

Digitizing Cultural Heritage in Bulgaria

A Survey of Intellectual Property-related Experiences and Practices

Prepared for the
World Intellectual Property Organization (WIPO)
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EXECUTIVE SUMMARY

The present survey highlights the role intellectual property (IP) plays in the preservation of the Bulgarian culture and its unique forms of expression. As many new and challenging questions arise when digitizing intangible cultural heritage (ICH), the use of IP tools to protect, preserve and promote ICH becomes vital.

The Bulgarian culture comprises a large and dynamic diversity of ICH as it is based on the cultures, traditions, customs and cultural expressions of the different ethnic and ethnographic communities, which have historically inhabited the country, and of the Bulgarian minorities living abroad. Although each community has its distinct identity and cultural characteristics, they all consider themselves “Bulgarian” and this has been an important prerequisite for the development of regional folklore in the Balkan region.

Bulgaria has, in the course of time, developed a national legislative system and ratified certain international conventions to administer its cultural heritage. The country is presently also amending and supplementing the recently adopted Cultural Heritage Act (2009). This Act introduces a new scope of “cultural heritage”, so as to include tangible and intangible, immovable and movable heritage as a combination of cultural values, which carry the historical memories of the country and have a scientific and/or cultural importance. ICH is generally considered as “public domain” and its utilization and practice do not require any authorization from or payment to its custodian or original creator. IP issues do however play an important role in the research, collection, documentation, digitization, preservation and promotion of ICH.

This survey directly addresses these issues and provides an overview of best practices on how IP could add value to the preservation, protection and promotion of ICH in Bulgaria. It maps out the inter-institutional collaborations, participation of the private and civil structures and role of the State and its national legislative system. The findings could not only be a fruitful base for future scientific works and practical research, but also perhaps add value to the development of a strategy for digitizing cultural heritage, for the benefit of the Bulgarian society. Finally, the survey comes with a “supplement”, which provides a historical overview of Bulgaria and the cultural groups inhabiting the country.

ACRONYMS

The following acronyms are used throughout this survey:

ICH	intangible cultural heritage
IP	intellectual property
LHT	living heritage treasures
TCEs	traditional cultural expressions
TK	traditional knowledge
BAS	Bulgarian Academy of Science
IEM	Institute of Ethnography and Museum
NAF	National Archive Fund
NCMGFA	National Center for Museums, Galleries and Fine Arts
NCICH	National Center for Intangible Cultural Heritage
NEM	National Ethnographic Museum
RHM	Regional Historical Museums
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNWE	University of National and World Economy
WIPO	World Intellectual Property Organization

PREFACE

I. INTRODUCTORY COMMENTS

Cultural heritage, and cultural expressions as its form of manifestation, embodies the historical and present day identity, skills, beliefs and values of Bulgaria. Although many “ethnic” and “ethnographic” communities historically settled in the country and are characterized by a specific cultural identity, expressed through distinctive performances, rituals and customs, they all consider themselves as “Bulgarian”.

Cultural heritage is generally not only of cultural significance, but also represent potential economic value. Particularly with new technologies and the Internet, it has become of increasing interest for the Bulgarian cultural heritage sector. When cultural heritage, regardless of its form, is a means to create a new cultural work, then it not only holds the promise of economic benefits but also the insurance of its preservation.

The legal system governing cultural heritage in Bulgaria was built on several national laws and international conventions, and was recently enriched with the adoption of the Cultural Heritage Act (2009). This Act defines “cultural heritage” as “tangible and intangible, moveable and immoveable, as bearers of historic memory, national identity and which have a scientific or cultural value”. Although the scope of protection is hereby improved and now includes “intangible” cultural heritage (ICH), the Act is presently being amended and supplemented, since it may not, as it currently stands, be able to solve all problems related to the protection of cultural heritage.

Bulgaria has also undertaken many other initiatives in protecting, preserving, promoting the country’s cultural heritage, including ICH. Active actors in the cultural heritage sector are the State, civil structures, community and private parties, and other cultural heritage experts. Cultural heritage institutions in Bulgaria have already embarked on, for instance, digitization of their collections. These institutions are therefore not only users of cultural works created and maintained by tradition bearers but they also produce works, such as catalogues, databases, photographs, scientific research works and other educational materials.

Intellectual property (IP) questions are central to these issues. While ICH may generally be regarded as “public domain”, questions on who owns the rights over new revitalizations, interpretations and adaptations of ICH and why should someone have a special right on them should be asked. Also, what role does IP play in law, policy and practice related to the preservation, documentation, digitization and promotion of ICH? It is not the objective of this survey to answer these questions, but rather to present information on experiences and practices in Bulgaria that may be useful for policymakers and others in considering these questions further.

It may furthermore be interesting to note that not all works in a collection are necessarily protected as IP, nor are they universally regarded as “public domain”. One specific sub-set of IP issues that a cultural heritage institution may face relates to collections of “*traditional*” *cultural expressions* (TCEs) and “*traditional*” *knowledge* (TK). Cultural communities may voice concerns that sometimes activities by cultural heritage institutions do not take adequate account of their rights and interests as tradition bearers and that documenting and digitizing a traditional song, for example, could make it vulnerable to distortion and misappropriation. The development of a strategy consisting of proper procedures and methodologies for digitizing ICH may therefore be useful. There is growing interest in Bulgaria in exploring the appropriate use of the country’s cultural heritage as a source of new ideas, new creations and, eventually, of economic development.

The particular focus of this survey is the cultural heritage collections of museums, archives and libraries in Bulgaria and how IP issues arise and are managed when such collections are accessed and used for educational, safeguarding, creative and commercial purposes. It should be noted that mainly conventional IP issues are dealt with in this survey, although some experiences with managing IP in relation to TCEs are also reported on. This survey forms part of a series of surveys prepared for the World Intellectual Property Organization (WIPO) within the context of its Creative Heritage Project.¹

¹ See <http://www.wipo.int/tk/en/folklore/culturalheritage/index.html>

II. OBJECTIVES AND SCOPE OF SURVEY

The purpose of this survey is to provide empirical information on experiences and current practices amongst cultural heritage institutions in Bulgaria with IP issues, especially in relation to the digitization of their collections, and on the role of IP in protecting, preserving and promoting ICH in Bulgaria. The survey provides information on questions such as:

- What IP questions arise for museums, galleries, archives, libraries and other storehouses of ethnographic and other cultural materials in Bulgaria?
- How do cultural heritage institutions deal with these issues? To what extent do they employ ethical codes and other “soft” instruments to deal with those questions?
- Do cultural heritage institutions have to deal with traditional cultural expressions (TCEs) regarded as belonging to an ethnic or other local community, whether in or beyond Bulgaria’s borders? What relationships, if any, do these institutions have with such communities?
- How should cultural heritage be used without this leading to its distortion?

In April 2008, WIPO conducted a mission to Sofia, Bulgaria, during which these issues were discussed with senior officials from the Ministry of Culture. Apart from assisting policymakers and decision takers in providing an overview of the cultural heritage sector of Bulgaria, it is also hoped that this survey will also be of interest and assistance to:

- Local communities, whose folk art needs to be documented and digitized for safeguarding and/or commercial purposes for their own direct benefit;
- Cultural organizations, whose purpose is the creation, distribution and preservation of cultural valuables, including folklore;
- Museums, libraries, galleries and archives, which would be better equipped to manage IP issues to advance their safeguarding, educational and commercial mandates and aspirations; and
- Artists, researchers and students, working in the field of ICH.

The survey is however limited to analyzing the relationship between IP and ICH and also limited to laws, programs, experiences and practices in Bulgaria. This survey is not intended

to advance particular solutions to these issues, or to offer critique on governmental or non-governmental practices. In fact, the survey shows that many of the experiences in Bulgaria are exemplary and could provide a basis for undertaking more extensive digitization projects.

III. RESEARCH METHODOLOGY

The research methodology used in preparing this survey comprised online research on the relevant legislations, policy documents and other materials related to Bulgarian cultural heritage and the different cultural groups inhabiting the country. Requests were submitted to the national competent authorities, including the Ministry of Culture, Copyright Office, Patent Office and other civil structures to provide access to more relevant documentations. A questionnaire,² together with a short explanatory letter, was sent to cultural heritage institutions and experts. Interviews were also conducted with several cultural heritage specialists.³ The information collected and received formed a good basis for the preparation of this survey.

The development of the survey was further enhanced by the author's participation at the *WIPO Roundtable on Building Community Capacity: a Roundtable on Practical Initiatives on Intellectual Property and Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources*,⁴ which took place from December 10-12, 2007. The author presented a report⁵ on the state and perspectives of cultural heritage in Bulgaria. The Roundtable also allowed for discussions on the different political and social aspects encountered in other countries where similar WIPO studies⁶ had already been concluded. These discussions were very useful and eventually led to this final survey report.

IV. STRUCTURE OF THE SURVEY

This survey provides an insight on the historical development of the Bulgarian cultural heritage, identifies the major competent authorities active in the cultural heritage sector, and

² See Annex III for a copy of the questionnaire.

³ See Annex II for a list of those consulted.

⁴ See http://www.wipo.int/meetings/en/2007/grtkf_ge_07/

⁵ For the author's presentation, please see

http://www.wipo.int/export/sites/www/tk/en/culturalheritage/pdf/borissova_geneva.pdf

⁶ See <http://www.wipo.int/tk/en/culturalheritage/surveys.html>

analyzes the national laws governing cultural heritage, with a particular emphasis on the role that IP plays in protecting, preserving and promoting cultural heritage and in relation to digitization activities.

The survey is divided into three main parts. The first part addresses the history that shaped the Bulgarian cultural heritage. It also provides an overview of the competent authorities that are active in the cultural heritage sector, what role they assume and what kind of activities they undertake. The second part analyzes the legal system of Bulgaria relevant to the protection, promotion, dissemination of cultural heritage. It also discusses the relevance and role of the IP system. The third part then unpacks the specific IP issues involved in the digitization of cultural heritage.

The survey comes with a Supplement,⁷ which provides a historical overview of Bulgaria and the cultural groups inhabiting the country.

V. ABOUT THE AUTHOR

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⁷ Available at
http://www.wipo.int/export/sites/www/tk/en/culturalheritage/casestudies/borissova_supplement.pdf



**PART ONE: AN OVERVIEW OF
CULTURAL HERITAGE IN
BULGARIA**

Objectives of Part One:

1. Review the Bulgarian cultural heritage
2. Identify the competent institutions dealing with cultural heritage
3. Describe the institutional competencies and interdependence
4. Review initiatives or projects done in that field

CHAPTER I: CULTURAL HERITAGE AND BULGARIA

I. BULGARIAN CULTURAL HERITAGE

As the result of its peculiar history, the cultural heritage of Bulgaria comprises a mixture of the influences, lifestyle, traditions and traditional practices of both the historical settlers and Bulgarian communities living abroad.⁸ Among the “Bulgarians” today, there still exists several ethnographic and ethnic groups.⁹ Whilst members of an ethnic group share a long history of traditions and customs, they may still form part of a larger ethnographic group. Ethnographic groups comprise members of the different ethnic groups within a socioeconomic region.¹⁰

As Bulgarians, they uphold both cultures, their own culture of origin and the national traditions, customs and rituals. The Bulgarian culture highly values the family, its structure and the architectural handicrafts used for the houses.¹¹ Today several authentic rural places¹² are being preserved and used as natural storehouses of the Bulgarian cultural heritage but they remain accessible to the public at large. Traditional costumes, folkloric instruments and different types of crafts and arts can be found there. Visitors can also drink traditional coffee, listen to folkloric music, watch performances and dances of folklore and buy legal copies of audio and audiovisual recordings thereof. These visitors, however, who are mainly users of folklore themselves, are also allowed to record any live performances and dances themselves without explicitly having to ask for permission and can distribute their recorded materials accordingly.¹³

⁸ For a detailed historical overview of Bulgaria and the cultural groups, see Supplement to this survey report at http://www.wipo.int/export/sites/www/tk/en/culturalheritage/casestudies/borissova_supplement.pdf

⁹ Ethnic groups in Bulgaria are the Armenians, Turks, Pomacks, Gagaouz, Karakachans and Gypsies (Romany), and the ethnographic groups are the Shopps, Dobrudjas, Tracians, Polians, Hurtzoias and Erliis, Macedonians, Rupans and the Balkans.

¹⁰ Bulgaria has six socioeconomic regions.

¹¹ A house can, for instance, reflect the self-awareness and traditions of an ethnographic group member as the architectural handicraft used for the house symbolizes that member’s traditional day-to-day life. The houses also differ among each ethnographic group, making them part of the national folklore and intangible heritage.

¹² These places include the Old Plovdiv, the Old Part of Veliko Turnovo, Arbanassi, Etura, Tryavna, Bojentzi, Nessebar and Sozopol.

¹³ Two pertinent IP questions arise here: i) what can be photographed, and ii) to what extent can the photographs be used, i.e. for personal or commercial use or both. In Bulgaria, often one could photograph all items from the collections of ethnographic museums without explicitly asking for permission or paying a certain fee. This “unwritten rule”, however, only applies to museums that do not charge an additional tax for

Bulgarian cultural heritage includes the intangible and tangible, immovable and movable heritage, which are of significant historical, scientific and national importance. For instance, Bulgarian folk art, whilst simultaneously developed, symbolizes both intangible and tangible values and is embodied, amongst others, in ornaments, belts, necklaces and rings on folklore dresses. In certain situations, it exists alongside the traditional “*posuda*” for the performance of ceremonial rituals. Another example is the pendants, gold and silver coins, which draw a particular interest for the “*nomizmati*” and are a precondition for smuggling as well.

The ethnic and ethnographic diversity allows the Bulgarian cultural heritage, despite the country’s unique religious (Christian and Muslim) traits, to form part of the regional folklore, specifically belonging to the Balkan Peninsula countries. The Bulgarian cultural heritage thereby possesses, to a certain extent, characteristics and customs that are typical from this Balkan region. Interestingly however, there seem to be no special policies in place that regulate access to and utilization of the regional folklore. Balkan folklore is considered as “public domain” albeit people do morally recognize the country of origin for certain creations.

II. COMPETENT AUTHORITIES DEALING WITH CULTURAL HERITAGE

This part of the survey covers the institutional system governing the Bulgarian cultural heritage, but does not cover the national reserves.¹⁴ The cultural institutions selected for this survey are the ones particularly responsible for documenting, preserving and disseminating cultural heritage. They are also in charge of providing access and establishing policies on how their collections could be used.

Bulgarian cultural institutions are largely independent entities, they, however, frequently collaborate through networking¹⁵ and maintain balanced relationships with one another.

these pictures taken. The type of policies employed by a museum depends largely by the museum’s relative autonomy in terms of internal discipline and regulations. Issues such as the IP rights embed in photographic materials taken by participants and the means of distributing these materials, will be discussed further in the second part of this survey.

¹⁴ National reserves are expressly excluded as these comprise the natural and cultural reserves. The latter is the parts of the country where people still enjoy the traditional way of living. These places, however, tend to also serve as tourist attractions.

¹⁵ In Bulgaria, there is a well-functioning network of private galleries promoting ICH.

They are established in a normative manner and consist of the following competent authorities: i) state authorities, ii) local authorities, and iii) civil structures.¹⁶

A. State Authorities

State authorities are generally responsible for monitoring and balancing the activities of all (profit and non-profit) institutions active in the cultural heritage sector.

1. Tangible Cultural Heritage

The main state authority in charge of the development, management and control of tangible cultural heritage is the *Ministry of Culture*.¹⁷ The Ministry is supported by the *National Union for the Preservation of Cultural Monuments*, a consulting agency responsible for issues related to immovable cultural monuments. Members of this Union comprise representatives of art unions, branches and organizations as well as individual artists and experts.

