in particular the Universal Declaration on Cultural Diversity,

Adopts this Convention on this xxx day of xxx.

I. OBJECTIVES AND GUIDING PRINCIPLES

Article 1 – Objectives

The objectives of this Convention are:

- (a) to protect and promote the diversity of cultural expressions;
- (b) to give recognition to the distinctive nature of cultural goods and services as vehicles of identity, values and meaning;
- (c) to facilitate the development and adoption of cultural policies and appropriate measures for the protection and promotion of the diversity of cultural expressions;
- (d) to provide a framework within which cultures may freely evolve and interact;
- (e) to encourage dialogue between cultures and civilizations with a view to ensuring wider and more balanced cultural exchanges between the countries of the world;
- (f) to foster respect for the diversity of cultural expressions and raise awareness of its value at the national and global levels;
- (g) to strengthen international cooperation and solidarity in a spirit of global partnership with a view, in particular, to fostering the capacities of developing societies to protect and promote the diversity of cultural expressions.

Article 2 – Principles

1. Principle of respect for human rights

No one may invoke the provisions of this Convention in order to infringe human rights guaranteed by international law or to limit the scope thereof.

2. Principle of fundamental freedoms

Cultural diversity can be protected and promoted only if fundamental freedoms such as freedom of expression, information and communication as well as the ability of individuals to choose

cultural expressions are guaranteed.

3. Principle of free access and participation

The right of access of all people to a rich and diversified range of cultural expressions from all over the world, and the possibility for all cultures to have access to the means of cultural expression and dissemination are essential guarantees of cultural diversity.

4. Principle of equal dignity of all cultures

The protection and promotion of the diversity of cultural expressions presupposes recognition of the equal dignity of and equal respect for societies and social groups, including minorities and indigenous peoples, and the cultures they express.

(SUGGESTED ADDITION to Article 2, after paragraph 4, insert): "Principle of equal rights of men and women.

The protection and promotion of the diversity of cultural expressions presupposes recognition of the equal dignity and the equal rights of men and women."

5. Principle of the complementarity of economic and cultural aspects of development

Since culture is one of the mainsprings of development, the cultural aspects of development are as important as its economic aspects, and individuals have the fundamental right to benefit from both.

6. Principle of international solidarity and cooperation

International cooperation and solidarity shall be aimed at enabling countries, especially developing countries and countries in transition, to strengthen their means of cultural expression, including cultural industries that are viable at the national and international levels.

(SUGGESTED CHANGE to Article 2, paragraph 6, change "viable at the national and international levels" to read): "viable at the local, national, and international levels."

7. Principle of sustainability Cultural diversity is an asset and constitutes an essential aspect of

the cultural capital of societies, in the same way as biodiversity is a critical element of natural capital. The protection and maintenance of cultural diversity for the benefit of future generations is an essential requirement for the sustainability of cultural development.

8. Principle of balance, openness and proportionality When States adopt measures which they deem relevant to support the diversity of cultural expressions at the national level, they commit themselves to guaranteeing, in an appropriate manner, openness to the other cultures of the world, and to ensuring that such measures are geared to the objectives pursued under the present Convention.

9. Principle of transparency States Parties shall ensure transparency in the development and implementation of their cultural policies.

II. SCOPE OF APPLICATION AND DEFINITIONS

Article 3 – Scope of the Convention This Convention shall apply to the cultural policies and measures that States Parties take for the protection and promotion of the diversity of cultural expressions.

Article 4 – Definitions For the purposes of this Convention:

1. Culture “Culture” refers to the set of distinctive spiritual, material, intellectual and emotional features of society or a social group and encompasses in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.

2. Cultural diversity “Cultural diversity” refers to the manifold ways in which the cultures of social groups and societies find expression. From the diverse forms taken by culture over time and space stem the uniqueness and plurality of the identities and cultural expressions of the peoples and societies that make up humankind. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humankind is protected, augmented and transmitted to future generations, but also through the variety of cultural expressions which are

borne by cultural goods and services, in all parts of the world at any given time, through diverse modes of production, dissemination, distribution and consumption.

3. Cultural expressions The term “cultural expressions” includes both the notions of “cultural contents” and “artistic expressions”, and refers to the various ways in which cultural goods, services and other activities may communicate symbolic meaning or convey cultural values. The “cultural content” of such goods, services and activities refers to the meaning and values thus conveyed. The “artistic expression” of these goods, services and activities is a cultural expression resulting from creative work or aesthetic creation.

4. Cultural goods and services “Cultural goods and services” (a non-exhaustive list of which is annexed to the Convention, see Annex I) refer to those goods, services and activities that embody or yield cultural expressions and have the following characteristics:

(a) they are the outcome of human labour (industrial, artistic or artisanal) and require the exercise of human creativity for their production;

(b) they express or convey some form of symbolic meaning, which endows them with a cultural value or significance distinct from whatever commercial value they may possess;

(c) they generate, or may generate, intellectual property, whether or not they are protected under existing intellectual property legislation.

