Dear Madame Rapporteur:

The Recording Industry Association of America (RIAA) greatly welcomes your examination of the relationship between the protection of intellectual property regimes and human rights. Far too much of the existing dialogue has been based on an over-simplified and inaccurate assumption that the protection of intellectual property is somehow inconsistent with the rights of the general public given that the protection of intellectual property is technically the protection of an exclusionary interest. This blunt analysis completely ignores the complexity of the relationship, and fails to properly consider the long term interests of societies to create incentives for the creation of original works that may be accessed by the general public.

A "right of access" presupposes the existence of something worth accessing and is, therefore, derivative. The first objective of societies must be to support the establishment and maintenance of an environment conducive to fostering creativity and innovation through the effective protection of the rights of creators. An effective copyright regime is an essential element for encouraging investment in cultural production, and investment will be lacking in societies where such protections do not exist. This has been the unfortunate reality in many developing countries where the lack of effective protection has eroded the willingness of private capital to fund production of original cultural works, contributing to economic stagnation and a dearth of cultural diversity. Simply put, when a society fails to reward its own creators, such creators will cease to exist, and "access" will be limited to foreign cultural materials.

In many developing countries, the marketplace has been so dominated by piracy that there is no viable mechanism for private capital to be employed in facilitating the creation and distribution of creative works. In such instances-i.e. where copyright protection is not effectively introduced and maintained in law and in practice, the creative community is silenced. Communities throughout the globe-particularly in parts of the Middle East and Africa, bear silent witness to the devastating impact that lack of effective copyright protection has on the ability to create. Where there is no financial incentive for the creation and distribution of cultural materials, the distribution of local cultural materials ceases, much to the detriment of society, as well as to the putative creators who are foreclosed from adding their voices to the cultural mix.

Make no mistake — cultural hegemony flows not from the protection of intellectual property, but from its absence. We owe the world's creators and societies a better deal, and effective copyright protection has well served the societies which have maintained such systems. We therefore urge policy makers around the globe to reject simplistic formulations of the public interest that are grounded only in considerations of access to creative works without considering the incentives for the production of creative works. We must ensure that policy makers ask themselves "access to what?" before adopting policies that endanger their own ability to foster creativity and innovation.

An effective and functional copyright environment is not a panacea; it does not on its own create global parity in the marketplace of ideas. But it does give individual creators a fighting chance, and an opportunity to compete. The ability to generate revenue from one's creativity — to earn a living as a creator — is central to a society's ability to foster cultural production. In its absence, dreams and creative lives perish. The moral and economic aspects of this equation are inseparable. We simply must ensure that all creators, regardless of their location, are able to enjoy the fundamental human right to choose the manner in which their creations are used as reflected in international law.

It is essential that policy makers remember that systems of copyright replaced private patronage as the mechanism for permitting creators to live through their craft. It does not serve the aspirations of developing societies to return to a system in which the voices of the people serve the whims of the private elite, or worse, to allow governments to be the sole determining body in the matter of cultural works. By permitting creative genius to be fueled by market forces, we unleash the cultural power and potential of the diversity of individuals, freeing creative impulses from the tyranny of centralized controls and making creative works accessible to the public at large. While copyright may be inadequate on its own in creating fair market conditions, it remains by far the most powerful tool for fostering creativity and democratizing culture itself.

It is also critical that we create a greater awareness that copyright is, after all, about the protection of the individual and the creator's personality. Copyright protection, while it may sometimes serve the interests of multinational corporations, is the mechanism that permits individuals to devote their lives to the creation of original materials; it serves as a catalyst for the preservation and growth of cultural identity. Societal understanding of this more complete and complicated picture of the objectives and functioning of the copyright system is critical for ensuring that policy decisions derive from reason rather than rhetoric, and that the public enjoys a greater appreciation for a dynamic that is not immediately discernible from the outside.

Madame Rapporteur, we sincerely hope that your Report will illuminate these key points, and in so doing you will help to create an environment which is more nurturing of the creative community. While a superstar in Los Angeles and a struggling musician in Harare may lead very different lives, their creative existences stem from the same source — the robustness of the copyright protection that permits them to make a living from their craft. If we want to foster cultural diversity (and I assume we all do), and want to ensure that diverse content is available to be accessed (and I assume we all do), then we must be more vigilant in ensuring the effective global protection of copyright.