On preservation and policy development issues related to immovable cultural heritage, the Ministry is supported by its own inspection body¹⁸ and another state institution, the *National Institute for Cultural Monuments*. This Institute is responsible for the documentation, inspection and registration of immovable cultural monuments. It also manages and supports the *National Archive Fund* (NAF)¹⁹ for these monuments. No digitization work on tangible cultural heritage has, however, been done yet, as at present, the focus tends to be on registering private collections.

2. Protected Territories (including Cultural Reserves)

The *Ministry of Regional Development and Public Works* is responsible for the protection of natural territories,²⁰ whilst preservation activities of these territories are managed by the *Ministry of Environment and Water of Bulgaria*, in association with the *Executive Environment*

¹⁶ According to Bulgarian law, museums can either be state, local or private institutions.

¹⁷ See <http://mc.government.bg/>

¹⁸ This inspection body of the Ministry supervises the compliance with the provisions of the national laws on cultural heritage and practices related to archaeological researches, preservation, protection and restoration of immovable heritage, and implementation of concluded concession contracts.

¹⁹ For more information on the National Archive Fund (NAF), see Part II of this survey.

²⁰ These territories are distinguishable by their specific rural structure, which represents a natural environment of cultural monuments.

Agency. The natural fields with their cultural monuments are being preserved and protected in a way that coincide with the interest of society and efforts related to the preservation of Bulgarian cultural identity and heritage.

3. Intangible Cultural Heritage

The Ministry of Culture, in collaboration with several competent state and municipal authorities,²¹ also administers preservation activities and manages a register of intangible cultural heritage (ICH). Competent departments within the Ministry in this field are the *Department for Cultural Policy*, *Department for Museums and Galleries* and *Department for Copyrights and Neighboring Rights*. There furthermore exists a national council to the Ministry mandated to make recommendations on, amongst others, the implementation of international laws in the field of ICH and establishment of national preservation systems.

Research and promotion of ICH are conducted by the *Bulgarian Academy of Science (BAS)*.²² Its objective is to contribute to the development of world science in accordance to human values, national traditions and interests and to assist in the accumulation of spiritual values of the nation and its welfare. The BAS consists of a *Scientific Archive* and the following institutes²³:

Scientific Archive

The Scientific Archive is a specialized independent juridical entity, which became part of the National Archive Fund (NAF) in 1994. As the Scientific Archive of the BAS and a state archive of NAF, the Archive is responsible for:

1. Combining archival documents and materials from each institute, personal funds, and corresponding articles written by scientific researchers for the BAS;
2. The scientific technical processing and investigation of the value of archival documents and materials and of their restoration;

²¹ Other competent authorities include the Holy Synod of the Bulgarian Orthodox Church and the civil structures. These bodies form part of the national system for preserving cultural heritage under the Law on the Protection and Development of Culture, DV 50/99.

²² See <http://www.bas.bg/>

²³ Note that each institute is an independent juridical entity, which may realize revenues for its scientific research and educational activities.

3. Managing the use of archival documents and materials for scientific research, information and other purposes, and managing the preparation of publications and exhibitions on these documents and materials; and
4. Methodologically coordinating the documentation and archival activities of archives of the institutes with regard to materials developed by their scientific researchers. These archives are thus all connected back to the Scientific Archive.²⁴

*Institute of Folklore*²⁵

Established in 1973,²⁶ the *Institute of Folklore* is a scientific institute of the BAS focusing on: i) the documentation, preservation and investigation of folklore and cultural traditions of Bulgarians, Bulgarian communities abroad and of ethnical, confessional and other communities, and ii) conducting a diverse range of scientific and applied research and promotion activities. The Institute is the only national institution in Bulgaria for the systematic development of documenting, preserving, researching and promoting folkloric culture in its entirety and diversity, which include language, rituals, musical-dancing and folk art.

It has significantly contributed to the establishment of academic studies of folklore in Bulgaria. It also conducts research²⁷ on issues related to: i) cultural identity and interactions from a national, Balkan and European perspective, ii) current cultural practices and policies, and iii) characteristics of folklore. In practical terms, experts²⁸ of the Institute would conduct field research and document a particular language, visual or musical performance at its place of origin, using methods, such as paper and photographic documentation and/or (digital) phonographic and video recordings. The cultural folkloric materials²⁹ created would subsequently be processed and catalogued according to the different categories and

²⁴ Through NAF, the Scientific Archive is also connected to the state agency “Archives” of the Ministry of National Affairs. See further Part II of this survey.

²⁵ See http://www.bas.bg/folklor/index_en.html

²⁶ The Institute was initially as a “folklore” section of the *Institute of Ethnography and Museum* (IEM) of the BAS.

²⁷ These researches are conducted using an interdisciplinary approach, which includes folklore studies, cultural anthropology, ethnology, ethnic musicology and sociology.

²⁸ The researchers, whom the Institute is working with, are specialists in folklore studies, anthropology and ethnology.

²⁹ These materials include texts of folk- language, music, dance and literature and photo, phonographic and video archive materials, which form the Institute’s folkloric collections.

communities of origin³⁰ and then preserved in the Institute's archive (see further below). The Institute is currently developing a digitized information system for these folkloric materials.

The Institute of Folklore comprises the following departments:

- i) *Anthropology of Verbal Traditions*,³¹ which focuses on the research³² and documentation of verbal forms of traditions.
- ii) *Anthropology of Music and Dance*,³³ which identifies issues related to traditional music, folklore and dance in the past and present contexts, and analyzes these using musical and anthropological approaches. Researches³⁴ on Bulgarian ethnic music are conducted in the towns and villages of the different ethnical and confessional communities living in Bulgaria and abroad.
- iii) *Anthropology of Folk Arts and Visual Forms*,³⁵ which conducts a wide range of (comparative) studies on traditional and modern folk arts and visual forms of culture,³⁶ taking into account the various aspects involved, such as the ethnic, religion and geographical layers.
- iv) *Balkan and Slavonic Folklore*,³⁷ which specializes in researching the cultural and social aspects³⁸ of Balkan and Slavonic peoples. As this region is very multicultural, this department also conducts comparative analyses on the mutual co-existence of the different communities living within this region, the

³⁰ The Institute also collects and processes data on the culture, specific characteristics, influences and interactions of each of the ethnographic/ethnic communities.

³¹ See <http://www.bas.bg/folklor/slovo.html>

³² The department's research scope includes, amongst others, the historical and contemporary studies of these verbal traditions, the different forms (diversity) of these traditions, the relation between oral and literary traditions, and the way in which these traditions are expressed (narration) and form part of the culture of various groups and communities.

³³ See <http://www.bas.bg/folklor/music.html>

³⁴ The department's research scope includes, amongst others, the symbolic and mythological essence of archaic music and dance forms, the vocal and instrumental music used in folklore rituals, the modernization of performing methods in the folklore music and dance culture, the documentation of alterations made around the world of traditional music and dance.

³⁵ See <http://www.bas.bg/folklor/plast.html>

³⁶ Including Bulgarian and European artifacts.

³⁷ See <http://www.bas.bg/folklor/balkan.html>

³⁸ These aspects comprise issues related to the diversity and different types of national, ethnical, religious identities of Balkan and Slavonic peoples and the different types of forms and evolution of the traditional (pre-industrialization) and contemporary folk art and culture of these peoples.

interethnic cultural interactions and communications within the Bulgarian society and ethno-cultural communities in the specific national contexts.

- v) *National Center for Intangible Culture Heritage (NCICH)*,³⁹ as part of the Institute specializes in the collection, protection and preservation of ICH alongside its scientific research activities. The NCICH consists of the Archive and a *Library*, where the folklore and cultural heritage materials and collections are preserved in the respective archive units: i) research papers archive unit⁴⁰ and ii) folklore materials archive unit.⁴¹ The latter further comprises four subunits: a) photo archive, b) phono archive, c) video archive, and d) CD archive. At present, the NCICH is modernizing its archival collections by developing specialized software to store its materials and digitizing its archive units. By carrying out these activities, the NCICH hopes to preserve and provide effective access to its entire collection.

The Institute of Folklore furthermore publishes several journals, such as “*Bulgarian Folklore*”,⁴² “*Collection of Bulgarian Folklore*”, “*Issues of Bulgarian Folklore*”⁴³ and “*Regional Studies of Bulgarian Folklore*”.⁴⁴

At the international level, the Institute collaborates with UNESCO⁴⁵ on ICH issues.⁴⁶ It co-organizes the National Fair on Folk Art, which is held every five years in Koprivtshitz. The Institute also carries out collaborative projects on folklore studies and cultural anthropology with institutes and scientific centers from Italy, France, Belgium, Germany, Finland, Hungary, Poland, Czech Republic, Slovakia, Romania, Russia, Ukraine, Belarus, Latvia, and Estonia.⁴⁷

³⁹ This Center succeeded the *National Center for the Collection and Preservation of the Bulgarian Folklore*. See further <http://www.bas.bg/folklore/center.html>

⁴⁰ Materials preserved in this archive unit include research papers written by employees of the Institute of Folklore, academics and students.

⁴¹ Materials preserved in this archive unit include collections of folklore, folklore fairs, academic and promotional materials, documentations from community centers and scientific and research projects.

⁴² Folkloric, ethnological, and anthropological studies conducted by the Institute of Folklore are being published in this journal. See http://www.bas.bg/folklore/bg_folk.html

⁴³ See <http://www.bas.bg/folklore/publications/problems.html>

⁴⁴ See <http://www.bas.bg/folklore/publications/regions.html>

⁴⁵ The Bulgarian government is currently considering the Institute to becoming a regional office of UNESCO.

⁴⁶ See further in section IV of this Chapter and <http://www.treasures.eubcc.bg>

⁴⁷ See http://www.bas.bg/folklor/index_en.html

*Institute of Art Science*⁴⁸

The *Institute of Art Science* of the BAS is the only academic center in Bulgaria that studies the different aspects of fine art, music, theatre, films and television works. Its main activities include the identification, documentation, research of Bulgarian culture and art traditions, from the distant past to modern age, using historical, theoretical and interdisciplinary approaches. Foreign cultures are also studied within the context of the global cultural developments. All scientific researches are conducted by in-house specialists and their works are published in the “*Bulgarian Musical Knowledge*” journal of the Institute.

Its music department is responsible for archiving folkloric musical art. It comprises an Ethnomusicology section and a *Library*. The former studies, documents and preserves ethno-music whereas the latter preserves the department’s entire music collection.

Alongside its preservation activities, the Institute has developed databases consisting of collected and documented materials of literary and musical folklore. These are: i) database for music texts, ii) database for musical performing art, and iii) multimedia database for authentic folkloric music.

The multimedia database was established as a result of the *WebFolkBulgaria* project. This project was executed by an in-house scientific team with the objective to preserve, systematize and computer process unique folkloric music recordings collected by the Institute for almost a century.⁴⁹ The multimedia database now consists of 15,000 recordings with lyrics, analyses of ethnomusicologists, audio recordings (RA), notes and photographs (GIF), and videos (RM) of Bulgarian folkloric music.

Institute of Ethnography and Museum

The *Institute of Ethnography and Museum* (IEM) of the BAS is dedicated to collecting, preserving and promoting cultural heritage. Its research areas include: i) Bulgarian folkloric

⁴⁸ See <http://www.arts.bas.bg>

⁴⁹ This Project was rewarded a first prize for a regional project by the *Global Inventory Project* initiative of the European Commission and G7 in 1997.

culture,⁵⁰ ii) ethnological issues of the Balkan and Slavonic region,⁵¹ iii) ethnical development of and relationships between different Bulgarian ethnic groups, iv) research and publication of the foundation of Bulgarian ethnography, v) civil culture, family and rural relations issues, vi) contemporary, social, political and cultural developments of Bulgarians, and vii) traditional and contemporary culture of Bulgarians abroad.

The Institute comprises two sub-institutes, the *Institute of Ethnography* and the *National Ethnographic Museum* (NEM), with each having its own distinct departments. The former mainly conducts studies on ethnology (ICH) whilst the latter preserves Bulgarian tangible heritage. This institutional framework within IEM has been established in order to respond to the rich diversity of Bulgarian popular culture and the need to document and preserve it.

The Institute of Ethnography comprises two departments:

- i) *Traditional Spiritual Culture*, which conducts studies on traditional customary law, social normative culture, ethno medicine, ethnic identity and ethnic groups, popular ideology and religion, customary and calendar cycle rituals, traditional metrical systems, and impulsive and contemporary traditional culture.
- ii) *Ethnographic Foundation of Knowledge*, which studies the theoretical issues involving the ethnographic foundation of knowledge, its specific characteristics, its classification and methodological principles for publication. The department publishes its findings in its “*Sources of the Bulgarian Ethnography*” documentary journal series.

The NEM holds collections of the Bulgarian traditional culture of the last 200 years and these include:

- (a) *Home Works and Household Goods*: this collection include household tools used by women, objects and furniture reflecting the lifestyle of a typical household, such as looms, spinning-wheels, hourkas ceilings and cupboards.

⁵⁰ These include calendar and family customs, mythology, popular medicine, house and architecture and traditional crafts.

⁵¹ Studies in this area include the geographical location and characteristics of Bulgarian traditional and contemporary culture in the Balkan and Slavonic regions.

- (b) *Ornaments*: this collection presents a diverse range of traditional ornaments, which are irreplaceable parts of both female and male festive costumes. The collection also holds all types of metal ornaments, such as earrings, necklaces, buckles, bracelets, amulets and kiustecks.
- (c) *Ritual Requisite*: this collection is of exceptional art value as it includes objects, such as sourvacks, mummer masks, amulets, symbols, martenitsas, ritual breads and ordained eggs, which are important for the festive ritual system, medicinal practices and witchcraft (magic).
- (d) *Embroidery and Fine Textile*: this collection consists of traditional popular textile, such as aprons, belts, rugs, carpets, goat's hair rugs, fleecy rugs, towels, bags, diapers, which were used daily and during fests.
- (e) *Traditional Folklore Costumes*: this collection includes original sets of costumes and traditional clothes with their accompanying embroidery, textiles and ornaments. The collection ranges from the XIX century to the beginning of the XX century.

The IEM, furthermore, includes a *Library*, which preserves scientific works⁵² of in-house specialists and collected materials from various cultural documentation and preservation projects. It has over 5,000 archival units containing about 500,000 pages of works, more than 100,000 negatives and 5,200 old photographs and portraits. The Library is also home to over 25,000 publications, some of which are unique.

The IEM is largely open to the public. There are, however, parts of NEM that can only be accessed by means of payment and permission. This is because many artifacts were destroyed or disappeared overtime, which made a large part of the collections only accessible to NEM's managers. Therefore, in order to make access to its cultural heritage collections simpler, the Institute has embarked on its digitization activities and established the digital archive "*Bulgarian Ethnographic Treasury*".

Through this experiment, NEM hopes to stimulate the digitization of its entire collection. The digital archive is perceived as a good base for the establishment of a future virtual representation of the Bulgarian traditional culture. It would allow for the preservation of

⁵² These include a collection of ethnographic and museum materials, professional aquarelles, graphics, architecture plans and sketches.

many endangered artifacts and, at the same time, be a resource of information for students and researchers.⁵³ The establishment of the digital archive thus coheres with the overall needs and objectives of the IEM.

B. Local Authorities

Local authorities dealing with the documentation, dissemination and promotion of cultural heritage are the city councils and mayors of the municipalities and regions. These include local and regional museums and community centers.⁵⁴ The former often holds ethnographic collections whereas the latter serves as the platform for the performance, passing on and dissemination of ICH.

4. Educational System

In Bulgaria, there exist academic institutions where one could study cultural heritage at high school and university⁵⁵ levels, so as to become cultural heritage specialists, performers or curators.

High School Education

Responding to its strong desire to preserve and pass on its folkloric culture, as well as foster respect for the educational system as a way in which society could learn about its origin and traditions, Bulgaria was the first to have established a high school for folklore in Europe.