(SUGGESTED CHANGE To Article 4, paragraph 4 (c), change to read): "they generate, or may generate, a material reward for their creators, whether or not they are subject to existing intellectual property legislation."

5. Cultural industries The term “Cultural industries” refers to industries producing cultural goods and services as defined above.

6. Cultural capital “Cultural capital” refers to tangible or intangible items of cultural value or

significance which are inherited from the recent or distant past, cared for in the present, and handed on to future generations. Items of cultural capital, being assets deriving from human creativity and resources, exist in the form of works of art, buildings and sites, customs and traditions, etc.

7. Cultural policies “Cultural policies” refer to policies, whether at the local, regional, national or international level, which address or affect any aspect of the cultural expressions of an individual, community, or society, including the creation, production, distribution, dissemination of, and access to, cultural goods and services. (A non-exhaustive list of cultural policies is annexed to the Convention, see Annex 2).

III. RIGHTS AND OBLIGATIONS OF STATES PARTIES

Article 5 – General rules on rights and obligations

1. The States Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, affirm their sovereign right to adopt measures to protect and promote the diversity of cultural expressions within their territory, and recognize their obligations to protect and promote it both within their territory and at the global level.

2. When a State Party takes a measure to protect and promote the diversity of cultural expressions within its territory, it shall ensure that such measure is in conformity with this Convention, its objectives, principles and scope.

Section III.1 – Rights and obligations at the national level

Article 6 – Rights of States Parties at the national level

1. Within the framework of its cultural policies as defined in Article 4.7, and taking into account its own particular circumstances and needs, each State Party may adopt measures, especially

regulatory and financial measures, aimed at protecting and promoting the diversity of cultural expressions within its territory, particularly in cases where such expressions are threatened or in a situation of vulnerability.

2. Such measures may include the following:

(a) measures which in an appropriate manner reserve a certain space for domestic cultural goods and services among all those available within the national territory, in order to ensure opportunities for their production, distribution, dissemination and consumption, and include, where appropriate, provisions relating to the language used for the above-mentioned goods and services;

(b) measures which guarantee independent cultural industries effective access to the means of producing, disseminating and distributing cultural goods and services;

(c) measures which grant public financial aid; in granting such aid, States Parties may determine the nature, amount and beneficiaries thereof;

(d) measures which promote the free exchange and circulation of ideas, cultural expressions, and cultural goods and services, encourage non-profit organizations, and stimulate the entrepreneurial spirit;

(e) measures which encourage and support public service institutions.

(SUGGESTED ADDITION: In Article 6, after paragraph 2 (e) insert:)

"(f) measures which encourage and support public service and community media;

(g) measures which limit vertical and horizontal consolidation and cross-ownership in the cultural industries;

(h) measures to promote equitable employment in terms of gender, race, class, caste, ethnicity, sexual orientation, physical disability, and other axes of social inequality, at all levels in the cultural industries;

(i) measures which guarantee diversity of ownership, including limitations on foreign ownership, of cultural industries."

Article 7 – Obligation to promote the diversity of cultural expressions

1. States Parties shall provide all individuals in their territory with opportunities:

(a) to create, produce, disseminate, distribute, and have access to their own cultural expressions, goods and services, paying due attention to the special circumstances and needs of the various social groups, in particular, minorities and indigenous peoples;

(SUGGESTED CHANGE: In Article 7, at the end of paragraph 1(a) add): "and including access to and participation in public service and community media."

(b) to have access to the cultural expressions, goods and services representing cultural diversity in other countries of the world.

2. States Parties shall also ensure:

(a) that the legal and social status of artists and creators is fully recognized, in conformity with international existing instruments, so that their central role in nurturing the diversity of cultural expressions is enhanced;

(b) that intellectual property rights are fully respected and enforced according to existing international instruments, particularly through the development or strengthening of measures against piracy.

(SUGGESTED REVISION OF ARTICLE 7, paragraph 2 (b):

"(b) that the role of the public domain and the cultural commons are fully recognised, in making freely available to all the essential raw material for cultural creativity;"

"(c) that copyright and related rights are fully respected and enforced, with an appropriate balance between the right of authors to their moral and material interests, and the right of all to freely participate in the cultural life of the community and to enjoy the arts."

Article 8 – Obligation to protect vulnerable forms of cultural expression

If some cultural expressions are deemed to be vulnerable to or threatened by the possibility of extinction or serious curtailment (hereafter referred to as “situations”), States Parties shall take appropriate measures to protect the diversity of cultural expressions within their territory according to the following provisions:

(a) each State Party may at any time bring before the Intergovernmental Committee referred to in Article 21 situations which may require action under this Article. Such situations shall be identified in conformity with the criteria established by the Advisory Group referred to in Article 22, exception being made for cases covered by existing international instruments relating to the protection of cultural heritage;

(b) the Intergovernmental Committee shall consider each case according to criteria established by the Advisory Group. In cases where the Intergovernmental Committee determines that action is necessary, it shall require the relevant State Party or Parties to take appropriate measures within a reasonable period of time;

(c) a State Party required to take appropriate measures by the Intergovernmental Committee may, through this body, seek international cooperation and assistance in identifying the necessary resources for effective action.

