



UNITED STATES MISSION  
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

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Ms. Farida Shaheed  
Special Rapporteur in the field of Cultural Rights  
United Nations Office of the High Commissioner  
for Human Rights (UNOHCHR)  
Palais Wilson  
Geneva, Switzerland

Dear Ms. Shaheed,

The United States is pleased to provide comments in response to your invitation to submit spontaneous comments regarding intellectual property regimes and the enjoyment of science and culture.

Your project description speaks to a concern that intellectual property regimes may hinder access to cultural heritage, scientific information, and the arts. We wish to emphasize that, on the contrary, intellectual property regimes (IPR) foster and promote, culture, science and the arts for the benefit of the public. Indeed, this principle is consistent with the purpose of copyright and patent law in the United States and many other countries. The United States Constitution empowers Congress to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Various studies conducted over the past two decades find a positive correlation between the strength of IPR regimes and the degree of investment in research and development. *See, e.g.,* Varsakelis, N.C. 2001. “The impact of patent protection, economy openness and national culture on R&D investment: A cross-country empirical investigation.” *Research Policy* 30 (7), 1059–1068. While this correlation is particularly strong in developed economies, it is also present in developing countries to a lesser extent. *See, e.g.,* Park, Walter G. 2005. “Do Intellectual Property Rights Stimulate R&D and Productivity Growth? Evidence from Cross-National and Manufacturing Industry Data,” in Jon Putnam (ed.), *Intellectual Property Rights and Innovation in the Knowledge-Based Economy*, Chapter 9, Ottawa: Industry Canada, pp. 9-1 – 9-51. Our Supreme Court has stated: “[t]he patent laws promote ... progress by offering a right of exclusion for a limited period as an incentive to inventors to risk the often enormous costs in terms of time, research, and development. The productive effort thereby fostered will have a positive effect on society through the introduction of new products and processes of manufacture into the economy, and the emanations by way of increased employment and better lives for our citizens.” *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 480 (1974). The Court also recognized that patent laws, as distinct from trade secret protection, benefit society by incentivizing public disclosure of research. *Id.* at 480-81.

High-quality IPR regimes likewise foster the creation of cultural works. There is a direct correlation between the introduction of copyright protection and increased production of works of authorship. *See, e.g.,* Giorcelli, Michela and Moser, Petra, Copyright and Creativity: Evidence from Italian Operas (October 7, 2014), available at SSRN: <http://ssrn.com/abstract=2505776> or <http://dx.doi.org/10.2139/ssrn.2505776>. With respect to copyright, our Supreme Court has stated that copyright “is a means by which an important public purpose may be achieved. It is intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired. The monopoly created by copyright thus rewards the individual author in order to benefit the public.” *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539 (1985). These principles are consistent with common sense: authors and other creators of cultural works are much less likely to have the incentive or the wherewithal to create those works without an expectation that they will benefit economically from those works. While that may not be true of all authors and creators – e.g., salaried university professors who are expected to publish scholarly works as part of their duties, or authors who are independently wealthy – most authors simply cannot afford to devote the time that is necessary to create cultural works without some financial reward that enables them to make a living from doing so. If society does not provide creators with sufficient incentives to create, the cultural life of the community, will be impoverished, as will authors, other creators and a host of other businesses that may rely on these creative endeavors.

Nevertheless, we note that there are certain IPR regimes, which, if implemented in particular ways, can indeed impede access to culture. For example, the United States respects traditional cultural expressions (TCEs) but has long been concerned that some regimes of protection may inappropriately diminish the public domain.

Certain systems for protecting geographical indications (GIs) likewise present concerns. In particular, some GI regimes prohibit producers of different products, including food products, from using the customary or generic term to identify their products. The many producers who are harmed by such restrictions include cheese makers in the U.S. and throughout the Western Hemisphere who employ traditional cheese making techniques, and who are barred from identifying their products by the generic terms associated with these cheeses.

You may wish to consider the impact of such restrictions as you conduct your study.

We wish you success in this endeavor, and we will read the results with great interest.

Sincerely,



Keith M. Harper  
Ambassador  
U.S. Representative to the United Nations  
Human Rights Council