The school of music “*Filip Kutev*”, situated in the small town of Kotel, was established in 1967 as the first to specialize in Bulgarian folklore.⁵⁶ The school’s curriculum includes: i) playing and making folkloric music instruments,⁵⁷ and ii) singing and performing folkloric songs and dances.⁵⁸ The school’s own ensemble is one of the most popular. Its current

⁵³ The project was conducted with the financial support of the “*Development of Communication and Informational and Communication Technologies*” Agency for the Ministry of Transport and Communication in 2005. The Project was realized in cooperation with the *Institute of Mathematics and Information Technologies* of the BAS.

⁵⁴ See further section III(C) of this Chapter.

⁵⁵ At university level, a Bachelor, Master and Doctor degree could be obtained.

⁵⁶ See <http://www.nufi-kotel.com>

⁵⁷ Such as shepherd’s pipe, bagpipe, mandolin and rebec.

⁵⁸ The alumni of the school perform in different concerts, festivals and competitions in Bulgaria and abroad.

leader, Ms. Elena Kuteva,⁵⁹ requires that the traditions be performed as in the past.⁶⁰ To preserve its genuine character, the ensemble works closely together with the IEM and Institute of Folklore.⁶¹

Another school of music specialized in traditions and folklore is the *National School of Arts "Prof. Vesselin Stoyanov"*,⁶² situated in Ruse.⁶³ This school was established in 1959, but was only in 1969 acknowledged as "an institute of national importance" for the preservation and passing on of the Bulgarian cultural heritage. The school's majors include: i) folklore dances, ii) folklore songs, and iii) folklore instruments.

The school actively participates in national and international competitions⁶⁴ and has already won 764 prestigious awards. The school also co-organizes the International Festival "*March Music Days*" held in Ruse. With such a presence in these activities, the school influences the cultural calendar of Ruse, the country and abroad.

Whilst the above schools are specialized in folkloric music, folkloric art is taught in several others schools. One of which is the national school for folkloric art "*Shiroka Luka*". Situated in the "Valley of Bell"⁶⁵, it is the unique place to educate on folkloric songs, dances and bagpipes. Established in 1971, its main objective is to preserve the original art in the drones of bagpipes and poetic songs, which have always been a source of support and inspiration for Bulgarians. The school's curriculum includes the following majors: i) Profession in folkloric music and vocals, ii) Profession in folkloric music instruments, such as bagpipe, rebec, shepherd's pipe and mandolin, and iii) Profession in folkloric dances.

⁵⁹ She is the daughter of the school's founder.

⁶⁰ i.e. to dance with the ancient spirit and sing as charming as the ancestors in fairs and blossomed fields.

⁶¹ The Institute of Folklore judges the authenticity of its performances whilst the IEM determines the authenticity of the folklore dresses and performances of rituals.

⁶² See <http://www.artrouse.com/>

⁶³ This is a Bulgarian town situated near the border with Romania.

⁶⁴ These include competitions held in Bulgaria, Czech Republic, Italy, Spain, The Netherlands, Belgium, UK, Germany, Romania, Russia, Japan, and the US. Examples of competitions held in the region are the "*International competition Franz Schubert*" and the national competition for schools and art classes in Northeastern Bulgaria.

⁶⁵ This valley is also called the valley of the Bulgarian spirit, culture and patriotism in the Rhodope Mountains.

The Shiroka Luka promotes folklore through concert performances by its art ensembles,⁶⁶ which include the folklore dance ensemble, mandolin orchestra, Jura and Kaba bagpipe ensembles and authentic folklore ensembles.

Bulgarian teachers of folkloric art and music established the *National Musical Folklore Union*⁶⁷ with the objectives to preserve folkloric music heritage and unite children and young people to learn about its values. Promotion activities conducted by this Union include: i) supporting talented students to pursue folkloric performing art, ii) organizing national and regional folklore festivals and competitions, and iii) publishing, sound recording and videotapes of musical performances by teachers and students.

University Education

At the university level, folklore and folk art curriculums are provided as part of studies in ethnography and anthropology. The major universities providing these studies are: i) PU “Paisii Hilendarski” in Plovdiv, ii) SU “St. Kliment Ohridski” in Sofia, and iii) VU “St. Cyril and Methodius” in Veliko Turnovo.

PhD Programs

Many universities also offer PhD programs in ethnography and anthropology.⁶⁸ These programs are usually provided with the participation of specialists from *Le Centre des Hautes Etudes de Chaillot* in Paris, France. The National Chamber for Craftsmanship focuses on providing students with professional skills in the restoration and preservation of cultural valuables.⁶⁹ The BAS⁷⁰ is then the main place where professionals eventually go to.

In conclusion, the national scheme for the promotion and preservation of cultural heritage is continuously evolving and open to the public for its contribution. The scheme does seem to

⁶⁶ Concert performances are conducted across the country. The ensembles have also represented the school in Switzerland, Greece, Belgium, France, Moldova, Germany and Ireland. Likewise, the school’s alumni perform and represent the authentic Bulgarian cultural heritage at the national and international levels.

⁶⁷ See <http://orfevo-izvorche.hit.bg/>

⁶⁸ These PhD programs represent an additional scientific growth in the field of folk art.

⁶⁹ Including textile, folklore dresses, colors, ornaments and other ritual tools.

⁷⁰ Particularly, the IEM, Institute of Folklore and Institute of Art Science.

function relatively well as an active informational website⁷¹ has proven that cultural institutions and professionals cooperate with one another in preserving cultural heritage.

Bulgaria furthermore has a national website⁷² for culture and art where, amongst others, current information on cultural events can be found. The website also promotes the Bulgarian cultural heritage and lists Bulgarian artists and restorers. A website for nongovernmental organizations (NGOs) active in the promotion and preservation of the national cultural identity also exists.⁷³

III. CIVIL STRUCTURES

Many industrial and non-profit organizations, also called the civil structures, are active in the national preservation and promotion of cultural heritage. The participation of these civil structures is highly crucial for the success of cultural heritage research, documentation, preservation and promotion. Furthermore, the civil structures add value as a stable partner to cultural institutions and to the development of cultural tourism through their funding and promotion activities.

Mediators play an important role in monitoring cultural relationships within and providing balance to the cultural industry. These mediators are often funds or NGOs and their main objective is to provide legal support and protection to fragile entities in the cultural sector.

A. Funding Structures: Business and Culture

Financial donations are an integral part of national efforts to preserve and promote ICH. Several funds have been established, including the National Fund “*Culture*”, the “*13 centuries of Bulgaria*” Fund and other municipal funds.

Established in November 2000 with the aim to support the development of culture, the National Fund “*Culture*”⁷⁴ is supported by the Ministry of Culture and governed by an Administrative Board. It collects and manages its financial resources to subsidize various

⁷¹ See <http://www.culture-forum.com>

⁷² See http://www.art.bg/main_b.htm

⁷³ See <http://www.ngo.bg>

⁷⁴ The Fund was established under the Law for Protection and Development of Culture (1999). See <http://ncf.bg/index.php?lang=en>, and for the text of the Law, see <http://www.bcnl.org/doc.php?DID=310>

arts, art activities and artists on a competitive basis.⁷⁵ Eligible applicants include cultural organizations, non-profit organizations and individual cultural workers. The Fund's preservation and promotion activities include a published competition for financing the documentation, preservation and promotion of traditional culture and folklore. Priority is given to project proposals submitted by community centers and other similar local cultural organizations.

The "13 centuries of Bulgaria"⁷⁶ Fund, also called the National Endowment Fund, is established in April 1980 within the framework of the National Cultural Resolution for the purpose of carrying out the State's charity tasks. Although the Fund is a public organization, it is self-supportive as its resources consist of donations and wills from over 75,000 donors. The Fund organizes and supports charitable campaigns and other donation activities for the development of culture, education and preservation of cultural historical valuables. Occasionally, the Fund manages properties of its donors free of charge, these include chattels, assets and IP rights⁷⁷ over unique pieces of art.

Whilst respecting the will of their donors and the national cultural policies, the IP rights and assets donated to the Fund are used to raise economic resources for the purpose of preserving cultural heritage. These IP rights, however, do not extend over the ICH itself, as they belong to the community and are in the form of collective rights.

The national Copyright Law (1993) is namely not limited to providing protection to scientific works, literature and artworks. Industrial works may also receive copyright protection. Copyrightable works often have an indirect rather than a direct connection with ICH.⁷⁸ The Bulgarian legal system, however, provides different types of protection to copyrightable works and ICH objects despite the certain fundamental similarities between these types of works. The IP system only protects contemporary works of oral and audio-visual folkloric expressions and works of traditional arts and crafts for which the author is known. By granting copyright protection over contemporary ICH works, the IP system protects the

⁷⁵ See Article 23 of the Law on the Protection and Development of Culture (1999).

⁷⁶ See <http://fond13veka.org/new/>

⁷⁷ This is particularly interesting for this survey as it involves the acquirement and exercise of IP rights over cultural objects.

⁷⁸ The Copyright Law does not extend direct protection to folkloric works as objects of copyright.

economic value and commercial potential of ICH that could be subject to possible appropriation.

As to conclude, IP, in particular the economic potential it provides, allows for the possibility to protect, preserve and promote the cultural heritage of a nation. This furthermore incentivates modern practitioners of Bulgarian intangible traditions and customs to create contemporary works that could contribute to the overall preservation and promotion scheme of ICH.

Although the abovementioned theory is not literally indicated in legal terms, it still forms part of the actual practices conducted in the country. The preservation and promotion of ICH thus play an important role in the development of economic wealth by governmental, local and private organizations as well as individual actors in Bulgaria. Folkloric works are often commercialized in places where their traditional authenticity and style have been preserved. These places have now become seasonal tourist attractions. For small private businesses, it is essential to preserve the traditions in the production, implementation, performances and practices of ICH. In these places therefore, the preservation activities come in the form of knowledge and skills being passed on from generation to generation, whilst the promotion of ICH is usually done through market exhibitions of these works, including handicrafts, traditional clothes, traditional musical instruments, utensils, engravings, masks, leathers and carpets.

B. Nonprofit Organizations

Non-profit organizations increasingly play an active role in the preservation and promotion of cultural heritage. Their presence in the cultural sector is also perceived as vital. However, these organizations seem to primarily focus their activities on tangible cultural heritage rather than ICH. This is because ICH comprises a public character, which makes access to and uses of this particular heritage without the formal permissions more profound, whereas tangible heritage, including cultural memorials, tend to be governed by strict sets of rules.

These sets of rules are thereby reflected in the restoration and conservative activities of the organizations.⁷⁹ Civil structures have expressed their view that regulations governing its participation in the cultural industry should be slightly loosened. The country is presently also working towards this improvement. Nevertheless, when looking at the cultural industry as a whole, its players, be it non-profit or business organizations, state or civil authorities, academic institutions or community centers, are all operating in a coordinated and complementary manner.

Ethnic non-profit organizations

There also exist several non-profit organizations established by the Bulgarian ethnic groups for the purpose of safeguarding specific characteristics of their cultural heritage. The large non-profit organization *Federation of the Bulgarian Karakachans*⁸⁰ is established in December 1980 by a group of about 20 enthusiastic Karakachans to deal with cultural and educational⁸¹ issues. Its membership is open to all Bulgarian and foreign citizens.⁸² The main objective of the Federation is to preserve the distinct culture of the Karakachans, including language, religion and lifestyle.

The Federation has a few dance ensembles, also for children, which perform authentic Karakachan songs and folklore dances and participate in the Federation's annual folklore festival "*Flambura*".⁸³ It also organizes fairs, which were first nationally-oriented and now internationally-oriented.⁸⁴ These fairs usually take place for three days, which officially start after a range of scientific and practical conferences and meetings have been held for the purpose of fostering relationships between the different organizations of the Karakachans.⁸⁵ The Federation's sixth fair was held in Karandila in 2007.

⁷⁹ These include non-profit and business organizations.

⁸⁰ It comprises 19 cultural and educational unions representing the 19 Bulgarian villages and towns that are home to about 20,000 Karakachans. These are Karnobat, Kotel, Sliven, Retsitsa, Samouilovo, Borov Dol, Tvurditsa, Kazanluk, Karlovo, Sopot, Samokov, Berkovitsa, Vratsa, Montana, Dupnitsa, Vurshec and Plovdiv.

⁸¹ The Federation offers, amongst others, language courses. These include the native language and Greek, although Greek is only being taught in 12 of the 19 unions.

⁸² The Federation namely operates using an open system.

⁸³ *Flambura* is also a newspaper published by the Federation until 2001 for promoting the Karakachan culture.

⁸⁴ The main motto for these fairs is "Bulgarian Karachans as the bridge of friendship in the Balkan region".

⁸⁵ The Chairman indicated the following as the main achievements in the regional collaboration of the Federation: the meetings held among the lawyers Sliven-Solun, the democratic movement of women Sliven-Greece, and the chambers of commerce (4 from Greece, 4 from Bulgaria) for business contacts, businessmen

The Federation partners with the All-Greek Federation of the Karakachans in Greece, altogether uniting over 50 unions. Bulgarian Karakachans' folklore groups participate in the annual festival of the all-Greek Federation taking place in Pertouli, Greece. Other preservation and promotion initiatives undertaken include the establishment of a big Orthodox temple⁸⁶ in Chochoven⁸⁷ and of a Karakachan traditional restaurant⁸⁸ in Karandila, the Bulgarian Balkans.⁸⁹

The Federation is perceived as a best practice for its performance in dealing with the cultural differences in Bulgaria. As the director of the Federation said:

“We are Bulgarian citizens, although we talk about our land of origin of two centuries ago. We know our history and we want to preserve our distinct culture and lifestyle whilst also live as good Bulgarian citizens”.⁹⁰

Another ethnic organization is the Armenian cultural and educational organization “*Erevan*”⁹¹ established in 1944 as a NGO to unite the then existing Armenian organizations in Bulgaria.⁹² Its functions are to preserve and develop the traditions and cultural heritage of the Armenian communities for the purpose to pass these to future generations and promote these to the rest of the communities. It publishes the weekly newspaper “*Erevan*” on politics, art and culture. The organization has a branch in all major cities in Bulgaria.

Cultural activities are carried out in several forms, including the Armenian amateur theatre “*Kapriel Sundukian*”.⁹³ This theatre hosts many performances, played by Armenian authors

and bank. In 2007, another meeting was held among journalists from Bulgaria, Greece and Cyprus. Cyprus has actually been a delicate matter for 20 years. It was the main subject for discussion at the UN and the meeting held was dedicated to unite the peoples. This dedication was thematic and ideological in nature and did not have any political perspectives. This information was taken from an interview with the Chairman of the Federation, by Tanya Vurbanova; info page, December 2007.

⁸⁶ The temple will be donated to the bishopric of Sliven, a town in Southeast Bulgaria.

⁸⁷ Chochoven is the only village in Bulgaria where the inhabitants are all Karakachans.

⁸⁸ The restaurant was established as a tourist attraction to serve traditional Karakachan cuisine consisting mainly of dairy products.

⁸⁹ The Balkans form part of the history of the Karakachans.

⁹⁰ From an interview with the Director of the Federation, Mr. Balezdrov, see http://www.geocities.com/Athens/Oracle/3424/mak/mak_32_2-7.html

⁹¹ See <http://www.armenians.orionbg.net>

⁹² It is important to note that at present the organization closely collaborates with other Armenian organizations in Sofia and in other towns. These include the Armenian school union “*Stepanos Honagimian*” and the church board of trustees of the Armenian Church in Sofia.

