

Special Rapporteur  
Farida Shaheed  
United Nations Human Rights Council  
Geneva  
Switzerland

September 12, 2014

Dear Madame Rapporteur:

On behalf of the Software & Information Industry Association, I would like to thank you for the opportunity to send you a contribution for your consideration for your report to the United Nation Human Rights Council on “the impact of intellectual property regimes on the enjoyment of the right to science and culture.” SIIA welcomes the possibility of substantive participation in this exercise. The Universal Declaration of Human Rights’ Article 27 certainly makes this an appropriate effort.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*

The Software & Information Industry Association (SIIA), based in Washington, D.C., is the principal trade association for the software and digital content industries. SIIA provides global services in government relations, business development, corporate education and intellectual property protection to the leading companies that are setting the pace for the digital age. The following [link](#) provides information on SIIA’s membership. We represent companies that are leaders in education technology, software, data analytics, cognitive computing, and publishing (both scientific and cultural).

All of SIIA’s members depend in part on strong intellectual property rights (IPRs) protection in order to thrive. Member firms use patents, copyrights, trademarks and/or trade secrets to conduct business. Without those protections, it would not be possible for a company to make available electronic educational materials in developing countries, offer subscriptions around the world for cutting-edge software programs, publish tens of thousands of scientific articles every year, and make available cultural materials globally.

Our views are informed by the experience of member companies who understand and appreciate how IPRs are an important element in expanding the reach of science and culture for more people. This is why the May 14, 2012 [report](#) on “the right to enjoy the

benefits of scientific progress and its applications” is concerning. SIIA is commenting on the 2012 report because it is logical to assume that it will inform the March 2015 report to the Human Rights Council. We hope that our comments will be considered in preparing the 2015 report.

The Special Rapporteur “considers the call for international cooperation in the area of science and transfers of technologies” particularly “important for realizing the right to science for all.” SIIA supports a range of activities to promote technology transfer to developing countries. One way of promoting this objective, which does not involve the outlay of funds from either developing or developed countries, is for developing countries to adopt and enforce strong IPR protections. International investors typically analyze the legal systems in potential investment recipient countries. Part of that analysis involves the IPR system. The stronger the IPR system, the more likely a country is to be considered for IPR-intensive investments.

SIIA agrees that “access to scientific information for researchers is essential.” There is no inherent contradiction between that access and different publishing models, including the open-access journals the Special Rapporteur mentions. There is space for a wide variety of models to disseminate scientific knowledge. One model involves the publication of scientific research in peer-reviewed journals kept electronically in repositories containing sometimes millions of articles. Articles in these technologically sophisticated journals often contain links to other useful information for researchers. The investment required to maintain this type of repository is considerable and therefore requires subscriptions in order to make it feasible. The legal framework should make it possible to continue to provide this type of services to researchers who want it. In this context, I recommend Adam Mossof’s [“How Copyright Drives Innovation in Scholarly Publishing.”](#)

Publisher/researcher collaboration is also essential in creating a vibrant modern research environment. That collaboration depends on trust, which in turn depends on respect for everybody’s rights, including IPRs. For example, researchers often wish to engage in text and data mining (TDM) of sometimes hundreds of thousands of articles. As a practical matter, this requires not only access to publications but also the technological ability to perform the TDM exercise that the researcher is interested in, for instance finding all articles on a rare disease. Frequently, researchers are also interested in materials made available by different publishers. Publishers are making their collections available for TDM and also collaborating with each other to facilitate researcher TDM access to materials made available by different publishers. This requires investments. The CrossRef (an organization dedicated to promoting new technologies to facilitate research – CrossRef is operated by the non-profit Publisher International Linking Association Inc.) [initiative](#) to facilitate TDM for researchers is an example of this collaboration which cannot flourish in the absence of rule of law, including with respect to IPRs.

Perhaps most importantly, the 2012 report posits that there is a “conflict between the right to science and intellectual property rights, in particular since the adoption of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).” SIIA does not agree with this premise. The 2015 report should not reflect this bias. To be sure, SIIA considers that there are rare occasions where exceptions and/or limitations are warranted. But far too often, intellectual property is cast as the problem rather than the solution. Again, the 2012 report states: “The potential of intellectual property regimes to obstruct new technological solutions to critical human problems such as food, water, health, chemical safety, energy and climate change requires attention.” The potential for IPRs to provide solutions requires at a minimum equal attention.

Later in the 2012 report, the Special Rapporteur says: “Scholars have found no evidence to support the assumption that scientific creativity is only galvanized by legal protection.” Although scientific creativity is not solely stimulated by legal protection, IPR protection is certainly a major driver in scientific creativity. For instance, passage in the United States of the Bayh-Dole Act, allowing universities to file for patents on research funded by the federal government (with a share of royalties going to the inventor) has certainly been a major driver in scientific creativity. On the global stage, in recent years China and South Korea have become major patent filers, together with the United States the European Union and Japan, which suggests that companies, innovators and researchers in developing (or formerly developing) countries experiencing extraordinarily high rates of economic growth, understand the tremendous value in the international patent system. SIIA members around the world use patents, such as the software patents that underpin much of today’s economy, to protect their products and services in a way that spurs investment, productivity, innovation and economic growth.

The 2012 report discusses “maximalist” and “minimalist” approaches to IPR protection with a preference for the latter approach. Presumably the March 2015 report will argue for a “minimalist” approach to IPR protection, which SIIA would strongly oppose. A more productive approach to take in the 2015 report would be to focus on the challenges faced by researchers in accessing information. We would welcome the opportunity to comment on those challenges.

SIIA notes that the Special Rapporteur also wishes to learn “more about the concrete obstacles met by authors, creators and inventors, such as scientists and artists” to enjoy the moral and material interests resulting from their efforts. This exercise should take into account the practical ability of companies to employ and/or represent authors, creators and inventors. The reality is that most scientists work for companies or universities. In the university setting, funding for research is key. A good IPR system can stimulate private transfers of capital, thereby lessening the need for government funding. For artists, the most concrete obstacle to realizing the enjoyment of moral and material interests remains rampant piracy, especially over the Internet. The cultural sector is particularly negatively affected by piracy. The 2015 report should discuss this reality.

Most broadly, given that the Special Rapporteur specifically refers to the International Covenant on Economic, Social and Cultural Rights, we urge the Rapporteur to consider how strong IPR protections can contribute to other rights (besides Article 15) contained in the Covenant such as the “right to work.” In 2012, the United States Department of Commerce [found](#) that IPR-intensive industries were responsible for almost 28% of all U.S. jobs. Moreover, jobs in IPR-intensive industries paid on average 42% more than jobs in non-IPR intensive industries. Similar numbers are likely in many other economies. The practical ability to enjoy science and culture depends at least in part on achieving robust economic growth, which again depends in part on reliable IPR protection.

IPR regimes make it possible for rightsholders to price their products in ways that are targeted to different users. For instance, major publishers make available their collections of scientific articles to developing countries on favorable terms. Their continued ability to sustain these initiatives depends on continued legal protection of their ability to offer their products and services on different terms to different consumers. That ability needs to be respected.

Madame Rapporteur, thank you very much for the opportunity to submit these comments for your consideration, I am at your disposal to answer questions that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Schonander". The signature is fluid and cursive, with a large initial "C" and "S".

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