Article 9 – Obligation of information and transparency

States Parties shall:

(a) establish competent authorities to be in charge of the protection and promotion of the

diversity of cultural expressions;

(b) determine how to establish a mechanism to share and exchange information relating to the protection and promotion of the diversity of cultural expressions;

(c) develop sectoral and cross-sectoral policies, strategies, plans or programmes for the protection and promotion of the diversity of cultural expressions, and publicize the measures taken in order to ensure transparency;

(d) notify UNESCO on a biennial basis of the new measures that have been taken to protect and promote the diversity of cultural expressions within their territory and to ensure openness towards foreign cultural expressions.

Article 10 – Obligation of public awareness and education

States Parties shall:

(a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions through public relations, the media and educational programmes;

(b) cooperate with other States Parties and international organizations in developing educational and public awareness programmes relating to the protection and promotion of the diversity of cultural expressions;

(c) endeavor to strengthen production capacities by setting up continuing education and training programmes in the field of cultural industries.

Article 11 – Responsibility and participation of civil society

States Parties shall encourage civil society to assume its share of responsibility for the protection

and promotion of the diversity of cultural expressions, and shall foster the participation of civil society in their efforts in this domain.

(SUGGESTED CHANGE To Article 11, rewrite to read as follows:) "States shall encourage and foster civil society in its efforts to protect and promote the diversity of cultural expressions, and shall provide the means necessary to ensure that civil society is an active participant in the design and implementation of policy in this regard."

Section III.2 – Rights and obligations relating to international cooperation

Article 12 – Objectives

1. States Parties shall cooperate for the creation of international conditions conducive to cultural development;

2. States Parties shall, within the framework of their development cooperation agreements, foster aspects relating to the protection and promotion of the diversity of cultural expressions, and shall undertake to strengthen their cooperation, particularly in order to:

(a) support the creation or consolidation of cultural production capacities, particularly in developing countries, countries in transition and least developed countries;

(SUGGESTED CHANGE To Article 12, paragraph 2 (a), change "consolidation" to "extension," i.e. paragraph 2(a) would read: "(a) support the creation or extension of cultural production capacities, particularly in developing countries, countries in transition and least developed countries;"

(b) enable, to this end, the emergence of viable local and regional markets for cultural goods and services;

(c) facilitate wider access to the global market and international distribution networks for the

cultural goods and services of all countries;

(d) foster the free circulation and mobility of artists and creators;

(e) enhance public sector strategic and management capacities and increase public sector competitiveness, so that the cultural industries sectors do not rely exclusively on private sector initiatives, and allow the establishment of strong public/private partnerships;

(f) develop a system of positive exhortation in support of national policies for cultural exchanges with a view to raising broad awareness of the diversity of cultural expressions;

(g) introduce incentive measures for the transfer of technology and know-how, notably in the areas of cultural industries and enterprises.

Article 13 – International consultation and coordination

States Parties shall bear in mind the objectives of this Convention when making any international commitments. They undertake, as appropriate, to promote its principles and objectives in other international fora. For these purposes, States Parties shall consult each other within UNESCO in order to develop common approaches.

Article 14 – Aid for co-production and dissemination States Parties shall encourage, as needed, the conclusion of cinematographic and other audiovisual co-production and co-distribution agreements, thereby enabling foreign productions to be considered as national and, as such, facilitating their access to national aid, devoting particular attention to developing countries and countries in transition.

Article 15 – Establishment of a Cultural Diversity Observatory 1. States Parties agree to develop the exchange of information and expertise concerning data and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.

2. To this end, the Intergovernmental Committee shall set up within UNESCO a Cultural Diversity Observatory to collect, analyse and disseminate all relevant information, statistics and best practices. The Observatory shall also establish and update a data bank on all partner sectors (governmental, private and non-profit) that wish to cooperate in the area of cultural diversity and exchanges.

3. All such information collected by the Cultural Diversity Observatory shall be communicated in an annual or biennial report to the Intergovernmental Committee. This report shall inform Member States for the purposes of formulating or applying their cultural policies. In addition, it will enable the Advisory Group to define international strategies for the protection and promotion of the diversity of cultural expressions.

4. To facilitate the collection of data, the Cultural Diversity Observatory shall pay particular attention to capacity-building and the strengthening of expertise in States Parties that submit a request for such assistance.

