



September 15, 2014

**VIA E-MAIL: [srculturalrights@ohchr.org](mailto:srculturalrights@ohchr.org)**

Ms. Farida Shaheed  
UN Special Rapporteur in the Field of Cultural Rights  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

Dear Madame Rapporteur:

I am pleased to offer this spontaneous contribution on behalf of the International Intellectual Property Alliance (IIPA) to your pending thematic report on “the impact of intellectual property regimes on the enjoyment of rights to science and culture, as enshrined in particular in article 15 of the International Covenant on Economic, Social and Cultural Rights.” See <http://www.ohchr.org/EN/Issues/CulturalRights/Pages/impactofintellectualproperty.aspx>.

Founded in 1984, IIPA is a private sector coalition of trade associations representing U.S. copyright-based industries, including book and journal publishing, motion pictures and television, music and sound recordings, and entertainment software. Of most relevance to your current research, IIPA has been deeply engaged over the past three decades in education and advocacy for modern copyright laws and policies in countries around the globe. We hope that our historical and cross-cultural perspective can supply something of value to your current project.

In our view, intellectual property regimes, and specifically copyright laws and practices, play an enormous and positive role in promoting the right of people to enjoy and access cultural heritage, the arts, scientific knowledge, and other fruits of human creativity and imagination. Copyright is the best system yet devised for encouraging the creation of new creative works; for providing incentives for disseminating these works as broadly as possible; and for funding the continued investment needed to renew and preserve the creative process and cultural enterprise.

Your investigation properly focuses on the issue of access to creative works; but this should include an appreciation of the critical importance of legal mechanisms to encourage the creation of new works. Unless these mechanisms are sufficiently strong, flexible and comprehensive, the corpus of works to which people may obtain access could dwindle, and the ability of every person to access, contribute to and enjoy the arts and otherwise to benefit from creative works would be undermined.



Copyright also provides creators with the maximum flexibility to choose how to make their works available to the public. The legal regime provided by copyright is essential to the licensing of access to creative products, and enables creators to choose whether to license these activities on commercial terms; to impose non-monetary conditions, such as through the use of mechanisms such as Creative Commons; or even to choose to make their works freely available under circumstances that they specify.

We commend you for also looking into the issue of artistic freedom, and the challenge of ensuring to authors and other creators the protection of moral and material interests resulting from the scientific, literary or artistic products they create. See Article 15, paragraph 1[c] of the Covenant. Strong and modern copyright systems are critical to creative freedom, and to the ability of creators to earn a livelihood and to devote time and resources to perfecting their literary, musical, programming, and other creative skills.

In order for a society to benefit from a rich variety of creative works, those works must be produced by human beings, whether working alone or (far more commonly) in concert and collaboration with one another. In order for this production to occur, society must have a robust and flexible mechanism for investing in such production. The common perception of creativity as the result of a solitary spark of genius, while not completely inaccurate, oversimplifies a far more complex reality. Authors, composers, performers, cinematographers, screenwriters, videogame designers, and all the other creative contributors to the process must invest their own time and resources, foregoing other occupations, in order to learn their crafts, hone their skills, improve their collaborative strategies, and perfect their abilities to convey an expressive message through their chosen medium. The process of publishing a book, producing a musical recording, filming a movie or TV show, or developing a videogame requires the participation of many other skilled professionals, and thus demands yet higher levels of monetary investment. Even once the production process is completed, much further investment is required in order to promote, publicize and disseminate the product – in other words, to ensure that the public is aware of it and has access to it.

In the absence of modern copyright regimes, investment in all these essential contributions at each stage – creation, production, dissemination - may be dependent on the whims of wealthy private patrons or the bureaucratic strictures of governmental sponsors. Only in the environment provided by copyright is there a possibility for investors to take the often enormous financial risks of producing and disseminating a complete creative work, motivated by the prospect for realizing a financial return on this investment (as well as by the desire to enrich the local, national or global culture). And only where these legal regimes are in place and functioning well can creators themselves contemplate the prospect of making a living through their creative activities, moving beyond amateur status into professionalism, and, in sum, achieving artistic independence.

The importance of copyright in promoting the creation and dissemination of music, films, literary works, software (including entertainment software) and other products is perhaps most acutely felt in smaller markets and less developed economies. Here, the failure to protect the right for everyone to benefit from the protection of the material interests resulting from



productions of which he or she is the author may inflict the most grievous harm on local creators, cultural institutions, and economies. When works originating in the developed world and catering to international markets are copied, disseminated, or otherwise exploited in these smaller or less developed markets without the authorization of the author, the injuries inflicted, while real and substantial, are to some extent ameliorated by the fact that the work might still be successfully exploited by the author in other national markets. Investments in music performed in the Spanish language, for instance, or in a film whose script is in English, may produce a reasonable return from international markets, even if a few of those markets are closed due to widespread and unremedied infringements. By contrast, for music in the Igbo or Yoruba language, or a film with dialogue in Telugu or Malayalam, the situation may be quite different. The products in these examples may have only a very limited market outside regions of Nigeria or India respectively. The risks to cultural diversity if these works are not adequately protected is apparent.

If, in his or her home market, the creator of such works is unable to realize any return on the considerable investments made, then his or her material interests arising from the production have effectively been destroyed. In this sense, protection of the author's human rights interest in realizing the material benefits of exploitation of the work is a particularly compelling challenge in such markets. Not coincidentally, some of the more vigorous and dramatic collective actions taken by artists to call attention to insufficient protection for these interests have taken place in just such markets. See, e.g., C. Nwanne, "Nigeria: September 1 is No Music Day in Nigeria," *The Guardian* [Lagos], Aug. 29, 2014, available at <http://allafrica.com/stories/201408290860.html>. Similarly, some of the most consequential recent economic research on the impact of insufficient protection on the production of creative works focuses on such markets. See, e.g., Telang & Waldfogel, "Piracy and New Product Creation: A Bollywood Story," available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2478755](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2478755).

These facts also underscore that the human rights interest in realizing the material benefits from creative works can most effectively be advanced when the copyright legal regime is not only spelled out in law but also effectively enforced. As noted by the UN ECOSOC Committee on Economic, Social and Cultural Rights in its comment on the relevant provision of the International Covenant on Economic, Social and Cultural Rights:

Effective protection of the moral and material interests of authors resulting from their scientific, literary and artistic productions would be hardly conceivable without the possibility of availing oneself of administrative, judicial or other appropriate remedies. All authors who are victims of violation of the protected moral and material interests resulting from their scientific, literary or artistic productions should, consequently, have access to effective administrative, judicial or other appropriate remedies at the national level.

General Comments No. 17 (E/C.12/GC/17, 12 January 2006), at paras. 51-52, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f17&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f17&Lang=en).



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IIPA greatly appreciates the opportunity to make this contribution and hope that it will prove useful to you in the preparation of your report. If you have any questions concerning it or would like to discuss these issues further with IIPA representatives, please do not hesitate to contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Steven J. Metalitz".

Steven J. Metalitz, Counsel  
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