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Diversity of  
Cultural Expressions

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

Tenth ordinary session  
Paris, UNESCO Headquarters  
12 – 15 December 2016

**Item 7 of the provisional agenda:** Preliminary draft operational guidelines on the implementation of the Convention in the digital environment

The Conference of Parties adopted Resolution 5.CP 12 at its fifth ordinary session, requesting the Committee to continue its work on digital issues and to prepare draft operational guidelines on the implementation of the Convention in the digital environment. This document contains in Annex a proposal for preliminary draft operational guidelines for adoption by the Committee.

Decision required: paragraph 12.

1. Since the adoption of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter referred to as “the Convention”) ten years ago, the digital environment and related technologies have transformed the way in which cultural goods and services are created, produced, distributed and consumed. The arrival of a new generation of connected multimedia devices such as smartphones, tablets and e-readers, the design of new trade models to facilitate the dissemination of cultural content and the emergence of new online businesses represent some of the challenges for public policies addressing the cultural industries. At the same time, not everyone has the necessary infrastructure (including devices, low or no connectivity among others), artists do not always have the technical expertise required and the impact of new trade agreements on the digital cultural industries will take time to measure. Lastly, the lack of concrete evidence to determine whether digital technologies and platforms have indeed made access to culture easier, faster and more affordable for everyone is detrimental to informed systems of governance of culture.

2. Over the past four years, the Convention's governing bodies have discussed the tremendous challenges raised by digital technologies for its implementation.<sup>1</sup> Drawing on these debates, the Conference of Parties requested, during its fifth ordinary session in June 2015, 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 para. 3) for its approval during its sixth ordinary session (June 2017).

### **First formal debate of the Committee on the draft operational guidelines**

3. To enable the Committee's work on the preparation of draft operational guidelines, the Secretariat presented a framework for discussion to the Committee at its ninth ordinary session (December 2015).<sup>2</sup>

4. A rich and constructive debate took place that emphasized the following issues to be taken into account in the guidelines<sup>3</sup>:

- the need for an integrated approach to digital issues due to the rapid growth of markets and economic pressures, that may affect the promotion of the diversity of cultural expressions;
- the recognition that while digital technologies provide an opportunity to ensure quick access to diverse cultural expressions, they also pose a challenge, particularly in an unequal digital environment in which many developing countries lack capacities and infrastructure;
- the inclusion of the principle of Internet universality pursuant to the decision of the General Conference (Resolution 38 C/56);
- promotion of human rights and fundamental freedoms, including artistic freedom and freedom of expression;
- affirmation of the States' sovereign right to introduce policies to promote the diversity of cultural expressions in the digital environment while facilitating access to other cultural expressions;
- fair remuneration for artists and creators in the digital environment, particularly in the music and publishing industries, where artists feel that their remuneration is under threat as well as a fair balance between the rights and interests of all stakeholders, including both the rights-holders and users of cultural content;

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<sup>1</sup> See 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; detailed summary record of the eighth ordinary session of the Committee, CE/15/9.IGC/3, para. 305-348; working document “Current state and action to address the challenges posed by digitization” (CE/14/8.IGC/12), eighth ordinary session of the Committee, December 2014; detailed summary record of the seventh ordinary session of the Committee, CE/14/8.IGC/3, para. 351-358.

<sup>2</sup> See the working document “Towards Operational Guidelines on digital issues” (CE/15/9.IGC/7), ninth ordinary session of the Committee, December 2015.

<sup>3</sup> See the draft detailed summary record of the ninth ordinary session of the Committee, DCE/16/9.IGC/3, para. 127-181.

- international cooperation to strengthen and adapt international instruments particularly within the context of cultural and trade agreements and public policies related to cultural industries in the digital environment;
- preferential treatment measures to strike a balance for the least developed countries so that their artists and cultural professionals, their cultural goods and services and their languages may be promoted internationally through the use of digital technologies;
- copyright and related measures to address online piracy;
- promoting the objectives and principles of the Convention in trade negotiations and agreements;
- the essential participation of all members of society in the digital environment in order to contribute to the diversity of cultural expressions, particularly social groups targeted by the Convention, with an emphasis on gender equality;
- the importance and the need to monitor and measure the exchange of cultural goods and services, and to share good practices on fiscal issues relating to their trade through online distribution platforms;
- the 2030 UN Sustainable Development Goals (SDGs);
- the influence of data and algorithms on the production and distribution of cultural goods and services and the issue of media diversity.