Article 16 – Cooperation for development

For the purposes of this Convention, States Parties shall undertake to support cooperation for development by the following means:

(a) exchange of information and experience as well as the training of human resources in developing countries and countries in transition to support the formulation of their cultural policies;

(b) support for creative work, cultural production and creators to foster the emergence of a dynamic cultural sector in developing countries and countries in transition;

(c) strengthening of the cultural production and distribution capacities of developing countries and countries in transition in order to increase their presence at both the national and international levels;

(d) adoption of appropriate measures, in countries which have strong cultural industries, with a view to facilitating access to their territory for the cultural goods and services of States Parties whose cultural industries are weak;

(e) other forms of financial and technical assistance, such as the establishment of an International Fund for Cultural Diversity, the modalities of which would be determined by the Intergovernmental Committee, or the provision of low-interest loans and grants to stimulate and support creativity;

(SUGGESTED ADDITION To Article 16 (e), after "International Fund for Cultural Diversity" add "resourced by innovative means such as a charge on commercial use of public commons e.g. radio spectrum," so that Article 16 (e) reads): "(e) other forms of financial and technical assistance, such as the establishment of an International Fund for Cultural Diversity, resourced by innovative means such as a charge on commercial use of public commons e.g. radio spectrum, the modalities of which would be determined by the Intergovernmental Committee, or the provision of low-interest loans and grants to stimulate and support creativity;"

(f) any other form of assistance which may be deemed appropriate.

Article 17 – Preferential treatment for developing countries

Developed countries shall facilitate cultural exchanges with developing countries and least developed countries by granting appropriate preferential treatment to their professionals, artists and other creators as well as to their cultural goods and services.

Article 18 – Partnerships for development

1. In pursuance of the objectives of this Convention, States Parties shall emphasize the development of innovative partnerships, between and within the public and private sectors and non-profit organizations, in order to promote the diversity of cultural expressions and increase

the exchange of cultural goods and services. Partnerships shall focus on the development of infrastructure, human resources and policies necessary for the responsible and sustainable exploitation of cultural resources in developing countries.

2. The Intergovernmental Committee provided for in Article 21 shall draw up, on the proposal of the Advisory Group, the criteria, rules and operational guidelines that shall govern the establishment of the partnerships mentioned in the preceding paragraph.

3. For the purposes of the establishment of such partnerships, States Parties wishing to obtain aid should apply to the Intergovernmental Committee and submit an inventory of their infrastructure, policies and concrete activities relating to cultural production and distribution. If need be, technical and financial assistance to draw up such an inventory may be provided by the Intergovernmental Committee.

4. The Intergovernmental Committee shall transmit the application for support together with the inventory to the Advisory Group for evaluation and recommendations.

5. Upon receipt of the evaluation and recommendations from the Advisory Group, the Intergovernmental Committee, in consultation with the requesting country, shall identify potential partners, establish contact between such partners and the requesting country, and contribute, if necessary, to the conclusion of a partnership agreement.

6. Partnerships shall be developed, to whatever extent possible, with a view to providing, whenever required, a regional response to the needs identified.

IV. RELATIONSHIP TO OTHER INSTRUMENTS

Article 19 – Relationship to other instruments

(SUPPORT MODIFIED OPTION A for Article 19. Delete paragraph 2 so that the full text of Article 19 reads as follows):

"The provisions of this Convention shall not affect the rights and obligations of any State Party deriving from any existing international instrument, except where the exercise of those rights and obligations would cause serious damage or threat to the diversity of cultural expressions."

Option A

(DELETE Paragraph 1, keep paragraph 2 in full)

1. Nothing in this Convention may be interpreted as affecting the rights and obligations of the States Parties under any existing international instrument relating to intellectual property rights to which they are parties.

2. The provisions of this Convention shall not affect the rights and obligations of any State Party deriving from any existing international instrument, except where the exercise of those rights and obligations would cause serious damage or threat to the diversity of cultural expressions.

(REJECT OPTION B): This option would render the Convention completely ineffective, and is therefore unacceptable. Option B should be deleted, and discussion should center on the wording of option A.

Option B

Nothing in this Convention shall affect the rights and obligations of the States Parties under any other existing international instruments.

V. FOLLOW-UP BODIES AND MECHANISMS

Article 20 – General Assembly of States Parties

1. A General Assembly of States Parties, hereinafter referred to as “the General Assembly”, shall

be established. The General Assembly shall be the sovereign body of this Convention.

2. The General Assembly shall meet in ordinary session every two years. It may meet in extraordinary session if it so decides or if the Intergovernmental Committee receives a request to that effect from at least one-third of States Parties.

3. The General Assembly shall adopt its own rules of procedure.

4. The functions of the General Assembly shall be, inter alia:

(a) to elect the Members of the Intergovernmental Committee;

(b) to receive and examine the summary reports of the States Parties to the Convention transmitted by the Intergovernmental Committee (cf. Article 21.3(c));

(c) to approve the operational guidelines prepared by the Intergovernmental Committee;

(d) to take whatever other measures it may consider necessary to further the objectives of this Convention.