⁹³ This theatre forms part of the organization and has a long history.

and in the Armenian language. It furthermore participates in the “*Review of Armenian Theatrical Groups*” periodically held in Plovdiv. The theatre also takes part in numerous national and international festivals. The choir “*Kirkor Kirkorov*” is another method used to promote the Armenian culture and traditions. It makes recordings, holds multiple concerts and performs in festivals and other cultural events at the national and international levels. The organization also used to have a club called “*Armenians of Iavorov*”.⁹⁴

In 1998, the Turks also established their own cultural and educational organization, “*the 21st Century*”.⁹⁵ This non-profit organization researches, preserves, strengthens, develops and promotes the ethnic cultural values, customs, folklore and traditions of the Turkish society in Bulgaria as being part of the national culture of the country. It furthermore publishes educational-scientific and art literature journals in Turkish and the periodical magazine “*Kainak*”.⁹⁶

The organization strives to establish an intercultural exchange and integration in Europe by actively collaborating with communities and organizations⁹⁷ in Bulgaria and abroad. In so doing, it is supporting the artistic, scientific and cultural development of the Turkish society.

In Bulgaria, fairs and festivals are rarely organized for the promotion of the Turkish culture. Established in the 1950s, “*Ardino*” is the only ensemble active in promoting the authentic Turkish folklore. In 2003, a similar group is established to promote the Turkish dance at the annual Festival of Ethnicities.

C. National Cultural Storehouses (Community Centers)

Community centers are the largest storehouses conducting cultural-educational activities for preserving and promoting culture and cultural heritage in Bulgaria. These public, not-for-

⁹⁴ The club carried out cultural activities focused on the life and work of the poet Peio Iavorov, who dedicated part of his work to events that were of a high importance to the Armenian people. The club organized literature nights, which eventually became the cultural holiday “*Literature Days of Iavorov*”, held in Pomorie, Chirpan and other towns. It, however, existed until 1992.

⁹⁵ See www.tkc21.hit.bg

⁹⁶ *Kainak* is the primary magazine covering the Turkish cultural traditions after 1985 and is available not only in Bulgaria and Turkey, but also in other Balkan countries, Asia, Europe and some of its editions, in the US, Israel and Australia.

⁹⁷ The organization’s main partners are the International Center for Research of the Minorities and Cultural Interactions, “Open Society” Foundation, Armenian Cultural Center for the US Embassy, National Council for Ethnical and Demographic Questions for MS and National Fund “Culture”.

profit centers subsist through charities, donations and governmental funding.⁹⁸ Community centers conduct cultural and educational activities for, amongst others, the educational and informational development of local ethnographic communities.⁹⁹ One of their main objectives is to educate Bulgarians by developing their national self-awareness whilst preserving their customs and traditions.

Within this framework, community centers collect and exchange information on the specific culture of certain regions and participate in meetings with museums. They furthermore organize, in collaboration with libraries, multimedia centers¹⁰⁰ and schools, reading sessions, courses and other collective activities. Together with the Ministry of Culture and other cultural organizations, they often co-organize folk festivals and folk art fairs.

At present, 3319 community centers are registered as national cultural storehouses in Bulgaria. An example of a unique community center is one of the Turks called “*Tumer Liutfi*”.¹⁰¹ To protect their interest, community centers can become a member¹⁰² of the “*Contemporary Community Centers*” association.¹⁰³

Cultural patronage

The Law on Patronage¹⁰⁴ describes a “patronage” as a complement form of assistance provided by patrons to preserve, promote and develop cultural works. This form of activity is increasingly undertaken by the civil structures¹⁰⁵ with the Minister of Culture ensuring the

⁹⁸ Reference to Article 2, paragraph 1 of the new national law on local community centers DV 89/96 (previously DV 108/06).

⁹⁹ These centers are a source of information in the field of culture, particularly in folk art and folklore.

¹⁰⁰ These include photo-, phono-, movie and video centers.

¹⁰¹ The Turks are one of the largest ethnic groups in Bulgaria and therefore have their own cultural center. See <http://www.chitalishte.bg> and Supplement to the survey at http://www.wipo.int/export/sites/www/tk/en/culturalheritage/casestudies/borissova_supplement.pdf

¹⁰² Any community center could become a member of the Association as long as it is willing to acknowledge the Association’s rules and contribute to the fulfillment of its purposes.

¹⁰³ The Association is a voluntary union for protecting and developing the cultural heritage of certain ethnographic communities. Although the Association could, to a certain extent, be similar to a Collective Management Organization, it still differs because it is an Association consisting of community centers, which i) are mainly active in the cultural sector and ii) do not manage access or collect any benefits for the use of ICH of an ethnographic community.

¹⁰⁴ Law on Patronage, DV 103/2005.

¹⁰⁵ The cultural industry is mainly supported by the government. However, patrons are increasingly encouraged, through credit interests, customs, tax and other financial benefits, to complement its support.

proper allocation of their support. A patronage can, as such, be regarded as a supporting institute.

The Law also provides for a list of what constitute cultural works. Folk arts and traditional expressions, however, are not included here, although in certain cases these could constitute a cultural work. IP issues may also arise and play an important role when dealing with cultural works.

In fact, there are cases where the involvement of both IP and ICH is reflected in the activities of a patronage. Namely in one case, the patronage is predisposed to support the preservation and promotion of all types of cultural works, including copyrighted objects. In another, the patronage stimulates authors and performers to develop new derivatives of existing cultural works, including intangible folkloric works, which in turn gives rise to new IP rights. This may also be the only legal way to abide the support from a patronage whilst using the IP system to preserve and promote ICH as IP protection is often conditioned upon the correlation between a work and an author and cultural heritage may not necessarily have an author per se.

The participation of the civil structures in the development, preservation and promotion of cultural works enables the archiving of all types of cultural heritage tangibles and documents. A considerable part of these resources go to the paper, phono and photo archives of the National Film Store, National Phono Store, National Radio, National Television and National Library “*St. Cyril and Methodius*”.¹⁰⁶ The patronage thereby promotes the use of the abovementioned institutes’ archives by the commercial society. The term “use” is here referred to as the development of derivatives and the dissemination thereof following compliance with the rules of copyright and reward payments.¹⁰⁷

Folkloric art is therefore promoted, through the organization of fairs, concerts, festivals, exhibitions, movie and theatre presentations, wireless and cable broadcasting, and using only copies of the official archive tangibles.

¹⁰⁶ See http://www.nationallibrary.bg/digitalna_bibl_doklad_en.html

¹⁰⁷ The total sum of the reward is determined by a rate approved by the Council of Ministers.

D. Business Practices

In recent years, the private sector is taking up a more active role in the preservation and restoration activities of tangible cultural heritage. Reasons are the increasing number of cultural monuments being proclaimed as private properties, the sector's concession and the softening of regulations governing the allocation of their funds. There also exists a system to control the auction and reception of finished conservational works. This system, however, lacks the capacity to regulate licenses for conservators of cultural monuments.

ICH activities of the private sector include, amongst others, the sponsoring of national and regional folklore festivals. With the purpose to preserve and promote folkloric heritage, trading companies are increasingly collaborating with community centers on projects related to the collection, narration and production of ritual folkloric dresses, clothes, masks and music.

Once a certain project is finalized, many companies often receive requests from private organizations or governmental institutions, including museums, to continue producing folkloric dresses and traditional instruments. Some companies even expand their business further by digitizing their product catalogues and offering online services for the production, export and import of their folkloric dresses, clothes, instruments, ritual masks and other works of national folkloric craftsmanship.

Such kinds of business activities for private commercial gains, however, tend to impede the country's social, cultural and economic interest in promoting cultural heritage and traditional folklore.

Here are two examples of business practices in the field of ICH and the digitization, preservation and promotion thereof. The firms "*Askia ET*"¹⁰⁸ and "*Balkanfolk Ltd.*"¹⁰⁹ both produce, upon request, folkloric dresses and/or their components, aprons, costumes, tunics, napkins with folkloric ornaments, all of which are either hand-made or machine made and derived from different ethnographic regions in Bulgaria.

¹⁰⁸ See <http://www.nationalfolklorebg.hit.bg>

¹⁰⁹ See <http://www.balkanfolk.com>

Established in 1998, Askia offers a collection of hand-made traditional tablecloths, napkins with national embroideries and folkloric dresses stemmed from the different ethnographic regions. The firm exports to France, Germany, The Netherlands, Japan and the US. The owner is a former artist designer of folkloric costumes, who worked for a state enterprise that manufacture costumes for practically all state ensembles, dance groups, performers of folklore and musicians.

Balkanfolk Ltd., on the other hand, is established in 2000 with a broader business scope. It both produces folkloric dresses, ornaments, masks and other attributes, and carries out management and musical-performing activities, such as the organization of festivals, concerts and other related events. The firm is a successor of “Zornitsa”, a folkloric ensemble highly experienced in promoting and presenting folklore and self-supporting through the received funds.

The firm started out with a search for unpublished musical and dance folklore, crafts and customs, and the sound-recording, reproduction and distribution thereof. It then evolved to promoting distinct Balkan traditions and customs, including music, songs and dances and promoting traditions and customs of other countries and regions. The firm’s services are promoted through its website,¹¹⁰ which include an online shop and the registration to its practical seminars on Balkan folklore “*Balkanfolk*”.¹¹¹

The firm’s core activities also include musical production, which encompasses the research, collection, recording and distribution of unrecorded folkloric dances and musical themes from all ethnographic regions¹¹² and is usually done as follows:

- The search for authentic folklore is conducted by visiting the villages to meet and record elderly people singing, dancing, playing musical instruments and sharing their knowledge on folk art. They, however, do not receive any remuneration for their contribution.
- The description of a theme by music notes is done by the firm and according to the type of music instrument using scores, which are created for each instrument.

¹¹⁰ See <http://www.balkanfolk.com/index.php>

¹¹¹ See <http://www.balkanfolk.com/workshop.php>

¹¹² The firm has already released 8 CDs, each containing 23 to 25 themes.

- Actual performers are asked to sign a contract for the transfer of their performance rights to the firm for which they would receive payment. They would also have to sign a certified notarial declaration to release rights related to the reproduction, transmission and distribution of a performance onto a CD, for a specified period and a certain amount of money. Such declaration is practically similar to a letter of authorization for the management of the same rights and could look as follows:

“The respective performers [names and personal number], authorize Balkanfolk to manage, on their behalf, the production of “*Balkanfolk 2003*” onto 2000 videotapes and 2000 compact disks and the distribution within Bulgaria and internationally thereof, for a period of 10 years, in exchange of remuneration”.
- The Ministry of Culture then certifies the signed documents and issues a Certificate, which authorizes Balkanfolk, the producer’s right to reproduce, distribute, export, broadcast and transmit the musical production.

IP obstacles faced by the firm mainly relate to the copyright in the lyrics, description and photographs of the folk art and performers published on its website.

Another business practice on the rise relates to the use of folklore for the development of the musical industry, also referred to as the pop-folk trend. Such use is influenced by the social and cultural needs of Bulgarians to create adaptations of their folklore and facilitated by the opportunities of new technologies. Although this type of business practice may have high commercial potential, it may also leave the folk art vulnerable to distortion and misappropriation.

The following example concerns “*Payner*”, a successful private holding structure in the music industry. Payner consists of several trading companies,¹¹³ which contracts composers, lyrics writers, production authors, make-up artists, designers, performers and music and film producers. By contracting these workers,¹¹⁴ Payner retains all copyright and related rights in the production of a work. The holding structure thus creates, amongst others, adaptations

¹¹³ Including an independent cable channel and some disco clubs and restaurants.

¹¹⁴ Through the use of labor contracts.

of authentic popular folkloric works and presents it as a form of pop-folk by giving it an independent sound, vision and message.¹¹⁵

The method used in Payner's folk art production naturally starts with a search for well-known, deeply-spirited authentic folklore, followed by its sound-recording, adaptation, production and distribution. In the course of such production, no consent is sought for, no reward given and no competent institution or community consulted on the origin of the folk art. The folk art is simply adapted in so far it corresponds to the present "cultural trend". Thus in principle, Payner's folk art production method is quite similar to the one employed by Balkanfolk.

Without any prejudice and for the sole interest of this survey, the main difference between the business practice examples given above lies in the production of adaptations of folklore. For instance, the adaptations produced by Payner generally do not convey the traditional folkloric message, show its traditional practice or relate the folklore to the land, people and beliefs, which thereby encourage the development of an inaccurate depiction of the folklore and can negatively affect the cultural self-awareness of future generations. Such commercial exploitation of folklore could, in the author's view, add to the artistic distortion of folk art.

A question to be asked here is then to what extent should the distortion and depersonalization be tolerated? Due to its open access, no cultural norms and remedies are yet in place to administer the authenticity and limit the commercial adaptations of folk art in which only the memory of the people can make out the difference.

A final business practice example in the field of ICH is a dance ensemble established by choreographer Ms. Neshka Robeva. This ensemble is internationally known for its modern and innovative depiction of Bulgarian folklore including music, dances, songs, customs, traditions and rituals.

Whilst such depiction represents the transition from "traditional" to "modern", it also preserves the "main pillars" of folk art, which include the relation people have with their fatherland, traditions, lifestyle and customs, and the eternal human quest for youth, love,

¹¹⁵ The holding structure produces both adaptations of folklore and "other original works by individual authors". The latter, however, is not subject to this survey.

faith, hope and power. This form of adaptation, therefore, does not contribute to the distortion of folkloric heritage, but rather turns it into art.

In conclusion, the direct involvement of the civil structures in preserving, developing and promoting cultural heritage is highly valued, mainly due to their flexibility and understanding of the current trends in the field of folk art and their ability to secure the passing on of the folk art to future generations.

IV. FOLKLORE PROJECTS

The preservation and promotion of authentic Bulgarian ICH saw a few breakthroughs. One of which was the symbolic musical folklore phenomenon “*Grandmothers of Bistritsa*” that became widely popular in the early 1970s. This was a group of old women practicing the ancient polyphony, dances and traditions preserved in Bistritsa¹¹⁶ until mid-1950s.

At present, the group is composed of 9 women. Typical characteristics of this group are: i) the shoppian two-voice singing as part of the women’s performances, ii) the folklore dresses, representing a collection of preserved authentic traditional costumes of the village, and iii) the method of training as these women are trained at an early age by their grandmothers. This training tradition is also continued in the last 10 to 15 years with support of the local community center. In November 2007, UNESCO announced the registration of the “*Grandmothers of Bistritsa*” in its “*Masterpieces of the Oral and Intangible Heritage of Humanity*”¹¹⁷ list.

In 2009, the traditional fire dance “*Nestinari*” was also registered as a UNESCO masterpiece. In the same year, the municipality of Tsarevo, where this traditional fire dance was preserved and transmitted from generation to generation,¹¹⁸ became the trade mark owner¹¹⁹ of the sign “*Nestinari*”. Although the registration of this mark was initially refused by the Bulgarian Patent Office on grounds of “potential harm that such registration could cause to the secrecy

¹¹⁶ A village situated in the region of Shopluka, see further Supplement to the survey available at http://www.wipo.int/export/sites/www/tk/en/culturalheritage/casestudies/borissova_supplement.pdf

¹¹⁷ For more information see <http://sabor.mc.government.bg/sabori/main.php?act=content&rec=52>

¹¹⁸ It should be noted that fire dancing does not only exist in Bulgaria, but also in other parts of the world, including Greece, Italy, the Far East, Siberia and Africa.

¹¹⁹ This IP right is collectively administered and exercised by the municipal council of Tsarevo. It is registered under Nice classification N41 (education; providing of training; entertainment; sporting and cultural activities).

and mystery of the fire dance” and “potential undeserved benefits that could be extracted by the acquisition of a monopoly right”, the municipality evidenced that this ancient fire dance was part of the cultural identity and social life of the municipality and local community. The purpose for registering the mark was also not to seek direct economic benefits, but rather to prevent unauthorized use of the word “Nestinari” in activities other than its traditional context and to promote the tradition and municipality for cultural tourism.

Another important breakthrough is the “*Living Human Treasures – Bulgaria*” project, which consequently led to the creation of a national representative list of ICH.¹²⁰ As nowadays many of these cultural skills and expressions, including music, dances, speeches and rituals, are threatened to disappear, it is up to the international society to take the active responsibility to develop, using new informational technologies, projects for the preservation and promotion of folklore. Bulgaria is proud to have taken steps to preserve its folklore through, amongst others, this project.

