



For the attention of the UN Special Rapporteur for the Human Rights Council

Consultation on the Impact of IP Regimes on the Right to Science and Culture

Comments by the

Independent Film & Television Alliance [IFTA]

The Independent Film & Television Alliance [IFTA] welcomes the opportunity to contribute to the UN's Consultation on the Impact of IP Regimes on the Right to Science and Culture, which references Article 15(1) of the International Covenant on Economic, Social and Cultural Rights [ICESCR]

IFTA is a non-profit organisation based in Los Angeles, with member companies in the Americas, Asia and Europe. IFTA's member companies are independent enterprises which produce, finance and license rights to films and audiovisual content throughout the world.

We note that Article 15(1) ICESCR protects both the right of people to "take part" in cultural life and the right of creators to enjoy the protection of their works. Specifically, 15(1)(c) holds the right of a person to benefit from "the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." This is also congruent with Article 27(2) of the UN's Universal Declaration on Human Rights and establishes that a creative author's economic interest forms of part of such fundamental rights and cannot be disassociated from them.

IFTA regrets what we see as a tendency in the global debate on copyright and fundamental rights to foster a simplistic opposition between copyright and the public interest. This argument fails to recognise the simple fact that rewarding creators and cultural entrepreneurs for their endeavours is integral to the public interest and to societal or cultural enrichment, not antithetical to it.

We also observe that the existing asymmetries in the upholding and efficient implementation of copyright law are causing asymmetries in countries' capability to produce and consume cultural artefacts. IFTA believes strongly – based on our own ground-level engagement with the realities of the global market for audiovisual works – that citizens of developing countries are not passive recipients of other people's cultural artefacts: they are dynamic creative forces, many of which with inexhaustible reserves of as-yet-untold stories and creative forms crying out to be expressed and thus to contribute to local and global cultural enrichment and economic growth. Copyright is for all individuals and businesses in these countries to use as practical incentive to take the economic risk

involved in making and marketing local works. Should they not be permitted to enjoy such protection and to develop string industries based on secure copyright-based transaction, their dependency on imported fare will increase, with an attendant loss of cultural sovereignty, and GDP growth opportunities.

Should creators and cultural enterprise in developing countries not be able to rely increasingly on copyright (or rely on an inadequate, weakened form of it), it is difficult to see how this would in any way benefit local cultural production and the public. In effect, the only alternative way to maintain any kind of local production would be through local government subsidy. Not only would governmental exclusivity over local content production funding be inefficient (experience all over the world shows it is only effective when combined with dynamic private sector participation), but it would also detract scarce national budgetary resources from other social/economic priorities (e.g. public health, education, etc). It would also inevitably result in the suppression of certain content and/or the empowerment of certain creators affiliated to the dominant political ideology, at the expense of others. Censorship would be built-in to this alternative structure and would risk undermining freedom of expression/speech as another fundamental human right, laid out in the UN's Universal Declaration.

There is an abundance of empirical evidence to suggest copyright supports the cultural empowerment of developing countries by acting as an incentive for investment from strategic sectors of the emergent economies, such as financial services and private equity. *Half of A Yellow Sun*, the 2013 Nigerian film based on the book by best-selling author Chimamanda Ngozi Adichie was made for \$8m, an almost unprecedented level of budget for a feature film from Africa. Another novelty was that most of this budget was covered by private sector investments from Nigeria. What made it possible for the Nigerian executive producers of this landmark movie to successfully attract such investments from untested sources was the ability to secure an international sales agent whose function was to find market outlets for the film throughout the world. This is normally achieved through the licensing of exclusive territorial rights to local distributors and this mechanism is in turn made secure by the legal infrastructure of copyright. Put simply: copyright helps secure legal outlets for new audiovisual works, and the prospect of achieving return on investment through secure, legal markets, supports inward investment into both individual works and audiovisual enterprises.

The choice of legal consumer markets underpinned by copyright-based transactions has been expanding since the advent of digital, the deployment of broadband Internet and the fast growth of consumer take-up for smart phones, especially in developing countries. Not only do these new outlets (e.g video streaming and downloads) create new opportunities for local production, but they can also help reach out vast diaspora communities where demand for original works from their home culture is considerable. Senegal's 12 million population also boasts a global diaspora of over 2.5 million. With the country's scheduled digital switchover in 2015, there is strong anticipation that cost-effective services will be developed to reach these expatriate communities with a wide choice of locally-made audiovisual programmes. The majority of these would be broadcast in Wolof, a language hardly spoken outside Senegal. Again, underpinning such initiatives to support access to culture by citizens, in the ability to license exclusive economic rights derived from copyright

and protect the considerable investments required to launch new services. Thus, copyright as applied to the digital environment can help people – wherever in the world they may be – maintain a lively connection with their cultural origins, languages, etc.

Copyright transactions in the digital age also help make viable the restoration and distribution of older films of a country's cultural heritage, on to new outlets. The considerable investments required to restore old films are made possible by the prospects of new forms of licensed distribution representing fresh sources of revenue for the authors of these heritage works and helping enrich people's access to – and participation in – culture.

Finally, makers of cultural content who are properly incentivised by copyright tend to spend most of their non-creative hours trying to increase the outreach of their works to consumers, through new outlets that offer a variety of pricing points adapted to asymmetrical levels of economic development and disposable income. Internet video-on-demand platforms (e.g. Nigeria's IROKO TV, Kenya's Buni TV) that have been launching in various segments of the African audiovisual market in recent years, are responding to fast rising demand from African and diaspora citizens for moderately-priced access to films through broadband networks and, increasingly, mobile Internet. The technology, combined with above-board copyright licensing now permit a highly differentiated approach to consumers' wants and needs, within a varied range of content choices.

15th September 2014

10850 Wilshire Boulevard / 9th Floor
Los Angeles, CA 90024-4321
310-446-1000 TEL / 310-446-1600 FAX
www.ifta-online.org / info@ifta-online.org