5. Following this constructive debate, the Committee requested the Secretariat to prepare preliminary draft operational guidelines on digital issues, taking into consideration the debates from the ninth ordinary session as well as the work undertaken by the governing bodies over the past four years. The Committee also requested that the Secretariat continue its work on digital issues and their implications for the implementation of the Convention by presenting to it, at its tenth ordinary session, the study on the Convention and digital technologies in Spanish-speaking countries, as well as the results relevant to digital issues drawn from the consultations on Articles 16 and 21. The Committee also requested that the Secretariat continue its efforts to raise extra-budgetary funds in order to conduct studies on the Convention and digital issues in other regions, particularly in Africa and the Arab States (Decision 9.IGC 7).

### **Implementation by the Secretariat of the decisions of the governing bodies**

6. In order to comply with Decision 9.IGC 7 and with Resolution 5.CP 12 and 14, the Secretariat worked on preliminary draft operational guidelines concerning the implementation of the Convention in the digital environment (proposed in Annex). In addition, a study on the impact of digital issues in Spanish-speaking countries was conducted with the support of Spain (see information document DCE/16/10.IGC/INF.4). Efforts continue to raise funds to conduct similar studies for Africa and the Arab States. The Secretariat has also published a study on the impact of Articles 16 and 21 as well as 17 cases on the application of these two Articles in bilateral and regional trade agreements, including on issues related to e-commerce (see information document DCE/16/10.IGC/INF.3).

7. The preliminary draft operational guidelines were drafted by the Secretariat with two experts from the Expert Facility<sup>4</sup>. Building on the work of the governing bodies, the preliminary draft proposal presented in Annex takes into account the many debates, decisions and resolutions of the governing bodies over the past four years as well as the legal provisions of the Convention, its operational guidelines approved since 2009, and the principle of technological neutrality.

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<sup>4</sup> Members of the Secretariat worked together with two experts from the Convention's Expert Facility, namely, Ms Véronique Guèvremont (Canada) and Mr Octavio Kulesz (Argentina) who contributed to the debates of the governing bodies over the past four years as well as to the monitoring framework to determine the impact of the Convention in the digital environment.

8. It is recalled that the operational guidelines do not go beyond what the Convention stipulates and that their goal is not to reopen the text of the Convention. As requested and discussed by the Parties, they aim to provide a reading of the Convention and its existing guidelines with regard to digital issues and related technologies. References to the aspects of creation, production, distribution/dissemination, access and use, including enjoyment, draw upon the objectives and principles of the Convention, which calls upon Parties to adopt policies and measures at different stages of the value chain.

9. The structure of the preliminary draft guidelines follows the Convention's monitoring framework as presented in the Global Report, *Re|Shaping Cultural Policies: a decade promoting the diversity of cultural expressions for development* and is made up of the following sections:

- General considerations
- Guiding principles
- Parties strengthen systems of governance for culture in the digital environment
- Rebalancing the flow of cultural goods and services
- Integration of culture in sustainable development frameworks
- Role of civil society
- Gathering and sharing information and good practices
- Role of the UNESCO Secretariat

10. With the aim of enabling the Parties to undertake consultations on the preliminary draft of the operational guidelines, the Secretariat has made every effort to provide them with the working document more than three months before the statutory deadline (12 November 2016).

11. The Committee is invited at this session to adopt draft operational guidelines for the implementation of the Convention in the digital environment. For this purpose, the Committee is invited to use the proposed preliminary draft annexed hereto as a basis for its discussion.

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

#### **DRAFT DECISION 10.IGC 7**

*The Committee,*

1. *Having examined document DCE/16/10.IGC/7 and its Annex, as well as document DCE/16/10.IGC/INF.4;*
2. *Recalling Resolutions 5.CP 12, paragraph 3, 5.CP 14, paragraph 4 and 4.CP 13, paragraph 6, of the Conference of Parties, as well as its Decisions 6.IGC 17, paragraph 5, 7.IGC 5, paragraph 7, 7.IGC 13, paragraphs 3 and 7, 8.IGC 12, paragraph 7, and 9.IGC 7;*
3. *Adopts the draft operational guidelines on the implementation of the Convention in the digital environment, annexed to this Decision;*
4. *Requests the Secretariat to submit the draft operational guidelines on the implementation of the Convention in the digital environment to the Conference of Parties' for approval at its sixth ordinary session in June 2017.*

