WIPO Draft Guidelines on Assessing the Economic, Social and Cultural Impact of Copyright on the Creative Economy

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

September 2013

TABLE OF CONTENTS

Figures

Tables

BOXES

PREFACE

The WIPO Economic, Social and Cultural Impact Assessment (ESCIA) Guidelines seek to provide a framework for systematic, evidence-based inquiry and evaluation of the societal impact of copyright on the creative economy. The need for these Guidelines was identified from ongoing policy discussions between WIPO Member States. There continues to be dialogue involving WIPO, its Member States and experts on the social and cultural potential of copyright in the creative economy.[1] In many of these discussions, WIPO Member States expressed a desire for the development of policy tools that go beyond assessment of the economic impact of intellectual property law and policy, to cover overall societal costs and benefits.[2] It is against this background that WIPO developed the ESCIA Guidelines, to offer the possibility of assessing the economic, social and cultural impact of copyright laws, policies, structures and systems linked to the creative economy and of the creative economy in general.

Why pursue an integrated approach to the analysis of economic, social and cultural impact? Copyright policy and law are primarily concerned with allocating proprietary rights in, and apportioning value to, intellectual assets that emerge through the work of creators, as expressions of their interaction with a society's cultural, social, historical and political context. As such, it regulates ownership and value with respect to creations that are an expression of identity, as well as collective and individual human experiences. Consequently, copyright has a much more important role to play in the constitution of society than is often recognized. Therefore efficient copyright policy, like all socio-economic regulation must focus on balancing economic, social and cultural goals. The Guidelines offer a mechanism to facilitate the gathering and analysis of data to aid this balancing process. While this is not an attempt to establish country rankings, Member States may be able to benefit from each other's experiences with ESCIA. It proposes a system of qualitative and quantitative approaches and techniques that can be specifically tailored to fit the national context of Member States. It is designed to assist governments and stakeholders in the creative economy to consider further and identify economic, social and cultural indicators that facilitate the identification of the effects of copyright legislation and policy. The ESCIA also provides a basic blueprint for interpreting research results.

Within the broader context of international policy, the objective of *The Guidelines on the Economic Social and Cultural Impact of Copyright in the Creative Economy* is to contribute to several parallel international efforts to provide better analytical tools for understanding the impact of copyright beyond its economic contribution to society. These Guidelines build on the inputs of different experts in copyright-related disciplines. The methods to be employed in attempting to go beyond economic impact have not always been self-evident. Certainly, there is a liberal

degree of creativity involved in applying and modifying conventional analytical models throughout the Guidelines.

A novel approach to understanding the way in which copyright accrues benefits to society is necessary, as utilitarian concepts of economic contribution do not show the full picture of the effects of policies, markets and legislation. The purpose here is to move away from the solely commercial logic of economic studies. What is proposed instead is an approach that opens up analysis to the social and cultural costs and benefits associated with copyright in the creative economy. Furthermore, the intent of the Guidelines is to underline the interlinkage of economic, social and cultural outcomes, and the way in which copyright interacts with these in the creative economy.

In the light of this it proposes an innovative approach to creating indicators for capturing economic, social and cultural impacts. It is an integrated indicator system, which puts forward economic, social and cultural pillars, fanning out into nine corresponding main indicators and a list of core and supporting indicators. This indicator system has been structured specifically to capture the synergies between all three impacts. Naturally this is work in progress and it remains to be tested empirically.

Additional innovations include a risks/opportunities system designed specifically to allocate value to copyright policies that carry social, cultural and economic risks or opportunities. It is designed to help Member States make decisions that foster beneficial policy outcomes and reduce the likelihood of non-beneficial ones. This approach to risk allocation and management is most closely associated with techniques used in engineering, environmental and health policy. The guidelines further propose research techniques, including mixed methods, which could reduce data collection costs, data collection time periods, necessity for highly complex analytical software and also add analytical accuracy.

The assumption of the Guidelines is that ESCIAs could be useful to the Member States in which they are carried out. It is therefore recommended that maximum national autonomy is applied in setting specific parameters and norms that reflect, as far as is possible, the local knowledge, local concerns and the local context. With this in mind governments are encouraged to contribute to the development of ESCIA by shaping the specific research to be carried out.