This project initially formed part of UNESCO’s overall “*Living Human Treasures*” (LHT) program¹²¹ aimed at encouraging ICH bearers to continue practicing their traditions and pass their knowledge and skills on to future generations. It was managed by the Institute of Folklore and executed within the March 2001 – December 2002 timeframe. Participants included experts from the Institute and the Ministry of Culture. The project focused on developing important parameters and criteria for the establishment of appropriate methods to preserve and promote Bulgarian cultural heritage. Some important outcomes of the projects include:

- The criteria for identifying what constitute cultural heritage, including authenticity, representativeness, artistic value, vitality, rootedness in tradition¹²²;

¹²⁰ The creation of such list was the result of a UNESCO pilot project undertaken in 2008. The following Bulgarian LHT are included in the list: the choir of “Bistrishkite Babi”, Tsarevo fire dancing, Kalusha ritual dance, Nedelino diphthong singing, Vasilishka traditional wedding and the traditional production of antique weapons by master Dianko Diankov..

¹²¹ See <http://www.unesco.org/culture/ich/index.php?pg=00061>

¹²² Author: Ekaterina Anastasova, see <http://www.treasures.eubcc.bg/main.php>, see also http://www.unesco.org/culture/ich/index.php?cp=BG&topic=nat_measure

- The formulation of Bulgaria’s attributions at the national and international levels with regard to traditional activities, such as crafts, technologies and practices to be preserved as living human experiences; and
- The establishment of the “Inventory (nomenclature) of activities”¹²³ at the national and regional¹²⁴ levels.

In regard to IP, the project’s website¹²⁵ contains a range of tangibles, documents and pictures, for which the Institute of Folklore owns the IP rights. A final important outcome was the establishment of a national LHT system coordinated by the Institute of Folklore, the Ministry of Culture in collaboration with the Bulgarian National Commission for UNESCO. Given that “living human treasures” refers to people who possess the required knowledge and skills to interpret or create specific elements of ICH for the attestation of the living cultural traditions and creative minds of Bulgarians, the establishment of such national system is intended to:

- Preserve cultural expressions, knowledge and skills of historical, artistic and cultural importance to Bulgaria;
- Pass these on to future generations through the establishment of effective programs;
- Encourage young people to acquire knowledge and skills pertaining ICH through the organization of national and international public performances and public acknowledgment of their skills; and
- Establish a unified archive¹²⁶ for the purpose of preserving documents and materials pertaining ICH. The establishment of such an archive would also contribute to the enrichment of the LHT Regional lists.

In 2006, Bulgaria held its “*European Days of Heritage*”, which was themed “*Heritage in the Information Society*”¹²⁷. This event highlighted the importance of information technology and the opportunities, it could offer for:

¹²³ See <http://www.unesco.ru/files/docs/clt/kazan/bulgaria-report-en.pdf>

¹²⁴ The term “regional” is referred to here as the administrative or socioeconomic regions.

¹²⁵ See <http://www.treasures-bulgaria.com/main.php>

¹²⁶ This Archive is part of NCICH, as already discussed in part II of this Chapter.

¹²⁷ See

- Cultural heritage documentation and preservation activities conducted by specialists;
- Development of national and international partnerships to launch various projects related to the preservation and use of cultural heritage;
- Promotion and presentation of heritage valuables before large-scale audiences; and
- Public awareness-raising corresponding to the shared contemporary views on the common cultural foundation and integration processes thereof in Europe.

This event reconfirms the desire and ambition of the society and cultural structures to contribute to the development of an optimal national cultural structure for the research, preservation, documentation, protection and digitization of ICH.

In conclusion, this Chapter showed that promotion of folkloric art was mainly carried out through specific folklore projects, festivals, individual/collective appearances, and special ethnographical and ethno thematic museum exhibitions. The latter was, particularly, used by the IEM, regional community centers and ethnographic museums to introduce the folklore of ethnic groups living in Bulgaria.



**PART TWO: LEGAL ASPECTS
RELATED TO BULGARIAN
CULTURAL HERITAGE**

Objectives of Part Two:

1. Review the existing legislation on cultural heritage and IP
2. Review regimes for researching, collecting, documenting and preserving cultural heritage
3. Analyze procedures and demands for ensuring access to and use of cultural heritage
4. Review questions related to the ownership of materials describing cultural heritage

CHAPTER II: CULTURAL HERITAGE AND THE LAW

I. TRADITIONS AND CUSTOMARY LAWS

At the time when folk art still played a significant role in the daily life of Bulgarians as a way of living and a mean for self-determination, there were no written rules regulating the preservation, education and performance of the traditions. Each ethnographic region, however, had its own “oral” rules, which formed part of the moral and ethical values of the ethnographic society and gradually became the customary law of the region.

Important elements of the ethnographic customary law thereby included, first and foremost, the “family union”. Marrying and forming a family was considered as an irreversible right and duty of each individual.¹²⁸ Another important element was the “home” of the families. A typical home had a hierarchical structure and consisted of the married couple, their children¹²⁹ and the couple’s parents. This was, however, referred to as a small home. There also existed big homes comprising the parents, their married children and grandchildren. All of them thus lived together.

Notwithstanding the size, all homes were managed by the oldest male family member.¹³⁰ He was in charge of dividing the industrial work among family members¹³¹ and representing the whole family in social circles and before social authorities.¹³² He was also responsible for carrying out the customs, rituals and traditions within the family.¹³³ His authority was, however, limited in regard to the ordinary daily tasks and in cases when a live-stock or

¹²⁸ It was even said that “there were no single young men and women in the village”. Old bachelors and maids were regarded as inappropriate by society.

¹²⁹ The older sons usually leave their parental house once settled whilst the parents live in the youngest son’s home once he has settled.

¹³⁰ This was usually the father, grandfather or great-grandfather.

¹³¹ Such as who would have to plough, search for wood and take care of the sheep.

¹³² He looked after taxes and had the authority to judge each family member against his/her actions. His authority was also for life.

¹³³ The author wishes to share the story of her grandmother, who experienced the abovementioned customs and traditions. Although many of these traditions are not practiced properly nowadays, certain holiday celebrations, such as Christmas, Easter and Forgiveness Day are still being celebrated. On the other hand, the Bulgarian families still continues to show respect to the oldest male family member. Respect is mostly shown by kissing his hand on holidays and whenever he gives his approval to someone for something.

property was being bought. In these cases, he would need to consult¹³⁴ with the other old family members before making a concrete decision.

The oldest female family member, usually the grandmother, was also highly respected. She was responsible for taking care of the children and other women in the household. She also looked after the incomes received from the family businesses. Ownership over family property was another interesting subject matter. Family property belonged to everyone in the family. The only types of property considered as private were clothes and gifts. This tradition, however, ceased to exist after a legislative change following the Liberation in 1878.

The third important element of the ethnographic customary law was the “village community”. This village community consisted of family unions living in a village and was managed by the oldest family member of each family union. They were also called the “old community”.¹³⁵ The village community allowed for, amongst others, unconditional common use of the common land. Each village community received considerable autonomy from the State, in exchange for taxes and certain services, including military services. Following the Liberation, however, the State started to increasingly intervene in the work of the municipalities.

Although the traditional way of living was mainly through agriculture and stock-breeding, many turned to the craftsmanship profession since the Ottoman Empire. This then led to the establishment of the first craftsmen unions in the Balkans.¹³⁶ The craftsmanship profession slowly became a tradition and the craftsman’s skills and knowledge were passed on to future generations at three levels, the journeyman, apprentice and master.¹³⁷

One of the oldest craftsmen unions that still exist today is the “*Union of the Masters of Folkloric and Artistic Crafts*”. This union has several regional branches with its main branch situated in

¹³⁴ Consultations are usually done around the fireplace at home.

¹³⁵ A leader was then chosen among them and he was responsible to act on behalf of the old community each time after having counseled with them.

¹³⁶ Information regarding these established craftsmen organizations in the Balkans were found in an old chronicle from mid-XVII century, which was written in Greek and concerned the craftsmanship in Plovdiv. This chronicle started in 1675 and maintained until mid-XIX century. It contained valuable data, such as announcements of the masters, a craftsman’s duties and information on taxes and loans.

¹³⁷ The masters were also called “masters of folkloric and artistic crafts”.

Sofia. The union functions as to preserve and teach the different types of traditional techniques for creating folkloric crafts.

In the past, the craftsmen unions were quite independent, had their own jurisdiction¹³⁸ and played an important role in the communities. Their jurisdiction consisted of a special judicial council,¹³⁹ which held general meetings for reviewing and solving disputes¹⁴⁰ between the various members of the craftsmanship profession and imposing punishments.¹⁴¹ These led to the establishment of certain behavioral norms, which had a great influence on the social life of Bulgarians and thereby gradually became “laws”.

The country’s historical development saw three pertinent periods, including the pre-Liberation, post-Liberation and present post-1989 period. The political changes occurred in these periods directly influenced the cultural and social life in which what used to be a certain lifestyle now merely became a holiday tradition. As the old traditions and customs slowly disappeared, the development of written rules for their preservation and promotion as part of the national cultural heritage became increasingly desirable.¹⁴² The current social trend is therefore developing activities for the research, preservation, documentation, digitization, protection and promotion of authentic traditions and folk art with the increasing involvement and participation of the civil structures.

II. CURRENT NATIONAL LEGISLATIVE SYSTEM ON CULTURAL HERITAGE

The national legislative system governing cultural heritage was initially established by a national law on the disclosure, preservation and usage of, and a series of special laws, on tangible cultural heritage.¹⁴³ The system was, overtime, built on the following laws:

¹³⁸ They were self-governing and could establish their own laws.

¹³⁹ This council was governed by 6-8 masters called “*sudars*”.

¹⁴⁰ All disputes were solved by consensus at the general meetings.

¹⁴¹ The lightest punishment comprised a certain amount of weight of wax for the church or bank of the craftsmanship. For serious acts, the punishment was to pay an amount of money or a temporary suspension of his/her crafts practice. There also existed cases where a craftsman was publicly disgraced, his/her shop closed or he/she was permanent banned from the profession as a direct consequence of his/her action.

¹⁴² The society started developing a strong desire to raise self-awareness and revisit its origin, lifestyle, traditions and folkloric culture (self-identification).

¹⁴³ The national legislative system governing culture was well developed for tangible cultural heritage, but still lacked a solid legal base for ICH although overtime the country ratified (all) international conventions related to ICH.

- Constitution of Republic of Bulgaria, 1991¹⁴⁴
- Law on the Protection and Development of Culture, DV 50/99¹⁴⁵
- Law on Copyright and Related Rights, DV 56/93¹⁴⁶
- Law on Crafts, DV 42/01¹⁴⁷
- Law on Cultural Monuments and Museums, DV 29/69¹⁴⁸
- Law on the National Archive Fund, DV 57/07¹⁴⁹
- Law on Patronage, DV 103/05¹⁵⁰
- Law on the National Charity Fund “13 centuries of Bulgaria”, DV 12/01¹⁵¹

As Bulgaria also ratified several international conventions related to cultural heritage and IP, the system was complemented by, amongst others:

- European Cultural Convention, DV 70/91¹⁵²
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions¹⁵³
- UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage¹⁵⁴

E. Protecting Folk Art using Cultural Heritage Laws

An old definition of cultural heritage provided by the Law on Cultural Monuments and Museums comprised only tangible cultural heritage, including cultural monuments and natural reserves, leaving the protection of ICH rather underdeveloped. This slightly changed with the adoption of the Cultural Heritage Act in 2009. Article 2 of the Act defines cultural heritage as “tangible and intangible, movable and immovable, as bearers of historic memory,

¹⁴⁴ See http://www.online.bg/law/const/const1_b.htm

¹⁴⁵ See <http://artclass.hit.bg/zakonzrk.htm>

¹⁴⁶ See <http://im.cablebg.net/clients/zapsp-93.htm>

¹⁴⁷ See <http://www.bcnl.org/doc.php?DID=246>

¹⁴⁸ See <http://im.cablebg.net/clients/zpkm-69.htm>

¹⁴⁹ See <http://www.econ.bg/law86422/enactments/article118764.html>

¹⁵⁰ See <http://www.bcnl.org/doc.php?DID=402>

¹⁵¹ See <http://www.bulnao.government.bg/files/bg/Z13veka.doc>

¹⁵² See <http://conventions.coe.int/Treaty/en/Treaties/Html/018.htm>

¹⁵³ See http://portal.unesco.org/culture/en/ev.php-URL_ID=11281&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁵⁴ See <http://www.unesco.org/culture/ich/index.php?lg=EN&pg=home>

national identity and which have a scientific or cultural value.”¹⁵⁵ Cultural heritage now includes, amongst others, intangible heritage, industrial heritage, underwater heritage, audiovisual heritage and landscapes.¹⁵⁶

The notion of “cultural value” is interpreted as intangible or tangible evidence of human presence and activity and could either be public or private property. Cultural value is considered to be public domain, but protected by and belonging to state and municipal authorities, the Bulgarian Orthodox Church or other religions as well as natural or legal persons, for the common interest of society.

Though ICH remain accessible to the public at large,¹⁵⁷ there exist a few exceptions related to the ICH declared to be of particular national importance. This kind of access policy is basically based on the notion that ICH possesses a high degree of dynamism and commercial potential, for which the IP system would be the most appropriate protection mechanism to be used.

Overall, the recently adopted Cultural Heritage Act (2009) provides for:

- Participation of the private sector (civil structures) in cultural heritage related activities and possible establishment of private museums and collections; and
- Equality of access, decentralization and transparency of cultural heritage management and protection.¹⁵⁸

Although the scope of protection is improved with the latest definition, the Act as it currently is may not be able to solve all problems related to the protection of cultural heritage. There is a need to develop a national strategy for the management of cultural heritage, which could also function as a basis for the further development and improvement of the Act. For this reason, the Act is currently still being amended and developed further.¹⁵⁹

¹⁵⁵ See <http://www.culturalpolicies.net/web/bulgaria.php?aid=533>

¹⁵⁶ See Article 6 of the Act.

¹⁵⁷ ICH may be used, by any Bulgarian citizen or non-citizen who has shown interest, using methods that correspond to his/her needs. Such public access should therefore be perceived as a precondition for its free use, its preservation and handing down to future generations.

¹⁵⁸ The Act, however, does not provide for written methodologies on access, use and preservation of ICH and does not directly deal with IP issues involved. See also articles 2 and 3 of the Act.

¹⁵⁹ The process of amending and supplementing the Act mainly refers to the provisions related to tangible, movable and immovable cultural heritage.

F. Protecting Cultural Heritage using IP Tools

This part of the survey focuses on reviewing the legal protection currently extended to folkloric art.¹⁶⁰ This is done by means of indicating the social and cultural significance folkloric art has and highlighting the role of IP in its use. Such approach could then be applied to the documentation, preservation, protection of and access to derivative works and materials produced thereof.¹⁶¹

The Copyright Law imposes certain requirements for protecting folkloric works. It firstly requires that folkloric works be acknowledged as “artistic” works.¹⁶² Secondly, the work should also have an identifiable author.¹⁶³ Such preconditions have been set for the purpose of establishing the exact duration of legal protection to be granted over a particular literary or artistic work and folkloric works are therefore rather indirectly than directly subject to copyright.¹⁶⁴

On the other hand, folk art and other folkloric works are recognized as inspirational pre-existing works, since these works could independently and collectively serve as a source for the creation of new (derivative) works. Article 3(2) of the Copyright Law namely states that the following shall be subject to copyright.¹⁶⁵

- (i) translations and adaptations of pre-existing works and folkloric works;
- (ii) arrangements of musical works and folkloric works; and
- (iii) collections, databases, and other similar works, which include two or more works or materials.