Article 21 – Intergovernmental Committee

1. An Intergovernmental Committee for the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Intergovernmental Committee”) shall be established within UNESCO. It shall be composed of representatives of 18 States Parties, elected by the General Assembly of States Parties upon the entry into force of this Convention pursuant to Article 28. The Committee shall meet once a year.

2. The number of States Members of the Intergovernmental Committee shall be increased to 24 once the number of States Parties to the Convention reaches 50.

3. Without prejudice to the other responsibilities conferred upon it by this Convention, the functions of the Committee shall be:

(a) to promote the objectives of this Convention, and to encourage and monitor the implementation thereof;

(b) to prepare and submit for approval by the General Assembly operational guidelines for the implementation and application of the provisions of the Convention in different situations;

(c) to transmit to the General Assembly summary reports from States Parties, together with general comments;

(d) to establish the Cultural Diversity Observatory as defined in Article 15;

(e) to draw up criteria, rules and operational guidelines aimed at supporting the establishment of partnerships;

(f) to propose appropriate actions to be taken in situations brought to its attention by States Parties in accordance with Article 8;

(g) to establish procedures and other mechanisms for consultation aimed at promoting the principles and objectives of this Convention in other international arenas;

(SUGGESTED ADDITION TO ARTICLE 21, amend paragraph 3 (g) as follows): "(g) to establish procedures and other mechanisms for consultation, including consultation with representatives of civil society, aimed at promoting the principles and objectives of this Convention in other international arenas"

(h) to determine, in consultation with international financial institutions and development banks, mechanisms for allocating a share of international financing to international cooperation in favour of the diversity of cultural expressions;

(SUGGESTED REVISION of Article 21, paragraph 3 (h), to read as follows): "(h): to determine, in consultation with international financial institutions, development banks, specialised agencies of the United Nations, donors, civil society organisations, and others as relevant, innovative and far-reaching mechanisms for financing international cooperation in favour of the diversity of cultural expressions."

(i) to establish such subsidiary bodies as may be useful for the efficient implementation of the Convention;

(j) to consult the Advisory Group on a regular basis in order to ensure the promotion of the objectives of this Convention and its implementation.

Article 22 - Advisory Group

1. An Advisory Group, serving as a source of independent and informed advice, shall be established by the Director-General of UNESCO. The Advisory Group shall consist of 12 members of recognized competence in the field of cultural diversity, serving in a personal capacity and coming from various regions of the world. The members shall be appointed for a term of three years and shall be eligible for reappointment once. The Advisory Group shall meet at least once a year.

2. Without prejudice to the other responsibilities conferred upon it, the functions of the Advisory Group shall be:

(a) to respond to requests for advice from the Director-General and/or the Intergovernmental Committee on the implementation of the Convention and on related matters, including cases of cultural expressions which are deemed to be vulnerable or threatened by the possibility of extinction or serious curtailment, as described in Article 8;

(b) to alert and advise the Director-General of UNESCO and/or the Intergovernmental

Committee, on its own initiative, with respect to all questions concerning the implementation of the Convention, in particular in the case of a threat to the diversity of cultural expressions. If it considers it appropriate, the Advisory Group shall make proposals to enhance the effectiveness of this Convention, such as work programmes, partnerships, national and international policies for cultural exchanges, as well as criteria or rules for supporting the development of the States Parties' capacities for cultural production and distribution.

3. The Advisory Group shall establish its own rules of procedure.

Article 23 – UNESCO Secretariat

UNESCO shall provide the secretariat of the General Assembly of States Parties, the Intergovernmental Committee and the Advisory Group.

Article 24 – Settlement of Disputes

1. In the event of a dispute between States Parties concerning the interpretation or the application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. If good offices or mediation are not undertaken or if there is no settlement by negotiation, good offices or mediation, the parties concerned may have recourse to one of the following means of dispute settlement:

(a) arbitration, at their joint request, in accordance with the procedure laid down in Annex III to this Convention; the arbitral award shall be binding. Parties shall implement the award in good faith;

(b) submission, at their joint request, of the dispute to the International Court of Justice.

4. If the parties concerned have not accepted either of the procedures provided for in paragraph 3 above, the dispute shall be submitted to conciliation in accordance with the procedure laid down in Annex IV of this Convention. The parties shall consider in good faith the proposal made by the Conciliation Commission for the resolution of the dispute.

VI. FINAL CLAUSES

Article 25 – Ratification, acceptance or approval

1. This Convention shall be subject to ratification, acceptance or approval by States Members of UNESCO in accordance with their respective constitutional procedures.

2. The instruments of ratification, acceptance or approval shall be deposited with the Director-General of UNESCO.

Article 26 – Accession

1. This Convention shall be open to accession by all States not Members of UNESCO that are invited by the General Conference of UNESCO to accede to it.

2. This Convention shall also be open to accession by territories which enjoy full internal self-government recognized as such by the United Nations, but which have not attained full independence in accordance with General Assembly resolution 1514 (XV), and which have competence over the matters governed by this Convention, including the competence to enter into treaties in respect of such matters.

