

**New issue in focus: the impact of intellectual property regimes on the enjoyment of right to science and culture**

**Submission to the Special Rapporteur from the International Authors Forum  
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**What is the International Authors Forum and who do we represent?**

The International Authors Forum is a membership organisation for authors in the text, screenwriting and visual arts sectors. Its members are authors' organisations from all over the world. IAF has 33 members, collectively representing over 260,000 authors; many more than that when accounting for the members of its five umbrella organisation members, whose members themselves are organisations. IAF is a permanent platform to ensure the voice of the author at the international level. Our members represent all types of writers and visual artists including academic, educational and scientific writers, poets, novelists, screenwriters, fine artists, designers and photographers.

IAF represents authors' interests regarding copyright and contractual matters. It provides a forum for debate, discussion and action between its members and organises events all over the world, at which it invites authors to speak in order to raise awareness of their concerns. IAF also represents authors on global platforms, such as at the World Intellectual Property Organisation (WIPO), where it is accredited as a non-governmental organisation (NGO) with observer status at the meetings of the Standing Committee on Copyright and Related Rights (SCCR).

**The importance of Intellectual Property in sustaining the enjoyment of the right to science and culture (moral and material interests)**

Authors want their work to be accessed, enjoyed and used by as many people as possible. They recognise that this access is integral to enjoyment of the right to science and culture. Likewise, intellectual property regimes are vital to enabling and sustaining the enjoyment of that right via the rights conferred. It is essential that all copyright regimes enable a balance to be struck between all groups with rights and interests in copyright, and the work which copyright protects, to ensure each of those groups – and crucially, authors - receives a fair share of the benefits of creative work. Those benefits include, for everyone, economic growth in society, social and cultural welfare and education. The importance of copyright is recognised in the International Covenant on Economic, Social and Cultural Rights (ICESCR), in both Article 15(1)(c), the right of everyone “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”, and is supported more broadly in Article 6, “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.” The dissemination of copyright works is vital to fulfilling the mission of UNESCO to “contribute to peace and security by promoting collaboration among the nations through education, science and culture”. It is within this material – the copyright protected expression of authors - that science and culture are embodied. Intellectual property regimes – specifically copyright – give authors the opportunity to exercise these rights and, crucially, ensures people can continue to enjoy the right to science and culture. The work of authors is indispensable to the production of cultural and scientific material; without their work it is in danger of being diminished severely. If authors cannot support themselves, or gain recognition for their work, they will be unable to continue that work.

## Challenges

Copyright, and therefore enjoyment of the right to science and culture, are under threat in several ways. These obstacles to the rights contained in Articles (6) and 15(1)(c) are outlined below:

### **Authors' ability to be fairly remunerated for the use of their work**

Most authors do not make a living only from their creative work, even in the developed world. This is especially important for authors of creative cultural work who often do not receive a supplementary salary. According to studies commissioned by the Authors' Licensing and Collecting Society (ALCS) in the UK in 2005 and 2013, "in 2005, 40% of authors earned their income solely from writing. By 2013, this had dropped to just 11.5%. If unchecked, this rapid decline in the number of full-time writers could have serious implications for the breadth and quality of content produced."<sup>1</sup> In contrast, the same survey reported that "In 2013, the annual earnings of professional authors fell far below the salary required to achieve the minimum acceptable living standard in the UK, but the wealth generated by the creative industries now equates to £8million per hour." According to a 2010 survey conducted by The Writers' Union of Canada, representing more than 2,000 writers in all genres, based on their earnings from writing, three quarters of its members live below the official poverty line. The creative industries are clearly high in economic value, but that wealth is not being equally distributed between those whose creative input is indispensable to generating it.

It has been said that "intellectual property regimes primarily protect business and corporate interests and investments." (UN General Comment No. 17 (2005)) This General Comment also states that "the human right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions safeguards their [authors'] basic material interests which are necessary to enable authors to enjoy an adequate standard of living." The exploitation of Intellectual property *is* authors' means of making a living; the creative aspects of authors' work cannot be separated from their livelihoods, in particular their economic welfare. They are entitled to a fair return for what they do, when what they do is considered valuable, necessary and useful by society. Paying authors, as opposed to making their work available for free, does not represent the commodification of science and culture, but is a basic necessity in a society which wants everyone to benefit from the right to access science and culture and entitles everyone to make a living. If authors are unable to sustain themselves through their work as authors, access to culture and science will not only be severely diminished, it will decline in quality, quantity and diversity, and could ultimately cease to exist.