The Copyright Law furthermore extends protection to works of folkloric artistic crafts.¹⁶⁶ It may also be interesting to note that an adaptation of a folk art work, which reflects an

¹⁶⁰ Such review could indeed be helpful for the identification of its significance to society and the reasons why and the way in which society makes use of folkloric art, and how IP plays a role in all this.

¹⁶¹ In the first instance, this part of the survey focuses on folklore as objects of intellectual creativity. It then continues with analyzing folk art as derivative/recreated works, also taking into account the (arising) IP rights of its creators and users. IP thus plays a central role throughout.

¹⁶² An artistic work includes any form of work created in the field of science, literature and art.

¹⁶³ With regard to folk art, in particular, the members of society, who have taught and practiced it for generations long, are generally regarded as its authors.

¹⁶⁴ See also Article 4 of the Copyright Law.

¹⁶⁵ Legal protection may also be extended to unpublished works of folk art (see further below).

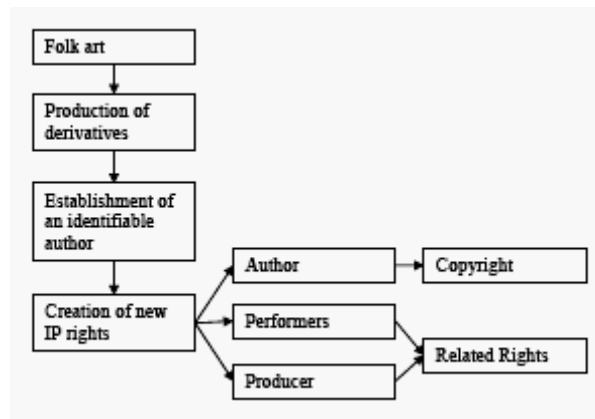
¹⁶⁶ See Article 3(1)(5).

individual's own sound and motive, may be subject to copyright. However, such adaptation may result in the (undesirable) loss of the work's "original" characteristics as a new artistic or literary work is created for which the individual who did the adaptation is the right holder.¹⁶⁷ For this reason, the adaptation of a folk art work could be quite different from a derivative work of folk art.

As for the creation of related rights over authentic, adapted or derivative works of folk art and folklore, these are mainly manifested in the performers and producers of such works.¹⁶⁸ Whilst performers could obtain rights over their performance, producers could receive rights over i) the adapted or derivative work produced, and/or ii) the first recording of a new folk art work.

It should be noted, however, that copyright and related rights could exist simultaneously without complicating the management of these rights as copyright would anyhow take precedence over related rights as the latter is rather the result of the use of the former and of the work it protects. The use, performance or recording of an authentic, adapted or derivative work of folk art and folklore is usually subject to prior permission to be granted by the rights holder in question and in accordance to the payment of a fee.

Figure 1: Process of transforming and reproducing folk art in a new folkloric work



¹⁶⁷ See Article 9.

¹⁶⁸ Bulgaria is a signatory to the WIPO Performances and Phonograms Treaty (WPPT).

Alongside the protection granted by Article 3(2) of the Copyright Law as stated above, legal protection may also be extended to unpublished works of folk art. Such protection has been implemented into the national legislation with guidance of the relevant international conventions. Article 15(4) of the Berne Convention for the Protection of Literary and Artistic Works, for instance, provides for the copyright protection of unpublished works of which the identity of the author is unknown. Although Bulgaria has not formally implemented this Article,¹⁶⁹ the national competent authority designated to deal with such works is the “Copyright and Related Rights” department of the Ministry of Culture.

This department is responsible for dealing with issues related to the existence and development of community relationships *vis-à-vis* artistic cultural properties. Through the use of an “approval mechanism”, the Ministry of Culture assists in protecting rights holders and has thereby indirect control over the creation of adaptations and derivations of folk art, in particular, over folk art proclaimed as national treasures. The approval mechanism requires all users, amongst others, to indicate the precise origin of the folk art they wish to use.¹⁷⁰ Foreign users, in particular, should always go through the approval mechanism, before they could be granted permission to use the folk art in question and the subsequent protection of their work.

As mentioned, access to ICH is public. However, this does not have a direct effect on the use of folk art. On the contrary, as the contemporary lifestyle merely characterizes their needs and desires, a significant portion of folk art seems to slowly disappear. Another reason for this disappearance is the lack of interest shown by the present generation as the cultural and economic potential and benefits of folk art and folkloric works are rather unknown to them. The role of government is thereby crucial in appointing specialized authorities and developing a system for the research, preservation, documentation, protection and promotion of the national cultural heritage.

The preservation of the ancient fire-dancing “Nestinari” already described in Part I of this survey may be a good example to show the importance of the state’s role in these activities.

¹⁶⁹ As Bulgaria has not formally provided WIPO with a written declaration as required in Article 15(4)b of the Berne Convention.

¹⁷⁰ Users are generally not paid for their use of folk art works due to the public accessibility to ICH.

This fire dance, which used to be a sacred ritual, became a mere tourist attraction.¹⁷¹ More gloomy was that its authenticity was not being handed down to future generations as there was only one person left practicing it, a very old lady from Bulgarevo. The intervention of the government was crucial in order to document¹⁷² and preserve the authenticity of this fire dance and other works of folk art sharing similar conditions.

III. ORGANIZATIONAL SYSTEM FOR PRESERVING ICH

As mentioned in Part I of this survey, the organizational system for preserving ICH consists of state and municipal authorities, scientific organizations and civil structures. Most of the research, documentation and preservation works are done by the regional community centers, the IEM and Institute of Folklore.¹⁷³ The scope¹⁷⁴ of a research to be conducted by either the IEM or Institute of Folklore would usually determine whether the collected data would be subject to subsequent archiving or inventory activities as well as which other competent authority would participate in the process.

The leading competent authority for ICH archiving activities is the state agency “Archives” of the Ministry of National Affairs whilst the “Museums and Galleries” department of the Ministry of Culture is responsible for the inventory activities of museum funds and collections. Below is an organizational chart outlining the competent authorities for the preservation of cultural heritage:

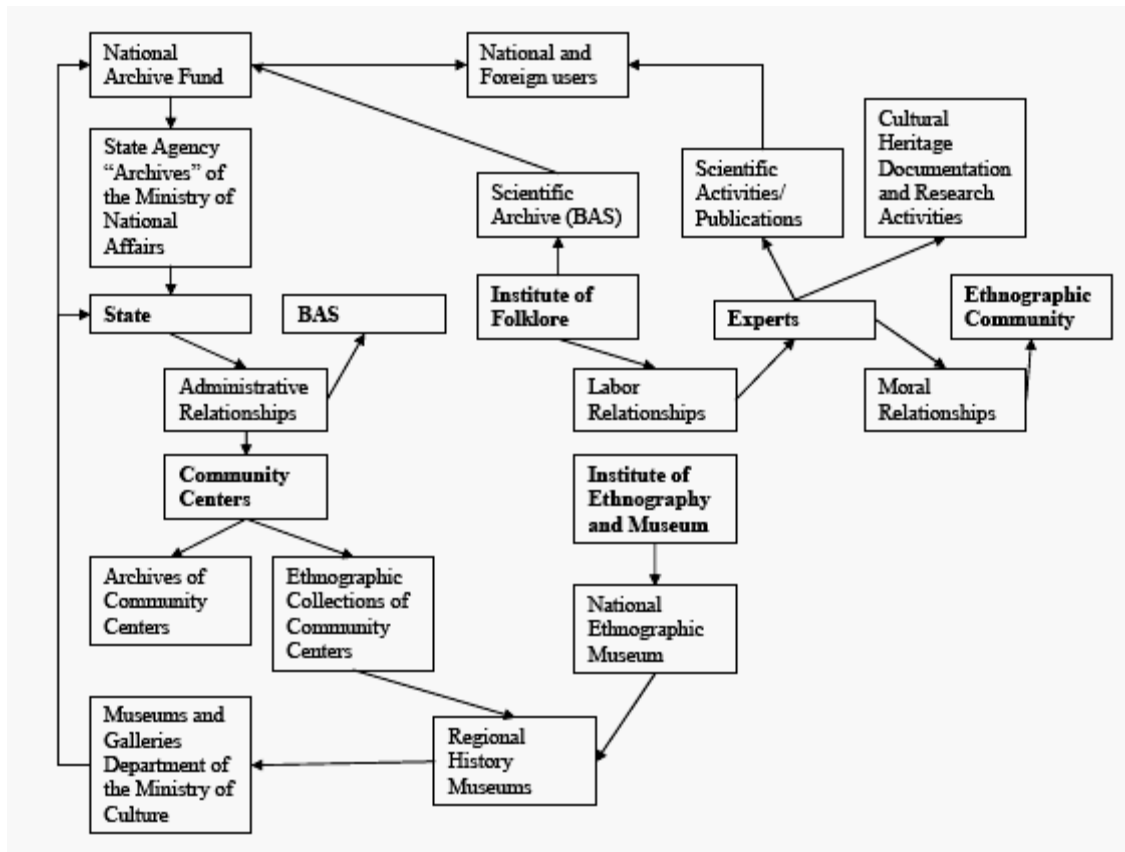
¹⁷¹ At present, fire dancing is done for tourists in restaurants and other touristic places. These performances however do not tend to be authentic and do not carry the traditional and spiritual message of the original ritual.

¹⁷² The ritual had actually already been documented for the first time by Petko Slaveikov in 1862.

¹⁷³ Although both institutes conduct scientific research activities, they do differ in their methods used for collecting and preserving cultural materials, as seen in Part I of this survey.

¹⁷⁴ This includes whether the research would involve the development of ethnographic and museum materials or folkloric materials as the Institute of Folklore namely specializes in the latter type of materials and the IEM in the former. See Part I of this survey.

Figure 2: Organizational Chart for the Preservation of ICH



IV. ROLE OF ARCHIVES AND RIGHTS VESTED IN THEIR COLLECTIONS

As the organizational chart shows, the process of researching, recording, documenting and preserving ICH is quite complex, due to the many social and juridical entities¹⁷⁵ from various angles involved. One important angle concerns the property question over ICH materials and contents, including the duration and holder(s) of rights involved and access to and use of these materials in general.¹⁷⁶ This part of the survey analyzes these issues in more detail whilst exploring the role of archives and their link to the National Archive Fund (NAF).

¹⁷⁵ These include labor, civil, moral and administrative entities.

¹⁷⁶ It may be important to note that currently a research is being conducted on IP issues related to materials and documents developed as a result of the documentation, registration and cataloguing of “original” ICH.

A. Research, Documentation, Archiving and Dissemination Activities

Archiving is the second step in the preservation process and conducted once the research and documentation activities have been concluded. Before any activity can be conducted, however, it is important to establish close relationships with bearers¹⁷⁷ of the folk art as research and documentation can only be accomplished through direct contact and interaction with them.

The sharing of knowledge is usually on a voluntary basis as the bearers are aware that they are the authentic folklore teachers. However, this is also because of the current legal status of ICH as being open to the public and its use considered as a collective right of every Bulgarian. This right may, in some cases, be perceived as a *sui generis* right, in particular, when it comes to the specific characteristics of a folklore stemming from the different ethnographic regions. Although no reward or benefit sharing is sought, it is still important to respect his/her moral rights by indicating the origin when cataloguing any documented folklore. The research and documentation activities are mainly conducted by scientific researchers of the IEM and Institute of Folklore, and in some cases, the institutes may also contract other professionals in the field to conduct these activities.

Each institute of the BAS, as independent entities, is the IP rights holder over its immovable and movable properties, its books and securities, its know-how and other rights obtained through trading, donation, substitution, testament or provided by the General Assembly.¹⁷⁸

In relation to scientific and research materials, photographs, phono- and video recordings produced or obtained by scientific researchers of the institutes, it may sound straightforward that the copyright (economic and moral rights) vested therein would be owned by the institutes. As these scientific works produced by the researchers as part of their research, cataloguing and documentation activities are subject to copyright, it would seem rather natural if copyright would belong to them as their “authors”. Although these are pure and important IP questions, labor law also plays a significant role in defining the relationship between the institutes and scientific researchers.

¹⁷⁷ These include members of an ethnographic community, who still practice their old traditions and customs.

¹⁷⁸ See also Article 69, paragraph 2, of the Law on BAS, DV 34/1994,
<http://www.bas.bg/fce/001/0266/files/LAWONBULGARIANACADEMYOFSCIENCES.pdf>

In general, there are two main IP questions involved here, which are i) to whom would copyright over the produced works belong¹⁷⁹ and ii) what kind of usage arrangements should be made between the institute and researcher? The first IP question depends on the contractual arrangement¹⁸⁰ between the parties, in which the institute would usually obtain copyright (economic) over the works produced with the researchers being acknowledged for their contribution (moral rights). It may be worth mentioning that, due to the social and cultural character of the scientific works, no time limits should be placed on the term of copyright protection over the original copies of these movable objects/materials despite the fact that the duration of copyright, as set forth in the Copyright Law,¹⁸¹ would normally have to be applied. These original copies are preserved in the archives of the individual institutes and these archives are, in turn, supervised by the Scientific Archive.¹⁸² Regarding the second question, this involves more complex issues, such as access policies and the objectives¹⁸³ for the creation of the works. In this case, a common practice at the BAS institutes is to catalogue, preserve and make available to the public the scientific works (or copies thereof) at the BAS's Central Library.

In order to maintain good relations with the scientific researchers, however, there exists a possibility for them to create and publish their scientific works through the “*Publishing Activity*” fund established for all the institutes of the BAS. Through this fund, the researchers would be able to enter a publishing contract¹⁸⁴ with the publisher of the BAS and thereby receive economic benefits from a possible economic realization over their works through copyright, as the scientific works produced and research methods used to process

¹⁷⁹ A similar question should be asked in relation to the communities who also contributed to the creation of the works. Usually these communities would, like the researchers, also be acknowledged for their contribution.

¹⁸⁰ Labor contracts are thus means used to transform an IP right into a property right, intellectual-wise and material-wise, as a whole or under certain specific conditions.

¹⁸¹ The duration of copyright is the life of the author plus seventy years from January 1st following his or her death. For detailed information, see Chapter Six of the Copyright Law.

¹⁸² As a state archive of NAF, the Scientific Archive is moreover connected to the “Archives” state agency of the Ministry of National Affairs. See also the organizational chart.

¹⁸³ For instance, whether the works produced are for preservation/archiving purposes only or whether these could re-used by and disseminated to the public.

¹⁸⁴ The Copyright Law contains certain provisions on such publishing contract rights.

and evaluate the folk art materials are subject to publication.¹⁸⁵ A copy of these works must nevertheless be submitted to the scientific library fund of the institute or community center.

B. National Archive Fund

The National Archive Fund (NAF) is responsible for ensuring the i) management of the country's documented information, ii) development of science and culture and iii) protection of the rights and legal interests of Bulgarians.¹⁸⁶ The NAF therefore comprises:

1. Documents created as a result of activities conducted by state and municipal authorities and other institutions, irrespective of the type of documents, methods used to create these documents, their time of creation, their original rights holders and their preservation purposes. These documents are all kept as records in the Registry of NAF; and
2. Documents and materials related to the history of Bulgaria received from foreign archives and other foreign juridical bodies.

The following "archives"¹⁸⁷ are preserving documents and materials for NAF:

1. State archives;
2. Archives or repositories of state and municipal museums and libraries;
3. Archives or repositories of cultural and public institutions;
4. Archives or repositories of community centers and religious institutions; and
5. Private archives.

Private archives are usually established and supported by private juridical bodies for the processing, preservation and making available for public use of documents and materials created or legally acquired by these bodies. These archives are particularly unique as they are administered by the Registry of NAF, thus by the state, whilst belonging to private entities.¹⁸⁸

The archives usually allow for access to their preserved collections by means of a scientific

¹⁸⁵ As the BAS institutes often publish and disseminate scientific and documentary works in their journals, catalogues, magazines, dictionaries and encyclopedias. See Part I of this survey.