3. The instrument of accession shall be deposited with the Director-General of UNESCO.

Article 27 - Competent authorities

Upon ratification, States Parties shall designate the “competent authorities” referred to in Article 9.

Article 28 – Entry into force

This Convention shall enter into force three months after the date of the deposit of the 30th instrument of ratification, acceptance, approval or accession, but only with respect to those States that have deposited their respective instruments of ratification, acceptance, approval, or accession on or before that date. It shall enter into force with respect to any other State Party three months after the deposit of its instrument of ratification, acceptance, approval or accession.

Article 29 – Federal or non-unitary constitutional systems

The following provisions shall apply to States Parties which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;

(b) with regard to the provisions of this Convention, the implementation of which comes under the jurisdiction of individual constituent States, countries, provinces or cantons which are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 30 – Denunciation

1. Each State Party may denounce this Convention.
2. The denunciation shall be notified by an instrument in writing deposited with the Director-

General of UNESCO.

3. The denunciation shall take effect 12 months after the receipt of the instrument of denunciation. It shall in no way affect the financial obligations of the denouncing State Party until the date on which the withdrawal takes effect.

Article 31 – Depositary functions

The Director-General of UNESCO, as the Depositary of this Convention, shall inform the States Members of the Organization, the States not Members of the Organization referred to in Article 26, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, approval or accession provided for in Articles 25 and 26, and of the denunciations provided for in Article 30.

Article 32 – Amendments

1. A State Party may, by written communication addressed to the Director-General, propose amendments to this Convention. The Director-General shall circulate such communication to all States Parties. If, within six months from the date of dispatch of the communication, no less than one half of the States Parties reply favourably to the request, the Director-General shall present such proposal to the next session of the General Assembly for discussion and possible adoption.

2. Amendments shall be adopted by a two-thirds majority of States Parties present and voting.

3. Once adopted, amendments to this Convention shall be submitted to the States Parties for ratification, acceptance, approval or accession.

4. For States Parties which have ratified, accepted, approved or acceded to them, amendments to this Convention shall enter into force three months after the deposit of the instruments referred to in paragraph 3 of this Article by two-thirds of the States Parties. Thereafter, for each State Party that ratifies, accepts, approves or accedes to an amendment, the said amendment shall enter into

force three months after the date of deposit by that State Party of its instrument of ratification, acceptance, approval or accession.

5. The procedure set out in paragraphs 3 and 4 shall not apply to amendments to Article 21 concerning the number of States Members of the Intergovernmental Committee. These amendments shall enter into force at the time they are adopted.

6. A State which becomes a Party to this Convention after the entry into force of amendments in conformity with paragraph 4 of this Article shall, failing an expression of different intention, be considered to be:

(a) a Party to this Convention as so amended; and

(b) a Party to the unamended Convention in relation to any State Party not bound by the amendments.

Article 33 – Authoritative texts

This Convention has been drawn up in Arabic, Chinese, English, French, Russian and Spanish, all six texts being equally authoritative.

Article 34 – Registration

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of UNESCO.

ANNEX I

NON-EXHAUSTIVE LIST OF CULTURAL GOODS AND SERVICES

Cultural goods and services include, but are not limited to, goods and services in the following categories:+

Publishing, printing and literature: books, newspapers, periodicals, other printed matter, ebooks, e-magazines, etc.; services for the publication, distribution, dissemination and promotion of books, newspapers, printed matter, electronic publications, etc.; library services, etc.; royalties and licence fees;

Music and the performing arts: music recordings, musical instruments, musical compositions and publications, etc.; festivals, concerts, plays and artistic performances, dance, opera, orchestral music, songs,++ other performing arts (circus, puppet theatre,++ pantomime,++ street performances, etc.), etc.; performing arts venues (theatres, concert halls, marquees, etc.); music and performing arts production, dissemination, operation and promotion services; royalties and licence fees;

Visual arts: painting (oils, drawings, engravings), sculpture, photography, photo-engraving, video art, computer graphics, graphic arts, electronic imaging; services for the production, dissemination, promotion and exhibition of visual arts; royalties and licence fees; Crafts, design and architecture: ceramics, fabrics, embroidery, basketry, glass, jewellery, leather, wood, wrought metal work, metals, garments and accessories, furniture, interior decoration; designer objects; architectural services; services for the production, distribution and promotion of crafts and designs, etc.;

Audiovisual and new media: film, video recording, radio and television programmes, entertainment software (video games, educational programmes, etc.), Internet creativity sites, virtual reality, broadband video broadcasting (videostreaming), etc.; radio and television services, radio broadcasting service, services for the production, distribution, operation, dissemination and promotion of film, video recording, and radio and television programmes; royalties and licence fees;

Cultural heritage:++ antiquities, collectors' items, museum services, archive services

(documents, recordings of items of the intangible cultural heritage, etc.), preservation services for historic sites and monuments; services relating to the safeguarding and transmission of rituals, narratives, folktales, etc.;

Cultural activities: sociocultural facilities, voluntary and community associations, recreational and sporting services, games, culinary traditions, costumes, cultural tourism, etc.