### **Threats to carefully balanced national and international copyright frameworks**

Copyright regimes have been carefully crafted to enable access to culture and science without unreasonably denying access to authors' works, nor denying authors fair payment for use. The copyright framework is set out at an international level in, (amongst other treaties), the Berne Convention, TRIPS agreement and WIPO Copyright Treaties. These contain many aspects which ensure that copyright strikes a fair balance between authors and the users who want to enjoy their works. They protect authors by granting them minimum rights in accordance with Article 15(1)(c) of the ICESCR, for the various uses of their works. Crucially, they also grant exceptions and limitations to those rights where it is deemed in the public interest for more people to be granted access to those works than

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<sup>1</sup> *What are words worth now? A survey of Authors' Earnings*, (Authors' Licensing and Collecting Society, 2014) <http://www.alcs.co.uk/Documents/A-Free-for-All-Loughborough-research/what-are-words-worth-now.aspx>

would otherwise be feasible, such as for educational purposes, or, where somebody has a disability that prevents them accessing works in conventional formats. For example, with regard to the visually impaired and print disabled population, the 'Marrakech Treaty' was created at the World Intellectual Property Organisation in 2013. Existing intellectual property regimes recognise the importance of access to science and culture and are developed bearing in mind the access needs of the public. Because they are created within a system which recognises authors' rights and copyright as core to protecting authors' livelihoods, they ensure the sustainability of authors' professions by, for example, permitting licensing schemes and collective management of authors' rights that remunerate authors without placing an unfair financial burden on end users. In Canada in 2011, the copyright protection conferred on authors was reduced by introducing an additional educational exception into Canadian copyright. This led many educational institutions to withdraw from licensing schemes, instead using copyright works without payment, leading to a total loss of \$18.4 million in revenues previously paid to copyright owners in 2013: "among creators that earn between \$5,000 and \$19,999 from written and visual works created...36.6% indicated that they would reduce moderately or significantly the number of works created"<sup>2</sup> if their licensing income was reduced; a consequence which has been realised.

### **Unintended Consequences**

Similar proposals to broaden copyright exceptions are being made at the international level, at the World Intellectual Property Organisation's (WIPO) Standing Committee on Copyright and Related Rights (SCCR). The areas being considered for the potential exceptions - libraries and archives and education - run the risk of upsetting the balance that has been struck in current international copyright legislation between payment for use of works, whilst enabling access to those works at a reasonable cost. They could lead to a decline in creative output which the ICESCR protects the right to enjoy.

### **Developing countries**

IAF recognises that economies and creative industries are at very different stages of development across the world, and that there is a significant difference between more and less developed countries. However, all countries have a culture, which is accessed through the work of authors and their literary, artistic and musical work. The protection of this work, and its authors, ensures that a cultural heritage is established and can be preserved for future generations to access. Countries with less developed creative industries provide examples of the dangers of poorly functioning or non-existent copyright regimes.

In countries which are subjected to high levels of government censorship, which restrict freedom of expression and the freedom to enjoy science and culture, well-functioning intellectual property regimes and respect for copyright help in overcoming such restrictions, by giving authors the means to trade their creative input for an income and earn an independent living, support their national economy and ensure that the cultural heritage of their country, and its unique identity, is preserved. These regimes include the means for authors to express themselves in their indigenous language, not being forced to write in other, more mainstream languages to cater for foreign markets if the creative industries are a limited or non-existent part of their own economy, if such limitations have not prevented authors from working completely. Even where censorship is overcome, if authors cannot

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<sup>2</sup> 'The Immediate Impacts of Bill C-11 on the Writing and Publishing Industry in Canada' (Access Copyright, August 2011)

support themselves by their profession through a robust copyright regime they will be unable to take advantage of the freedom of expression they are afforded. Likewise, if scientific authors cannot be assured of recognition for their work, and the preservation of its content, their professional integrity is at risk of being undermined. In this sense, human rights and intellectual property rights are complementary to one another, fostering diversity, quality and choice in science and culture and in preserving local languages and traditions, by fostering national creative industries.

In the developing world, the example of the Malawi Writers Union (MWU), a member of the IAF, demonstrates the importance of authors working together to ensure they can secure basic professional standards equivalent to others within the creative industries and in other industries. The MWU is active in fostering creativity in society and as a legitimate profession, which is indispensable to the enjoyment of science and culture. The Malawi Writers Union was established in 1985 and now has over 800 members. Over 400 secondary schools, colleges and universities have benefitted from its programme of career talks motivating people to take up creative writing as a profession. It also runs three national literary competitions.

#### **Example of the detriment to science and culture when access is provided without respecting Intellectual Property: Zimbabwe**

In Zimbabwe, a licensing framework has been set up but is not active and is not currently rewarding creators. The drive to get books into schools has led to books being sold below cost to charities to distribute those books. This is to the detriment of the publishing industry, as publishing businesses become unsustainable and cannot pay writers. Successful licensing of the use of such books, enabling affordable prices for users whilst sustaining authors and publishers, would not only enable books to reach educational institutions, it would also ensure they do not disappear altogether by removing any incentive or reward for authors.

#### **Visibility and awareness**

There is a lack of general awareness in society of the importance of copyright and related rights. This results in piracy and other behaviour by users which undermines copyright and leads to authors' work being used without payment or permission. One reason for this is a lack of understanding that authors are being denied payment or are even entitled to payment, and a lack of understanding of the value of copyright to their livelihoods. The quantity, quality and choice of cultural and scientific work will decrease if the current levels of piracy continue. In an IAF survey conducted between 2013 and 2014, 60% of those surveyed thought in their country, there was a basic awareness of copyright in their countries (of the 24 surveyed) but that copyright was perceived negatively by the general public. Efforts to facilitate the enjoyment of the right to science and culture must be accompanied by efforts to educate people about the value of creators who put science and culture into a form which can be shared, especially as the digital age makes sharing easier and creators less visible.