¹⁸⁶ See Article 2 of the Law on the National Archive Fund, DV 57/2007.

¹⁸⁷ Article 5 of the Law defines "archives" as repositories or specialized departments of institutions that collect, process and preserve documents and materials and subsequently make these available for public use.

¹⁸⁸ The archives therefore have a public flavor and are kept as a unified database.

information mechanism.¹⁸⁹ Such access is granted in writing by the manager of that archive and in the case of an access prohibition, this may be appealed using administrative channels.

V. CREATING MUSEUM COLLECTIONS WITH AUTHENTIC FOLK ART

The scientific researchers conducting research, documentation and archiving activities on the Bulgarian folklore traditions, lifestyle and customs, also occasionally collect important authentic cultural materials and objects, such as folkloric dresses, tablecloths, knitting works, ornaments, tunics, stockings, crafts and arts.¹⁹⁰ The traditional characteristics, rituals and uses of collected valuables would thereby be described and documented on paper or by means of photographs, audio and video recordings.¹⁹¹

In relation to copyright in the documentations and recordings, the researchers would, as already described, be accredited as the authors¹⁹² whilst the institute or community center would obtain the property rights over materials produced. The institute or community center would also obtain property rights over authentic materials collected. The communities would not gain any (intellectual) property rights simply due to the concept that folk art and its practice belong to the society at large. It is therefore believed that they informally shared their knowledge and traditions and informally donated their cultural objects. They would usually not be rewarded for their involvement nor would their consent be sought for any reproduction or dissemination of their folk art.

The Law on Cultural Monuments and Museums regulates the management and dissemination of collected authentic folklore materials as these are considered as “movable cultural monuments”. The Law allows for the establishment of “museum collections centers”,¹⁹³ which are financially supported and managed by the community center, school or cultural organization they form part of and supervised by the Regional Historical Museums

¹⁸⁹ Documents may be used in accordance to the regulations on methodological requirements of the “Archives” state agency as stated in Article 33 of the Law.

¹⁹⁰ These researchers collecting authentic materials as part of their activities would work for the IEM or community centers. Other collectors are individual donators of ethnographic valuables.

¹⁹¹ These are then catalogued and preserved in the archive of the relevant institute or community center carrying out the activities. See previous section for a detailed description on these research, documentation and archiving activities and their legal (IP) impact and possibilities.

¹⁹² This of course depends on the conditions set forth in their labor contracts.

¹⁹³ These centers function as local, cultural and educational centers for the collection, preservation and promotion of movable cultural monuments.

(RHM).¹⁹⁴ The RHM is responsible for overall management of the museum collections centers, development of inventories at the centers and records maintenance of the original materials preserved by the centers. As part of their activities, the museum collections centers usually support the regional state museums. They are also working with the specialized “Ethnography of Bulgaria”.

VI. ACCESS TO AND USE OF AUTHENTIC FOLK ART

The legal system puts a significant weight on certain forms of rights related to the use of folk art declared as the historical heritage of Bulgaria. These rights include the right to reproduce, make adaptive and derivative works and the right to import and export these works. Such rights are also a rights holder’s copyright.

An example of a restriction put in place by the legal system is that materials of historical heritage may be reproduced for a fixed amount of copies and for educational, illustrational or trade purposes only.¹⁹⁵ Such reproduction usually involves a visual change of at least ten percent from the authentic works and may be done by legal users, juridical and physical figures or by the museums themselves.

The reproduction or creation of identical imitations¹⁹⁶ of the authentic cultural materials is, furthermore, primarily permitted for enrichment, preservation and dissemination purposes and for use at museum expositions. These works must also be marked with a sign. There are also instances where such imitations may only be made once explicit permission by means of an entrusted letter from the Ministry of Culture is obtained and at the completion of a receiving-transmission protocol between all parties involved.

The right to reproduce an authentic folk art may be obtained through a licensing contract with the rights holder, which is usually the museum or community center. Such an agreement should also be concluded for the i) reproduction of these works in digital,

¹⁹⁴ The centers are formally established and closed by the Museums and Galleries department of the Ministry of Culture. In case of a closing, the collected materials would be given to the RHM.

¹⁹⁵ See Article 32 of LPKM.

¹⁹⁶ The exact reproduction of a work is essential for its preservation and only a fixed amount of copies may be produced, which is determined beforehand and may not be changed. Such a precise imitation is considered an original as it fully reflects the authentic work.

photographic, audiovisual or other related formats, ii) reproduction of the works for use on goods, labels and designs and for other related trading purposes, and ii) general dissemination¹⁹⁷ of the reproduced works.

A. Reproducing Authentic Folk Art Materials within Museum Collections

Access to a museum exposition is usually granted upon payment of an admission fee. Although taking photographs or conducting video recordings is generally prohibited, museums often have a special policy¹⁹⁸ allowing for photographs to be taken of their exposition provided that explicit permission is granted by the museum and an advanced payment of a certain amount is made by the requestor. When photographs are taken for personal use, the advance payment is usually fixed and paid together with the admission fee.

Taking photographs for commercial purposes,¹⁹⁹ however, would require a licensing contract to be signed by the museum as the principal and the publisher as the service provider. The museum would hereby retain the copyright of the photographs while granting the publisher the right to reproduce²⁰⁰ and distribute (an agreed amount of copies).²⁰¹ The benefits²⁰² accrued from such a business relationship are shared between the two parties and often used by the museum to improve the preservation conditions of the original folk art.

Whilst the museum retains the copyright and physical property rights over the reproduced works, the publisher obtains certain related rights for its part in the reproduction process of and for the museum's exposition. Such related rights are, however, limited to the publisher being properly acknowledged. This is because the reproduction usually does not require any

¹⁹⁷ A definition on what constitutes the distribution of a work is provided paragraph 2 of the Additional Regulations for the Copyright Law.

¹⁹⁸ Through their autonomy in the management of their own funds, museums are free to generate such a policy as they wish.

¹⁹⁹ This includes the reproduction and publication of photographs in catalogues, postcards, movies and other types of commercial activities.

²⁰⁰ The reproduction of a work usually entails the direct or indirect duplication of copies of the work or certain parts of it in any form (including electronic form) and using any type of technology (i.e. digital recordings). See also paragraph 2 of the Copyright Law.

²⁰¹ This information was derived from an interview with the director of IEM, professor Rachko Popov. See also Article 43 of the Copyright Law.

²⁰² For more information on the value of a license for IP objects, see B. Borisov, "License trade", *UI Economics*, UNWE, Sofia.

intellectual or creative efforts, as it is simply an act of direct copying and therefore may not comply with the originality requirement of copyright.

B. Reproducing Authentic Folk Art Materials for Education and Commerce

The reproduction of an authentic folk art material for educational or trading purposes is subject to at least a ten percent deviation from the original work. Although the difference between a direct reproduced work and the original can usually not be detected, it merely depends on whether or not the objective is to create a new work, which can be subjected to new copyright.

The deviation requirement can therefore be perceived as a precondition for the creation of a new work as each work is unique in its substance, spirit and form.²⁰³ A change in one of these three elements leads to the transformation of the entire work and gives it a new authorial feeling (which is the one of the reproducer). It then also becomes a precondition for any subsequent changes to be made to the work. Copyright arises for every newly created work and rests in the person who created (or reproduced) the work. Such copyright²⁰⁴ is also different and independent from the property right over the physical work that may vest in the museum or community center.

The reproduction of folk art works for trading purposes is done purely in order to benefit from their economic potential. The reproduced works are considered as souvenirs and only a certain amount of such works may be created. Upon receipt of permission, authentic materials may be used to reproduce these works.²⁰⁵ In essence, the works must indicate the author of the original, his stamp, the ethnographic origin of the folk art and reproduction number. Trade is then used as a mean to distribute²⁰⁶ the reproduced originals. Once a work is traded, the right to disseminate may cease to exist as the rights holder parts with the

²⁰³ The substance is the message the author wishes to convey to the society, the spirit is the author's feeling, thoughts, emotions and ambitions, and the form is the author's means of expression. The form is in most cases objective and only in some could it be material.

²⁰⁴ The term of copyright protection according to the Copyright Law is the life of the author plus 70 years. The right of authorship over the newly created work vests in the author.

²⁰⁵ The use of authentic materials, for the reproduction of authentic folk art work for educational purposes, is limited as basic materials are rather used in order to prevent their potential illegal commercialization.

²⁰⁶ "Under distribution is meant the trade, substitution, donation, loan, lease as well as the proposal for trading and leasing the originals or samples of the work...", paragraph 2, p.4 of Additional Regulations for LAPSP.

physical copy of his work. This right, however, only ceases to exist on the territory where the work was first sold²⁰⁷ and/or when the author is not entitled to any resale rights.²⁰⁸

The benefits accrued from the licensing of rights are generally reinvested to protect and preserve the authentic original folk art materials as well as to a certain extent, their reproduced copies, which are created for educational and trading purposes as described above.²⁰⁹ Revenues realized by non-profit organizations for the use of the authentic materials, however, are put in the National fund “Culture”.²¹⁰

C. Exporting and Importing Authentic Folk Art Materials

The owner of authentic folk art materials not only possesses the right to reproduce but also the right to import and export its materials. This right²¹¹ is, however, subjected to prior permission to be granted by the Ministry of Culture and to the conditions set forth in the regulations of the Council of Ministers. Furthermore, the export of materials declared as national historic heritage is considered unacceptable, except in cases when the objective for exporting is to disseminate the Bulgarian culture and lifestyle abroad or to restore the material as part of its preservation scheme. In both cases, the export is temporary and done using a strictly defined timeline.

Other authentic folk art materials, which are unique and exact copies of the originals, may be exported using a certain certificate. This certificate may be issued by (the director of) the National Center for Museums, Galleries and Fine Arts (NCMGFA) upon request and after an expert evaluation on the value of the cultural good is made. The estimated value is described in “lev”, which is the national currency for cultural goods. The whole permission procedure does not apply to authentic materials reproduced for educational and trading purposes.

²⁰⁷ What is meant here is that when a work is sold, the author cannot receive any remuneration from any other use of his work on the territory where the original trade took place.

²⁰⁸ Resale right usually only applies to authors of artworks, such as graphics, paintings and sculptures. In the national law, it is not apparent that authors of folk art works could also gain such right. For more information on the resale right, see, for instance, EU Directive 2001/84/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0084:EN:HTML>

²⁰⁹ See Articles 26 and 33 of the Copyright Law for more information on the sums.

²¹⁰ See Articles 24-35 of 33RK

²¹¹ Including the permanent and temporary export of the authentic folk art materials.

D. Registering and Evaluating Authentic Folk Art Materials

The registration of authentic folk art materials at the nearest regional or specialized museum is obligatory, irrespective of whether the owner is a state or private figure and/or whether the material is declared to be a national historical heritage or not. Once the authentic folk art materials are registered, an evaluation on their value in monetary terms will be conducted by the so-called expert evaluation commissions. Such an evaluation is also necessary in order to economically benefit from these works as the expert evaluation can conclude whether a work is a movable cultural heritage or not and can also serve as a reliable basis to determine the cost of a license for the use of the work.

The regional and specialized museums responsible for handling the registration and overseeing the evaluation of authentic folk art materials done by the commissions are:

- National Historic Museum;
- National Museum of Bulgarian Fine Arts;
- National Literature Museum;
- National Poly-technological Museum;
- IEM of the BAS; and
- Regional Historic Museums (RHM).²¹²

It is the duty of each museum receiving a registration application to assess whether it would be competent to administer the subsequent expert evaluation. Should it not be, it would have to send the registration to the appropriate museum. Each expert evaluation commission is appointed on a case-by-case basis by the NCMGFA and pre-selected by the Minister of Culture.

The expert evaluation takes place once the subject matter is provided for by the owner and would last for one month. All information must be kept confidential during the entire evaluation period, including the name, condition, description, weight, origin and place of

²¹² The RHM is situated in Bourgas, Varna, Veliko Turnovo, Vratsa, Kurjali, Kiustendil, Pazarjik, Pleven, Russe, Stara Zagora and Shoumen. See also Article 6, p.1 of Regulation No.1 on the evaluation of movable cultural monuments declared as national historical heritage.

creation, materials and technology used, estimated value in levs,²¹³ specific characteristics, color depiction and identification marks of the authentic work.²¹⁴ Once evaluated, the work is marked on the lower right-hand corner with the seal of the museum and signature of the commission's director. In addition, should the work be concluded a movable cultural heritage, it would also receive a registration number. The expert evaluation comes in three uniform copies²¹⁵ and is valid for twelve months.

In cases of disagreement, the owner retains the right to conduct a second expert evaluation, of which its conclusion is considered final. The expert evaluation then comes to force three days after it has been issued. All expert evaluations are kept in the records of the museum involved, whilst the NCMGFA keeps a record of all registrations of works declared as movable historic heritage.²¹⁶ As a concluding remark, Bulgaria is presently developing an intensive state policy for facilitating access to authentic folk art materials and its promotion in its traditional way and style.

²¹³ Estimation on the value in levs is only provided for in the expert evaluation when the owner has expressly declared its wishes to export the work.

²¹⁴ The evaluation may not contain all this information if its determination was not deemed possible.

²¹⁵ These copies are reserved for the i) owner, ii) NCMGFA and iii) unified register for movable cultural heritage, which represents the national historical heritage for the Center.

²¹⁶ See Regulation No.1 (renewed DV issue 13/2005) for the rules on the expert evaluations of works declared as cultural monuments, which are the properties of juridical or physical figures.



**PART THREE: CULTURAL
HERITAGE AND DIGITIZATION**

CHAPTER III: CULTURAL HERITAGE AND DIGITIZATION

I. OVERVIEW OF INTELLECTUAL PROPERTY ISSUES

Part I of this survey showed that cultural heritage institutions and local community centers in Bulgaria are rich store-houses of the history and cultural diversity of this historical nation. Their collections often include invaluable and unique records of Bulgarian ancient traditions and community histories.

Preserving and providing access to these collections can raise IP issues, especially in regard to digitization. Many works in a collection are potentially subject to copyright and related rights protection. Reproducing a work of folk art for preservation purposes may, therefore, require prior permission of the rights holder. Similarly, developing digital databases and providing electronic access thereto may also require permission.

The Bulgarian Copyright Law provides for certain exceptions and limitations, which could perhaps be applied to the activities of cultural heritage institutions. These institutions, as seen in Part I of this survey, are not only users of cultural works and artifacts created and maintained by tradition bearers but they also produce works of IP. Examples of these are catalogues, databases, photographs, scientific research works and other educational materials.

IP may also vest in digitized works of ICH and other forms of cultural expressions, and this IP needs to be managed appropriately so as to respect the (moral) rights of communities, researchers and others involved and in regard to issues of access to and use of these digitized works. Apart from copyright and related rights issues, IP issues relating to trademarks, patents, confidential information, domain names and designs are also relevant in this field.

II. CULTURAL HERITAGE INSTITUTIONS AND DIGITIZATION

Cultural heritage institutions in Bulgaria are becoming increasingly aware of the tremendous potential of digital technologies and the Internet in i) making available of scientific and educational materials and other resources, ii) offering online exhibitions, and iii) reaching the public at large. At the same time, the Internet offers certain commercial opportunities through for instance the establishment of online shops. While the Internet offers new

opportunities for Bulgarian cultural heritage institutions, it also presents new challenges, particularly concerning the unauthorized use and reproduction of digital works. Some legal uncertainty may also exist in relation to the legal status and ownership of digital works of cultural collections.

The concept of digitizing cultural heritage, especially ICH, is quite contemporary and provokes many questions. At present, there exists no special legal requirement in Bulgaria that deals with this issue, neither in the IP law nor cultural heritage law. The possibility of digitizing ICH using existing funds is not even officially discussed. The public opinion and those of cultural heritage experts are also quite different. On the one hand, there exists a public concern that digitization may result in ICH becoming more vulnerable to distortion and misappropriation. On the other, it is believed that digitization may allow for better preservation and promotion of ICH.