## ANNEX

### **Preliminary draft operational guidelines on the implementation of the Convention in the digital environment**

#### **General considerations**

1. These guidelines provide a strategic framework for understanding, interpreting and implementing the Convention on the Protection and Promotion of the Diversity of Cultural Expressions in a digital environment where cultural goods and services are created, produced, distributed, disseminated, consumed and/or stored electronically. These goods and services transmit cultural expressions through a computer program, a network, a text, a video, an image, an audio recording or other digitally- encoded products.
2. The distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning does not change in the digital environment. Consequently, 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.
3. There are significant differences in the rate at which digital technologies are adopted and accessed around the world. The resulting digital divide exists globally as well as between urban and rural areas in both the global North and South. This has an impact on the way in which cultural goods and services are created, produced, distributed and accessed in the digital environment.
4. The accelerated expansion of social networks and user generated content (UGC), the explosion of data and the proliferation of connected multimedia devices in the hands of the users have had a huge impact on the creative sector in all parts of the world. Technological changes have also led to the emergence of new players and new logics, and will continue to provide new challenges and opportunities to promote the diversity of cultural expressions and, in particular, to design relevant public policies.
5. Protecting and promoting human rights and the freedom of expression, information and communication in the digital environment means supporting Internet universality principles that promote a Human Rights-based, open internet, which is accessible to all and characterised by multistakeholder participation.
6. Recalling that technological neutrality is affirmed as a principle in the Convention, these guidelines shall be interpreted and applied in relation to the Convention as a whole, thus promoting a transversal approach to the diversity of cultural expressions in the digital environment. They complement all relevant provisions of the Convention and existing guidelines that refer to digital issues and new information and communication technologies.
7. All stakeholders are encouraged to respect and promote the Convention and these guidelines, which are interlinked with the United Nations Sustainable Development Goals (2030) and the United Nations Guiding Principles on businesses and human rights. They address not only public authorities and non-governmental organisations but also private sector cultural and creative industries, including global digital platforms and actors.

## Guiding Principles

8. Complementing the goals and principles set out in Articles 1 and 2 of the Convention, these guidelines:
  - 8.1 reaffirm the Parties' sovereign right to formulate and implement policies and measures for the protection and promotion of the diversity of cultural expressions in the digital environment;
  - 8.2 promote equitable access and balance in the flow of digital cultural goods and services, in particular through the application of preferential treatment provisions for works created or produced by artists and cultural professionals from developing countries;
  - 8.3 recognize the complementarity of economic and cultural aspects of sustainable development in national digital strategies as well as within international assistance programmes that support digital programmes and projects;
  - 8.4 promote international cooperation for development to enable greater access to digital technologies, to develop related skills and competencies and to support mechanisms that are required for the emergence of dynamic digital cultural and creative industries;
  - 8.5 promote respect for fundamental freedoms of expression, information and communication as pre-requisites for the creation, the distribution and access to diverse cultural expressions. This includes promoting artistic freedom as a corollary to freedom of expression, the social and economic rights of artists working in the digital environment and connectivity of all partners to partner with those of their choice;
  - 8.6 promote respect for human rights in the digital environment, including gender equality and the empowerment of women and girls through support for their participation in the digital cultural and creative industries as creators, producers and consumers of digital cultural expressions.

## Parties strengthen systems of governance for culture in the digital environment

9. Pursuant to Articles 5, 6, and 7 of the Convention and to the Guidelines thereto, Parties shall adopt or update existing policies and measures to protect and promote the diversity of cultural expressions in the digital environment paying due attention to the special circumstances and needs of women as well as various social groups.
10. These policies and measures shall address all areas from creation, production, distribution, dissemination, as well as access and enjoyment, taking into account the profound changes to the value chain and the arrival of new actors.
11. Parties may update their legislative and regulatory frameworks for public service media to promote the diversity of cultural expressions in the digital environment, taking into account the increasing convergence of operations across the value chain.
12. Parties are encouraged to establish interministerial groups on digital issues that would bring together representatives of relevant Ministries including those of Culture, Research, Trade, Industry, Telecommunications, and involve the Convention's contact point as well as civil society representatives in their work.
13. At the stage of **creation**, Parties shall aim to support new forms of creativity in the digital environment, including real-time interactivity. This may include national, regional or local policies and programmes and funding schemes that:

- 13.1 provide direct support to artists and other cultural professionals working with digital tools;
- 13.2 establish new training programmes and higher education curricula for artists in the use of digital technologies;
- 13.3 provide spaces dedicated to digital creativity and innovation that enable artistic experimentation and collaboration such as incubators and laboratories, artist residences and centres and promote international cooperation through networking activities;
- 13.4 promote cooperation among artists, educational and cultural professionals working in the cultural and creative industries, with actors in the digital environment, including designers, programmers, engineers, scientists;
- 13.5 recognize and value the work of creators in the digital environment, by promoting:
  - equitable/fair remuneration for artists;
  - transparency in the distribution of income between digital distributors, ISP (Internet Service Providers) and rights holders and among rights holders;
  - access to necessary bandwidth;
  - intellectual property rights and allowing exceptions for collective bargaining of digital rights; and
  - electronic legal deposit systems to archive their works.
14. At the stage of **production**, Parties shall aim to support the modernisation of the cultural and creative industry landscape. Measures to promote the production of cultural expressions in the digital environment should aim to:
  - 14.1 promote digitization and the incorporation of technological tools into the cultural and creative industries' production processes, in particular among micro, small and medium-sizes companies;
  - 14.2 provide support to cultural entrepreneurs, local production companies or incubators wishing to expand their activities in the digital cultural and creative industries;
  - 14.3 promote new forms of financing for cultural and creative industries in the digital environment;
  - 14.4 recognize the larger research and development aspect of artists' using digital technologies as a benefit to society in producing new and different communication tools.
15. At the stage of **distribution/dissemination**, Parties shall aim to support and provide opportunities for works to be distributed in the digital environment as well as promote and consolidate the development of emerging and local digital markets. Measures at this stage of the value chain should aim to:
  - 15.1 ensure diversity in digital media including the multiplicity of digital distributors of cultural goods and services and digital actors (online platforms, Internet service providers, search engines, social networks), while also ensuring visibility and discoverability for national and local cultural content;

- 15.2 promote transparency on the way in which these digital distributors and actors collect and use data that generate algorithms, and identify good practices that ensure a diversity of cultural expressions in a digital environment;
  - 15.3 work toward the standardisation and interoperability of formats, protocols and metadata in order to achieve diverse digital environments for the distribution of cultural goods and services;
  - 15.4 adapt and modernise online transaction mechanisms and processes in order to facilitate e-commerce;
  - 15.5 encourage a fair, transparent and ethical trade in the exchanges of cultural goods and services in the digital environment;
  - 15.6 develop the legal framework for online distribution of cultural goods and services such as contractual arrangements and measures to protect against online piracy.
16. At the stage of **access**, Parties shall aim to ensure freedom of access to diverse cultural expressions as well as to increase participation in cultural life in the digital environment. This includes measures to ensure access to digital technologies, know how and diverse cultural goods and services and should aim to:
- 16.1 introduce greater transparency and readability of indexing modes and content referencing in order to ensure that the digital mechanisms (recommendation algorithms) that determine the content available to the users provide a range of diverse digital cultural expressions;
  - 16.2 invest, develop and strengthen telecommunications infrastructures to improve access to diverse digital cultural expressions;
  - 16.3 support linguistic diversity and translation interfaces in the digital environment;
  - 16.4 encourage public cultural institutions to provide online access to diverse cultural expressions;
  - 16.5 supply the necessary digital equipment to public institutions such as schools, libraries and cultural centres;
  - 16.6 set up programmes for digital literacy, public education and awareness on using the Internet and on mastering digital tools.

### **Rebalancing the flow of cultural goods and services**

17. In the context of international solidarity and cooperation, Parties shall introduce preferential treatment provisions to ensure more balanced flows of digital cultural goods and services from developing countries pursuant to Article 16 of the Convention. Parties may:
- 17.1 improve the digital distribution of cultural goods and services produced by artists and cultural professionals from developing countries, including through artistic and cultural collaboration, co-production and co-distribution agreements;
  - 17.2 take into account the provisions of international trade agreements they have concluded and their respective mechanisms with a view to offer preferential treatment in favour of cultural goods and services of developing countries in the digital environment.

18. In order to foster an integrated approach in the area of culture, trade and investment in the digital environment, the promotion of the objectives and principles of the Convention in other international fora, pursuant to Article 21 of the Convention, requires Parties to promote:
  - 18.1 complementarity and coherency among the various legal instruments addressing the diversity of cultural expressions in the digital environment;
  - 18.2 transparency in bilateral, regional or multilateral negotiations having an impact on digital goods and services;
  - 18.3 close coordination between national authorities responsible for culture and trade, as well as other relevant public authorities and bodies;
  - 18.4 the introduction of cultural clauses in international bilateral, regional or multilateral agreements, including preferential treatment clauses, with particular attention to the status of e-commerce that should recognize the specificity of cultural goods and services;
  - 18.5 the incorporation of explicit references to the Convention and these Guidelines on the digital environment in trade and investment agreements as well as modalities of implementation including the possibility of designing new public policies as required.