#### **Open Access<sup>3</sup>**

With the emergence of Open Access, in some cases the author is even required to pay to make their own work available to the general public. According to a consultation by the UK

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<sup>3</sup> All material in this section comes from a consultation by the UK Society of Authors of its Academic and Medical Writers Group

Society of Authors of its Academic and Medical Writers Group, in this 'author pays' scenario, open access will be a hindrance to scholarship. This point was made not only by academics in the arts and humanities, but by doctors and other medical researchers and practitioners. Some feared that the impact on science and medicine could be even greater, pointing out that putting material straight onto the internet 'swamps' readers who 'will have no idea of the quality of the papers', depriving academics of professional credibility, or that those who cannot afford to pay to be published in journals will instead publish their research as chapters in books, making them even less accessible. In this respect, the access to science and culture everyone has the right to enjoy will be limited to the work of either those who can pay to publish it, or who are employed by an institution which selects only the most commercially or politically preferable work. Furthermore, the move to extend Open Access to books, monographs and other published work would compound the problem if no funding or royalties are provided.

### Policy suggestions

- Improve copyright awareness through education as part of efforts to improve access to science and culture, promoting the right to enjoy science and culture concurrently with the importance of IP to underpinning that enjoyment. That way, as countries develop, they will understand that it is impossible to sustain the access they enjoy to science and culture without fair payment to those that provide the means to enjoy it.
- Promote participation in and establishment of authors' organisations, collective management of rights and other ways authors can actively engage with their rights collectively to maximise use of their works in affordable ways for users, such as through licensing schemes.
- Law and policy making in this area should ensure remuneration for authors and respect for the integrity and attribution of their work, to ensure the enjoyment of science and culture can be maintained.
- Establish a dialogue between representatives of authors and of users to raise awareness of the importance of the author in creating the science and culture everybody wants to enjoy.

### Author Testimonials

The following extracts are taken from authors across the world about the value of copyright to them.

#### **Ahdaf Soueif, Egyptian Writer and Political Commentator**

I am grateful that I'm able to make a living by writing. How, among all the calculations that one must make when taking up a position - I am always grateful that I don't need to work out if "they" can stop me earning a living. If we, writers, are to be able to try to fulfil our function as the antennae, the warning systems of our communities, it helps if we can earn our bread simply by being read. So, please take that into account in your deliberations.

©Ahdaf Soueif, December 2013

#### **Harry Thurston, Canadian Author and Poet. Chair, The Writers' Union of Canada**

I am concerned for writers' welfare at all stages of their careers: those starting out in an increasingly "free culture," that is, freedom for consumers not to pay for cultural content; mid-career and mid-list writers whose books are getting less support within the publishing industry; and older writers like myself who can expect to see their production decrease with

age — and with it, their already marginal incomes.

Payment for public use of a writers' work — for mechanical and digital copying of works in the educational system and archives, and for holdings in libraries — are key to a writer's economic security. In my own case these payments nearly equal my Canada Pension Plan accrued over a lifetime of writing. Loss of this income would spell economic hardship for all writers. The reading public must understand that, if they are to enjoy the imaginative work of our writers in future, they must pay for it, in the retail store (virtual and real), on-line, in the education system, and in our public institutions, such as libraries and archives.

©Harry Thurston, August 2014

#### **Martina Pearson, Educational Writer, South Africa**

The educational (school) market in South Africa is extremely competitive and under threat of self-publication by the government in an attempt to reduce cost. Most public libraries do not have sufficient funds to buy a wide range of books anyway. In my view the greatest threats are the likely collapse of commercial publishing in South Africa if the government attempts self-publishing, and the completely uncontrolled copying occurring across the board already.

©Martina Pearson, August 2014

#### **Nora Iniesta, Argentine Visual Artist**

If artists receive the Resale Right, it helps by providing us with additional income that enables us to pursue our creative endeavours. Another interesting point of it is to enable us to know the fate of our works, because mostly one is not told if there is a resale; it is found out by some circumstance usually anecdotal or casual. When this happens, the Resale Right is all that protects the artist and their work, and it is a most welcome payment.

Visual artists hardly ever receive prepayments for their works, nor are they usually employees who receive a standard salary. Their work is a pure risk, so an economic right recognised retrospectively is very attractive. There is a reason to consider the ethics of a track record that does not reward the artist. There is a virtuous social and economic circle that is not complete without payment for future sales of our work.

As a director of the Museo Nacional del Grabado I can see how and what happens to the property, works, books, often original donor families, in this case the state, that we have in the museum. You can differentiate the works there by those that have been cared for and those that have been neglected. Insofar as we need to protect our art, we also need to protect our artists.

©Nora Iniesta, October 2012

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