INTRODUCTION

The *Economic, Social and Cultural Impact Assessment (ESCIA) Guidelines* are intended to be a tool for assessing the ways in which copyright law and policy interventions impact economic, social and cultural outcomes in society, as well as the objectives of national governments. The proposed approach to the creative economy will assist each country in building a reliable foundation upon which an effective copyright/creative economy policy framework can be constructed. The Guidelines are aimed at facilitating the analysis of copyright law, policy and systems in the creative economy and analyzing their relationship to social, cultural and economic outcomes. In them methods are proposed to assist with identifying issues that arise when attempting to construct, choose and apply indicators in the assessment of the impact of any copyright policy or legal intervention within disparate legal, governance and economic systems.

The ESCIA answers the need for assessments, evaluation and impact studies. Member States requested that WIPO undertake studies to demonstrate the economic, social and cultural impact of the use of intellectual property systems. This underlined the need for the ESCIA Guidelines. They have involved a number of stakeholders and meetings of experts. Consultations have been held with legal, economic, social and cultural experts in order to develop the guidelines.

The ESCIA has been developed with the hope that it will expand and enhance comprehension of the operation of copyright law in society. In turn this knowledge can build a greater awareness of the costs and benefits for specific copyright interventions and will, thus, facilitate greater precision and objectivity in the development of laws and policies for creative economies.

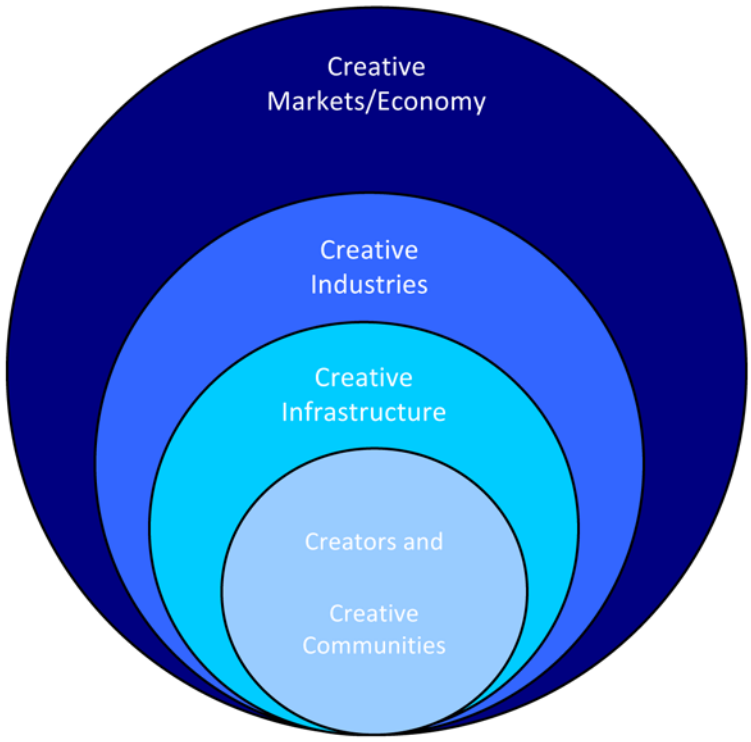
The development of ESCIA for creative economies begins from the premise that copyright and related rights are not shaped in the same manner globally. The ESCIA seeks to provide a scalable assessment framework that can accommodate fundamental differences existing between different copyright systems, such as the Common Law and American system and the Continental European authors' rights system. Furthermore, a scalable approach to the development of an ESCIA framework allows the model to be useful for a wide range of countries at different levels of economic development and with differing levels of complexity within their creative economies and their copyright regulatory systems. Any universally applicable policy assessment tool must take all of these variables into account. The WIPO ESCIA Guidelines are thus intended to provide policymakers with a framework for impact assessment that can be tailored to their specific policy objectives, and can fit within the scope of the creative economy in their particular jurisdictions.