#### **Integration of culture in sustainable development frameworks**

19. In the context of the UN Sustainable Development Goals 2030 and pursuant to Articles 13 and 14 of the Convention, Parties shall elaborate national development policies and international assistance programmes that recognise the complementarity of economic, social, environmental and cultural aspects of development in the digital environment.
20. Parties shall integrate culture into their information and communication technologies (ICTs) plans and digital strategies, by including references to the Convention and to its aims and principles.
21. At the *national* level, measures should aim to:
  - 21.1 foster the development of viable cultural and creative industries that work in the digital environment at the local, regional and national levels;
  - 21.2 assess specific technological needs in order to promote geographical equity in the distribution of cultural resources as well as equitable access to those resources for various individual and social groups, as foreseen in Article 7 of the Convention;
  - 21.3 encourage inter-ministerial collaboration to integrate culture into the programmes of other ministries working on digital matters;
  - 21.4 reinforce and improve development policies in the digital environment in other sectors such as education, public health, security, research, and urban planning.
22. At the *international* level, measures should aim to support developing countries by:
  - 22.1 updating cultural cooperation agreements so that they take into account the impact of digital technologies, particularly in the implementation of co-production and co-distribution agreements;
  - 22.2 developing new forms of cooperation that facilitate the co-production and co-distribution of networked artistic works, unaffected by distances between creators;

- 22.3 prioritizing bottom-up cultural cooperation initiatives involving local actors, over top-down initiatives which, for example, restrict them to simple donations in kind (of equipment, software, content and connectivity);
- 22.4 supporting capacity building activities, as well as the transfer of knowledge, environmentally sound technology (hardware and software) and infrastructure;
- 22.5 ensuring equitable access to resources and digital cultural content through educational and public awareness activities on the uses of the Internet and digital tools;
- 22.6 supporting projects linked to the application of the Convention in the digital environment, particularly through regular voluntary contributions to the International Fund for Cultural Diversity (IFCD).

### **Role of civil society**

23. Pursuant to Article 11 of the Convention and its Guidelines, partnership with civil society organizations is essential in the digital environment, and may take the form of:
  - 23.1 initiatives to raise awareness of the potential of the digital environment through the use of digital technologies (such as social networks, mobile applications, online discussion platforms), the organization of events and the creation of communication tools (such as shared-work platforms, real-time interactive exchange platforms, blogs, electronic information bulletins);
  - 23.2 efforts to consult actors in the cultural sector on digital matters, and to share the results with the Convention's governing bodies through the submission of written documents (information documents) and oral contributions to the Conference of Parties and the Intergovernmental Committee;
  - 23.3 active contribution to the preparation of the Parties' quadrennial periodic reports, by providing relevant information on the opportunities and challenges for artists and other professionals and cultural practitioners arising from digital technologies;
  - 23.4 collaboration between civil society representatives, including academics, researchers and experts, to provide input for reflection within other international organizations and to directly or indirectly focus on issues relating to the diversity of cultural expressions in a digital environment.

### **Gathering and sharing of information and good practices**

24. When implementing Articles 9 and 19 of the Convention, Parties shall:
  - 24.1 systematically include information in their quadrennial periodic reports on policies to address the opportunities and challenges linked to the protection and promotion of the diversity of cultural expressions within a digital environment;
  - 24.2 encourage the collection of statistics on the uses, practices and markets for digital culture;
  - 24.3 support discussions in developing countries on the opportunities and challenges for the diversity of cultural expressions in the digital environment.

## **Role of the UNESCO Secretariat**

25. Pursuant to Article 19 of the Convention, the Secretariat, in collaboration with the Parties, civil society and relevant international organizations shall:
  - 25.1 gather, analyse and disseminate information and statistics, on the protection and promotion of the diversity of cultural expressions in the digital environment, including on related technological developments;
  - 25.2 set up and maintain, through its Knowledge Management System, a list of good practices;
  - 25.3 strengthen dialogue in co-operation with the Parties and civil society with other international actors concerned by digital technologies, particularly those responsible for trade, intellectual property and telecommunications, to raise awareness of the Convention and share information with all Convention stakeholders;
  - 25.4 encourage discussions among Parties and report to the governing bodies on the opportunities and issues for promoting the diversity of cultural expressions in the digital environment.

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