It is also important to bear in mind that creators do not generally engage in original production for the purpose of keeping their creations to themselves. The *sine qua non* of the cultural marketplace is providing access to creative works. And just as creators have little interest in keeping their productions private, they also have little interest in making them available under conditions that don't allow meaningful access. Copyright protection, particularly in the current environment, allows creators to provide differentiated products and services dependent upon consumer choice. The music marketplace is particularly diverse with more than 450 digital authorized services operating around the globe (<http://www.pro-music.org/>), ranging from free (to the user), ad-supported streaming services to permanent downloads. This diversity of choice is dependent upon, and fueled by, the operation of the copyright system. As such, it is better to think of copyright protection and access as two parts of the same engine, and not as competing, linear forces.

Before closing, I wanted to briefly discuss a recent article by Lea Shaver entitled “Copyright and Inequality.” Ms. Shaver summarizes her article as follows: *“The standard theory of copyright law imagines a marketplace efficiently serving up new works to an undifferentiated world of consumers. Yet the reality is that all consumers are not equal. Class and culture combine to explain who wins, and who loses, from copyright protection. Along the dimension of class, the inequality insight points out that just because new works are created does not mean that most people can afford them, and calls for new attention to the problem of affordability. Copyright protection inflates the price of cultural works, with implications for distributive justice, democratic culture, and economic efficiency. Along the dimension of culture, the inequality insight points out that is not enough for copyright theory to speak generally of new works; it matters crucially what languages those works are being created in. Copyright protection is likely to be an ineffective incentive system for the production of works in “neglected languages” spoken predominantly by poor people. This article highlights and explores the relationships between copyright and social inequality, leveraging the inequality insight to provide a new perspective on what is at stake in debates over copyright reform.”* Lea Shaver, Copyright and Inequality, 92 WASH. U. L. REV. \_\_ (2014).

While this is undoubtedly well-intentioned on the part of Ms. Shaver, I urge Madame Rapporteur to think carefully about the proposals put forward. Ms. Shaver starts with an inaccurate picture of the world, resulting in proposed solutions that would fail to resolve, and would indeed exacerbate, the perceived problem. Her recommendations are based on the premise that “copyright law imagines a marketplace efficiently serving up new works to an undifferentiated world of consumers.” But nothing could be farther from the truth. Indeed, it is only the existence of copyright that permits a creator to define the uses of his or her work. Market differentiation is central to the copyright world, and to copyright licensing. It is what allows a creator to offer low cost (or free) streams of her music without giving away her work entirely. It expands choice rather than contracting it. But in Shaver’s world, the interests of the creator and the user are diametrically opposed. That is not a vision that captures reality, or empowers the creation of original and culturally diverse works. And most fundamentally for present purposes, it is not a vision that protects the fundamental human rights of the individual.

Like many observers, Ms. Shaver has allowed the fact that large companies care about copyright protection to obscure her understanding that copyright protection is the final salvation of the individual against the horde—whether that horde is constituted by corporations who want to distribute her work, or the public that wants free and unrestrained access to it. Ms. Shaver writes that “copyright protection inflates the price of cultural works.” But again, that is completely wrong. Copyright protection gives economic value to cultural works, and sustains creators. It doesn’t inflate price—it recognizes a property interest so that the creator can determine the conditions of subsequent use. I share Ms. Shaver’s desire to incentivize the creation of works in “neglected languages.” However, her proposals would relegate them to extinction by removing incentives for investment in the creation of works in such languages.

Madame Rapporteur, we thank you again for undertaking this important initiative, and look forward to your Report which we hope will help to dissipate some of the dangerous misunderstandings in this area, and which embraces an approach that gives meaning to the right of the individual to define how his or her creation will be used. We will not effectively promote “creativity” as an abstraction if we fail to protect creators. I leave you with a statement made last year by Bankole Sodipo, a founding member of the Africa IP Group (AIPG) and professor of law at Babcock University in Nigeria. At a regional workshop held in Dar es Salaam, he said *"Today, more than ever, Africans whether living on Africa soil or in the Diaspora need to network to nurture our intellectual property. We need to share experiences, to evaluate and consider how we can promote our culture, our creative industries, our innovation and our investments and ensure that intellectual property becomes a tool for African economic emancipation.”* Hopefully with your help, we can generate a greater understanding of the role of intellectual property as a tool for economic emancipation, a catalyst for cultural diversity, and a powerful protector of individual dignity and fundamental human rights.

Respectfully submitted,

Neil Turkewitz

Executive Vice President, International

Recording Industry Association of America (RIAA)

1025 F Street, NW

Washington DC, 20004