-- As defined and adapted on the basis of the 10 categories of the UNESCO Framework for Cultural Statistics, UNESCO Institute for Statistics (UIS): <http://www.uis.unesco.org>.

-- Certain cultural goods and services in this list are already covered by other UNESCO standard-setting instruments. However, such goods and services may be concerned by this Convention to the extent that spin-off products such as films, CD-ROMS, books, catalogues, etc. are brought into circulation.

Among these instruments, one may note the Florence Agreement of 1950 and its Nairobi Protocol of 1976, the Universal Copyright Convention of 1952, the Declaration of Principles of International Cultural Cooperation of 1966, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, the Convention for the Protection of the World Cultural and Natural Heritage of 1972, the Recommendation concerning the Status of the Artist of 1980, and the Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, and other newly adopted conventions such as the Convention on the Protection of the Underwater Cultural Heritage of 2001 and the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003.

ANNEX II

NON-EXHAUSTIVE LIST OF CULTURAL POLICIES+

1. Cultural policies are aimed in particular at:

Enhancing development by integrating cultural strategies into social and economic development policies: cross-sectoral policies and regional development programmes;

Supporting creativity and promoting participation in cultural life: urban cultural policies; policies that cater needs and aspirations of the young and elderly people;

Preserving and safeguarding tangible and intangible cultural heritage⁺⁺: policies to recognize new heritage categories such as cultural landscape, industrial heritage or tourism; policies to inventory and register oral traditions and traditional performing arts, and improve scientific conservation policies; policies to protect buildings, sites, ensembles and landscapes of cultural significance in urban and regional development plans;

Promoting pluralism, cultural and linguistic diversity in and for the information society: policies that enhance media pluralism and develop community, linguistic and minority services in public radio and television and on the World Wide Web; policies to digitalize archives, museums and libraries and facilitate access to that content; policies that educate and train children in the use of new media technologies; develop research on the relationship between culture and its dissemination in the media and through new communication services; promote cultural contents in formal and non formal education and the learning of mother tongues as well as of foreign languages (see Article 5 of the UNESCO Universal Declaration on Cultural Diversity);

(SUGGESTED ADDITION TO ANNEX II paragraph 1, just before "promoting culture among young people"): "Protecting and extending the cultural commons: policies that protect and encourage the enriching of the cultural commons; copyleft, General Public License; Creative Commons licenses; policies that protect the public domain; policies that encourage collaborative rather than competitive forms of cultural production; etc." _

Promoting culture among young people: enhance and enforce the rights of the child and vulnerable groups with special educational and cultural needs; encourage the young generation to appreciate the existing diversity of contents and forms of cultural expressions, including expressions of the communities or peoples they form part of;

-- This non-exhaustive list has been elaborated on the basis of the document Cultural Policy for Development – Evaluation of the Stockholm Action Plan 1998, prepared by Professor Jens Cavallin and Professor Tobias Harding from the University of Linköping (Sweden, 2003).

-- Some of the cultural policies mentioned in the above list may be covered by other UNESCO standardsetting instruments. However, they might also be concerned by the present Convention, in particular to the extent that spin-off products such as films, CD-ROMS, videos, books, catalogues, etc. are brought into circulation.

UNESCO normative instruments referred to above comprise the Florence Agreement of 1950 and its Nairobi Protocol of 1976, the Universal Copyright Convention of 1952, the Declaration of the Principles of International Cultural Cooperation of 1966, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, the Convention for the Protection of the World Cultural and Natural Heritage of 1972, the Recommendation concerning the Status of the Artist of 1980, and the Recommendation of Safeguarding Traditional Culture and Folklore of 1989, as well as other conventions recently adopted such as the Convention on the Protection of Underwater Cultural Heritage of 2001 and the Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

Strengthening cultural industries: training schemes for national specialists, cultural administrators and managers; assisting artists, designers and craftspeople by safeguarding and improving the rights of creators;

Enhancing and supporting new and traditional media: support local/national production and distribution; develop innovative funding systems and foster the complementarity between public and private initiatives; support access to the new technologies;

Improving international cooperation and research for cultural policy; support developing countries to consolidate their cultural institutions and to train cultural professionals; encourage

the development of civil society, professional and research networks; increase consultation and coordination among ministers of culture at the regional and international levels; develop comparable statistical data and indicators; and

Mobilizing more human and financial resources for cultural development: increase investment in cultural development; develop fiscal frameworks for cultural activities; promote business support for cultural development; develop public endowment and other revenue earning projects by cultural institutions.