The digitization of ICH involves IP. Possible IP questions to take into account are:

1. What is the difference between an adaptation and a derivative work in relation to copyright protection?
2. Could digitization be considered as a means to create derivative works in which new copyright can be obtained?
3. How should artifacts be photographed and digitized so that new copyright could be obtained?
4. Who should or would be the rights holder(s)?
5. When developing a digital database, what IP issues arise that should be taken into consideration?
6. How would access to such database be accorded – electronically, open or limited access, on the Internet, against payment?
7. How should new rights be managed so that they would not conflict with the principle of free public access to ICH?

Although theory and practice may not have the answers to these questions, they could be a fruitful base for developing an IP framework for future digitization activities. In Bulgaria, such digitization activities would mainly be conducted by cultural heritage experts, on behalf

of the BAS institutes and community centers, and would be based on commission contracts.²¹⁷ The right of authorship thereby remains with the executor (expert), and the requester (institute) would obtain copyright over the work.

III. TOWARDS DEVELOPING A DIGITIZATION STRATEGY

Developing a digitization strategy with an IP focus is considered essential and could perhaps comprise both legal and non-legal tools. Such a strategy should be in line with the objectives and mandate of the cultural heritage institutions in which appropriate IP policies, protocols, guidelines and license and other agreements²¹⁸ may play an important role.

A digitization initiative covers a considerable amount of preliminary operations, each requiring precise expert knowledge, professional intergovernmental coordination, active participation of the private structures, and financial and IT support. Furthermore, a balance between the possibilities for exploring the economic potential of ICH, for purposes of cultural tourism and the preservation of ICH for future generations would be necessary to achieve in any cultural heritage digitization activity. For this reason, it may be necessary as a first step to identify and unpack the “issues” involved. A list of key questions could look as follows:

1. What is “intangible” cultural heritage?
2. What is meant with “preservation” and “protection”?
3. What are the objectives for digitizing ICH?
4. How should the “types” of ICH be selected for digitization?
5. What are the objectives for establishing a digital database?
6. How should “access” be regulated?
7. What kind of “use” can be regarded as acceptable?
8. How should distortion of cultural heritage, its message and purpose be prevented?

Below are some commentary and guidance to these questions:

²¹⁷ See Article 42 of the Copyright Law.

²¹⁸ Reference may be made to WIPO’s searchable database of such resources from around the world, accessible at http://www.wipo.int/tk/en/folklore/creative_heritage. Another resource is the WIPO’s Guide on Managing Intellectual Property for Museums accessible at http://www.wipo.int/copyright/en/museums_ip

The following are described in the Cultural Heritage Act (2009) as “intangible” cultural heritage, the list should however be regarded as non-exhaustive:²¹⁹

- i) Oral traditions, languages and other forms of cultural expressions;
- ii) Works of artistic and performing arts;
- iii) Social customs, beliefs, rituals and celebrations;
- iv) Knowledge and customs related to nature; and
- v) Knowledge and skills related to traditional crafts.

The preservation of cultural heritage is generally regarded as a systematic process of researching, identifying, documenting, restoring and promoting cultural heritage, which include works conducted by experts in the field. The protection of cultural heritage is then perceived as a system of measures to amongst others ensure its preservation and respect the public interest.

ICH may be digitized for different objectives, which also depend on the type of ICH, its status or condition, and its cultural and economic significance. Furthermore, as mentioned above and in Part I of this survey, the digitization of archival funds and museum collections involves different experts in the process and their contractual arrangement will determine the type of IP right they could hold.

Additionally, the uniqueness and value of folk art are generally affected by its popularity. For instance, the folk song “delio voivode has come out” was worldwide disseminated to spread the message of peace and self-awareness. Another well-known example is the registration of the “Grandmothers of Bistritsa” as a UNESCO masterpiece.²²⁰ Other examples include the unique folk art performance of the Valia Balkanska and Kushlevi sisters called “the mystery of Bulgarian voices”.²²¹

The establishment of digital databases of ICH leads to questions on access to and use of digitized works of ICH. Although the underlying or “original” works of ICH remain public domain, i.e., open to the public for its free use, practice and promotion, digitized works of

²¹⁹ See Chapter IX of the Act and Part II of this survey.

²²⁰ See Part I of this survey.

²²¹ A remake of this Bulgarian folk song was performed at the Eurovision competition and received a fifth place.

ICH could be considered as derivative works under copyright, for which the establishment of a legal regime on access to and use of may be desirable.

At present, there exist no specific norms on the types and methods of access and use considered as acceptable. The indication of the source is usually a best practice followed, which also adds value to the preservation of “authenticity” in the use, practice and dissemination of traditional authentic folk art. Another way to prevent misuse and distortion of ICH is to set certain conditions on changes made to the traditional substance or message. These should perhaps be in line with the public interest so that the ICH’s representation of national value and self-awareness would not be negatively affected.

Digitization of ICH is closely related to the development of special computer software and databases. Copyright laws generally provide for protection to such works.²²² Again, should experts be involved in the establishment of a digital database of ICH, copyright would usually vest with the employer. However, if a database is created outside the scope of such a working relationship, copyright could belong to the producer, namely the person who took the initiative in collecting and compiling the contents of the database.²²³

In any event, it should be noted that copyright only provides for protection of the compilation and ways of arrangement and does not extend to the materials, ideas and information collected. These may have separate protection, which would also need to be taken into account.

²²² See Article 5 of the WIPO Copyright Treaty and Article 3 of the Bulgarian Copyright Law.

²²³ See Article 93b of the Copyright Law.

PART FOUR: CONCLUSIONS AND THE WAY FORWARD

CHAPTER IV: CONCLUSIONS AND RECOMMENDATIONS

This part of the survey hopes to formulate a relatively broad, independent and neutral set of conclusions and recommendations, based on the research results outlined and discussed in this survey. This set of conclusions and recommendations is, however, left rather open-ended for the purpose of developing and presenting best practices for the future digitization, preservation and promotion of cultural heritage, as it is not only part of the past, but also part of the future development of the Bulgarian society at large.

I. CONCLUSIONS

Cultural heritage forms part of the history, traditions and cultural values of Bulgarians. Its preservation and continuance are considered vital for the cultural and economic development of the Bulgarian society.

The national legal system governing cultural heritage was recently improved with the adoption of the Cultural Heritage Act (2009). Although this Act as it currently stands may not be able to solve all problems pertaining to cultural heritage, there exists political will to further improve and amend the Act and to develop a national strategy for the management, protection, preservation and promotion of cultural heritage in Bulgaria.

The survey showed that IP could to a certain extent provide protection to “intangible” cultural heritage. Although ICH is generally considered as public domain, certain IP-related questions in relation to the use of ICH may need consideration that could in turn help prevent the misappropriation and distortion of ICH. IP questions also arise in research, documentation and digitization activities on ICH and in the creation of scientific and educational works from these activities. Furthermore, the establishment of digital databases of ICH provides for new ways of protecting and preserving ICH, which involve IP. Lastly, the role and impact of IP is significant in regard to the economic exploitation of ICH.

In general, the Bulgarian legal system governing cultural heritage is open to new trends related to ICH and IP. Both state and private structures have a positive attitude towards the idea of digitizing ICH as a way for its better preservation and promotion. The Institute of

Folklore and IEM of the BAS are front runners in undertaking digitization initiatives, as the majority of their archival funds and museum collections have already been digitized.²²⁴

In summary, the main conclusions of this survey are:

- Bulgarian ICH is extremely rich and diverse and its preservation and promotion are important for, amongst others, national self-awareness. It is also widely seen as both a cultural asset and a source of economic benefits;
- The overall system for the preservation and promotion of cultural heritage in Bulgaria is functioning relatively well and is effectively open for enrichment to the public through programs conducted by the State, civil structures, community and private parties, and other cultural heritage experts;
- There exists a collaborative spirit and effort among the main actors in the cultural heritage sector to preserve and promote ICH and ensure its transmission;
- The number of industrial and nonprofit organizations representing the civil structures is on the rise and their active participation in ICH preservation and promotion activities is increasingly visible; and
- There is growing interest in digitization initiatives and the management of IP in the access, use, preservation and promotion of ICH is important, there is therefore also interest in developing appropriate IP policies in this regard.

II. RECOMMENDATIONS FOR FUTURE DEVELOPMENTS

The following recommendations could perhaps be considered for future developments in the fields of ICH and IP:

1. Organization of regular meetings between ICH and IP experts could be important for contributing to the preservation and promotion of ICH in Bulgaria and abroad.²²⁵
This could perhaps also have a positive impact on preserving the Bulgarian identity in the Balkan region, particularly in relation to regional ICH;

²²⁴ See Part I of this survey.

²²⁵ Bulgaria hosted an experts regional meeting on the preservation of ICH, held in Arbanasi, Bulgaria, June 15-20, 2007. Amongst the participants were Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Macedonia, Romania, Slovenia, Turkey and Croatia.

2. Development of an effective coordination system comprising various administrative, cultural heritage institutions, NGOs, civil structures and other experts active in the Bulgarian cultural heritage sector for the purpose of enhancing collaboration between them;
3. Development of digitization strategy consisting of procedures and methodologies for digitizing ICH and IP management policies for the establishment of digital databases of ICH; and
4. Improvement of existing legislation on the protection, promotion and management of ICH with the inclusion of relevant applicable IP principles.

These recommendations could perhaps be best achieved when there is:

1. A policy on the relation between copyright protection and the preservation and digitization of ICH;
2. A policy on the protection of authenticity of folklore, artifacts and the creation of derivative works thereof; and
3. A balance between the possibilities for exploring the economic potential of ICH in the field of cultural tourism and its preservation for future generations.

PART FIVE: ANNEXES

ANNEX I: PLAN OF ACTION

Activity	Timeline
1. Launch of Project and preparatory activities, including List of Institutions and Experts, Questionnaire and Plan of Action	July 2007
2. Online research	August-September 2007
3. Discussions with WIPO*	November 2007
4. Participation at WIPO Roundtable (see Annex III)	(10-12) December 2007
5. Preparation of first draft and conducting additional interviews	January-February 2008
6. Submission of final draft	May 2008

* WIPO and the author had a range of informal discussions in which important parameters and questions regarding the peculiarities of the Eastern European governments, the socio-cultural politics and structure of these countries were discussed and specified. Some of the questions raised and discussed during the discussions included:

1. In some specific cases, who were the local societies, would these be the ethnic and ethnographic societies living in the countries?
2. Which of these societies should be researched?
3. What could be considered to be a “culture heritage” for the purpose of the project? According to the Law on Cultural Monuments and Museums, culture heritage is tangible and nonmaterial works of human activity, which is important for the social and cultural life of the society. Tangible heritage, on the other hand, can be movable and immovable with each having a different legal status;
4. How should the research and its contents be structured?
5. What obstacles were encountered in the collection of information from the questionnaires as well as the opportunity and expectancy of conducting telephone and live interviews?

ANNEX II: LIST OF INSTITUTIONS AND EXPERTS

Ina Kileva	Vice Minister of Culture	Ministry of Culture
Georgi Damianov	President	Board of “Copyright and Related Rights”
Rusi Ruskov	President	Board of “Museums and Galleries”
Mila Santova	President and Professor	Institutions specialized in Cultural Heritage, Bulgarian Academy of Science / BAS Institute of Folklore
Volodia Velkov	President	Section “Struggle with Organized Crime, Smuggle and Illegal Importation and Exportation of Cultural Valuables”, National Service for Combat against Organize Crimes (NSBOB)
Todor Chobanov	Adviser	Regional Prosecutor’s Office
Rachko Popov	President and Professor	Institutions specialized in Cultural Heritage, BAS, Ethnographic Institute with Museum and Galleries
Plamen Bochkov	Ethnographic Experts Associate Professor and Vice President	New Bulgarian University
Philip Kutev	Dance Ensemble	BAS Institute of Folklore
Elena Kuteva		
Kushlevi sisters	Folklore Singers	BAS Institute of Folklore
Bistriza Grandmothers	Folklore Performers	BAS Institute of Folklore
Radka Bratanova	Expert	BAS Institute of Folklore

ANNEX III: QUESTIONNAIRE

Below is the questionnaire used to compile this survey report:

WIPO's Creative Heritage Project IP Best Practices and Guidelines for the Recording and Digitalization of Cultural Heritage

Questionnaire

1. Do you have examples of existing guidelines on CH*?
2. What codes of conduct, standards, agreements and protocols are currently used for governing CH?
3. Do you have information on IP issues, questions and claims such institutions and specialist come across or practical information on current initiatives and projects relating especially to the recording, digitizing and public presentation of CH, with a focus on IP-related questions and needs in this areas?
4. What institution is mainly responsible for CH?
5. Describe the administrative structure of this institution.
6. Do you have a special Institute of the Museums, Archives, Galleries or other institutions involved in collecting, recording, presenting, conserving and licensing the re-use of CH?
7. Do you have private museums or galleries for the collection of CH?
8. What type of relationship do you have with them?
9. Does there exist any special procedure for the use of CH by private institutions?
10. Who is the proprietor over the CH which is a part of the museum collection?
11. Do you prepare catalogues of your CH collections?
12. How does the procedure on access to the CH collections look like?
13. What about the authorship over the catalogue, photography, publishing procedure and advertising activities as well as the reproductions made of the cultural expressions of folklore?
14. Do you receive any incomes from these activities?
15. Do you have a special code of expenditure on the incomes made?
16. Do you digitize your CH collections?
17. Who manages the rights over the digitized CH collections?

18. Are there cultural groups who possess collective and age old cultural traditions in respect of which these IP issues arise?
19. Are the cultural traditions of these groups documented, preserved or protected through the IP system or digitization efforts?
20. Could you please share your views on the policies and practices of museums and archives in relation to IP with reference to issues such as:
 - a. Acquiring collections, including issues of cultural sensitive material, provenance and due diligence?
 - b. Removing and disposing of collections?
 - c. Care of collections, including the inventory, cataloguing and documentation of collections?
 - d. Research by or for museums and archives, including fieldwork?
 - e. The display, representation and exhibition of collections, and the publication and reproduction of these collections?
 - f. Identification, authentication and validation services provided by museums and archives?
 - g. The relation between museums and archives and source communities?
 - h. Trends and common feature and IP related needs perceived, as well as possible suggestion as to what could be the best practices or model provisions?

* *CH denotes Cultural Heritage*

ANNEX IV: LEGAL RESOURCES

1. Constitution of Republic of Bulgaria, 1991
2. Law on the Protection and Development of Culture, DV 50/99
3. Law on Copyright and Related Rights, DV 56/93
4. Law on Crafts, DV 42/01
5. Law on Cultural Monuments and Museums, DV 29/69
6. Law on the National Archive Fund, DV 57/07
7. Law on the National Charity Fund “13 Centuries of Bulgaria”, DV 12/01
8. Law on Patronage, DV 103/05
9. Law on National Community Centers, DV 89/96
10. Cultural Heritage Act, 2009
11. Rules of Bulgarian Academy of Science, 34/94
12. European Convention of Culture, 70/91
13. Decree №1 on the order of evaluating movable cultural monuments as a property of legal entities, 13/05
14. Decree on reporting and preservation of cultural monuments, 35/04
15. Instructions on the requirement of opening and functioning of a museum’s collections at community centers and other institutions in relation to the implementation of the Law on Cultural Monuments and Museums and Decree №6 on structure and functionality of a museum’s collections since 1985
16. Bulgarian report on the national policy for preservation of cultural heritage, 2007
17. Convention on development and preservation of diversity of cultural expressions, 98/06 enacted since March 2007
18. Convention on the preservation of intangible cultural heritage, draft bill № 502-02-28, ratification proposed by the Ministry of Council on December 13, 2005