2. To attain such objectives, cultural policies should cover, inter alia, the following areas:

Law, Administration, Finance: Legislation in the field of culture; financing of culture; improvement of socio-economic conditions for those engaged in the field of culture; framework for foundations and regulation of tax exemption; copyright; pension schemes for artists and freelancers; taxes for national and international artists; training for cultural administration; participation in culture for communities, groups and ethnic minorities; cultural decentralization;

(SUGGESTED ADDITION TO ANNEX II, paragraph 2, just before "Arts Education"): "Cultural commons: free/libre open source software; creative commons licenses; support for the public domain, etc."

Arts education: cultural and artistic education; supporting young artists; cultural education for children, youth and adults inside and outside school;

Cultural relations and exchanges: International relations in the field of culture; the running of cultural institutes abroad; exchange between groups and communities within States;

Cultural heritage: Cultural and natural heritage (tangible and intangible)++; involvement of the communities in heritage conservation++; information technology to preserve and sustain cultural heritage++; museums++; archives;

Fine Arts: Music; visual arts; theatre; sculpture; painting;

Traditional arts and handicraft: traditional arts; handicraft; basketry; weaving; ceramics; oral literature++; social and cultural traditions++ (oral expressions, songs, dance, other traditional performing arts); fostering intangible culture++; rewarding living national treasures**;
recognizing and rewarding living national treasures++;

Applied arts: Architecture; design;

Books: Libraries; book policy; publishing; public reading;

Media and Cultural Industries: Television; radio; mass-media; cinema; multimedia and network projects; the arts and cultural industries (film industry, books, music industry, on- and off-line publishing); games, animation; improvement of technical equipment of the cultural sphere; establishing of information banks and broadening the communication sphere; access for minority ethnic groups in the electronic and broadcasting media; Community, recreation and sports: amateur culture; community culture; cultural centres; tourism, sports and youth; recreation;

Values: the development of an ecological conscience and the construction of a pluralistic citizenship; spiritual values and beliefs; languages; as vehicles of cultural values;

Research: The creative knowledges; research on contemporary materials; cultural investigation.

ANNEX III

ARBITRATION PROCEDURE

Article 1 – Establishment and Composition of the Arbitration Tribunal

1. Subject to Article 2 below, in disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two

arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

4. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Director-General of UNESCO shall, at the request of a party, designate the President within a further two-month period.

5. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request for arbitration or acceptance thereof, the other party may inform the Director-General who shall make the designation within a further two-month period.

6. The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

7. The arbitral tribunal shall determine its own rules of procedure.

8. The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence. 9. The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal. Article 2 – Initiation of

the Arbitration

1. A party wishing to have recourse to arbitration (hereinafter called “the claimant”) shall submit its request for arbitration to the UNESCO Secretariat (hereinafter called “the Secretariat”). The request for arbitration shall contain the name of the party against which the claim is filed and the description of the nature and circumstances of the dispute giving rise to the claim.

The Secretariat shall send a copy of the arbitration request and the statement of the claim to the other party (hereinafter called “the respondent”).

2. Within 30 days after the receipt of the aforementioned document from the Secretariat, the respondent shall notify the Secretariat whether or not it accepts recourse to arbitration in accordance with the provisions of this Annex. In case of acceptance, the respondent shall designate an arbitrator and shall communicate to the Secretariat the comments as to the nature and circumstances of the dispute giving rise to the claims submitted by the claimant.

3. Following the acceptance by the respondent, the claimant shall designate an arbitrator within 30 days.

4. If the respondent does not reply to the request of the claimant for arbitration within the deadline as provided in paragraph 2, or expressly rejects the arbitration procedure, the Secretariat shall inform the claimant within 30 days of the deadline that an arbitration procedure cannot take place.

5. Should an arbitration procedure be accepted by the parties, the Secretariat shall assist with the establishment of the Tribunal in accordance with Article 1 above and forward to it the information and statement received by the parties.

Article 3 – Award

1. Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority

vote of its members.

2. The Arbitration Tribunal shall render its final award within six months of the date on which the Arbitration Tribunal is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed six more months.

3. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

4. The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

5. An award shall be made in writing and, unless the parties have agreed upon otherwise, shall specify the grounds on which it is based. Once an award has been made, the Secretariat shall notify to the parties the text signed by the Arbitration Tribunal.

Article 4 – Costs

Unless the Arbitration Tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The Arbitration Tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

ANNEX IV

CONCILIATION PROCEDURE

Article 1 – Conciliation Commission A Conciliation Commission shall be created upon the

request of one of the parties to the dispute. The Commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2 – Members of the Commission In disputes between more than two parties, parties in the same interest shall appoint their members of the Commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3 – Appointments If any appointments by the parties are not made within two months of the date of the request to create a Conciliation Commission, the Director-General of UNESCO shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4 – President of the Commission If a President of the Conciliation Commission has not been chosen within two months of the last of the members of the Commission being appointed, the Director-General of UNESCO shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5 – Decisions The Conciliation Commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6 – Disagreements A disagreement as to whether the Conciliation Commission has competence shall be decided by the Commission.