Another term of the creative economy, 'creative industries', entered the policy literature and defines an area of economic activity that has traditionally been difficult to fit into existing conceptual and policy frameworks. Initially, it gained currency with UK usage (1998), albeit narrowly relating to selected industries and focusing on the traded value of activities. The term is often used interchangeably with the notion of cultural industries, and in the WIPO context with the term copyright-based industries. The term creative economy has also come into use. Since 2001 it has stressed the economic and social aspects of the field, including the notion of a wider ecosystem of cultural production. The term 'Creative Economy' is used in the current guidelines to reflect copyright impacting society as a whole, and possibly affecting groups that are not directly involved in the creation, production, and distribution of creative products.

The role that copyright plays in sustaining the creative economy and facilitating the exchange and consumption of creative products is of primary importance. The following diagram provides a visual representation of these relationships. It shows the structural concept of the creative economy, which has creators and creative communities at its core; transitioning to the facilitating infrastructure; the productive capacity of industry based on inputs by the previous outputs; and the outer ring of creative markets, facilitated by the previous three.

Figure 1: Creative Economy Diagram

Key	
	Creative Markets/Economy: includes production, consumption and exchanges of other creative products
	Creative Industries: includes industries wholly or partially based on copyrighted intellectual assets Core; Interdependent; Partial and Non-dedicated Support Industries[3]
	Creative Infrastructure: includes legal frameworks, institutions (public or private), policy programmes that facilitate the production of creative goods and services, including collective management, organisations
	Creators and Creative Communities: includes groups who practice and engage in the creation of ideas, works of art, and creative knowledge and expression as part of social, cultural and political participation or for artistic, societal and commercial purposes.



The scope of application of the term creative economy often focuses on the protection of rights in creative, cultural and artistic assets or outputs, whether acquired by creation or transmission of ownership or exploitation rights. Whether owners of such rights are large enterprises or single artists or authors, copyright law provides a set of rules that can help them to protect their creative assets. It also provides protection for certain industries that go beyond artistic creativity to produce items related to intellectual creations. This highlights the various factors that must be taken into consideration when deciding on the outer boundaries of a practical definition of the creative economy within a given country. When designing ESCIA

research, definitions of creative economy in different countries will differ with respect to what is included and excluded. It is therefore important to understand the structure of the creative economy, in order to facilitate the development of a definition that is useful for carrying out specific empirical research.

The kinds of analyses and quality of data produced by the ESCIA is limited by the quality of economic, social and cultural data that government agencies have the capacity to collect, and the quality of their existing data sets. With respect to social and cultural aspects of the ESCIA study, it is important to note that applying certain analytical models to cultural or social phenomena can only produce data that represent an approximation of reality. The ESCIA study is limited in time, as it reflects the state of a particular variable at a particular point in time. It may be possible partially to remedy this shortcoming by constructing projections of the data that have been gathered. Other issues include more fundamental differences in the structure and behavioral norms of the economic, social and cultural realms. For example, economic and legal practices operate with respect to certain types of categorical thinking that can be significantly different from those that function within cultural practice, underpinning the creative or copyright industries. In short the ESCIA study will ultimately be limited by the quality of available data, the data collection and analysis techniques, the research time frames and the capacity of the agencies conducting the studies.

Chapter One of the Guidelines sets out the framework for assessing the economic, social and cultural impact of copyright on the creative economy and outlines the main objectives and guiding principles. Here the target audience of the Guidelines is discussed, highlighting the fact that they may also make useful reading for private industry and civilians. It also discusses ESCIA's limitations. An important feature of Chapter One is that it also provides a comprehensive overview of the ESCIA research design, focusing on the operational aspects of the research.

Chapter Two addresses the major conceptual issues involved in constructing reliable indicators. It also briefly analyses other international efforts to develop indicators of social and cultural impact. The primary aim is to put forward practical issues that will arise when applying the ESCIA Indicators, or developing country specific indicators. Among the issues broached are the need for consistency in the use of indicators from the baseline to the monitoring and evaluation stage; the importance of specificity; issues of societal values and valorisation for choosing and constructing indicators. Chapter Two also includes a comprehensive chart showing the research design including a risk matrix, designed to aid policy decisions to mitigate economic, social and cultural impact.

Chapter Three focusses on laying out the nine main ESCIA indicators, designed to capture the interrelated characteristics of economic, social and cultural impacts. It

describes the logic behind the structure of the ESCIA indicator system and explains how the indicators are used to identify various impacts. In Chapter Three each of the 9 main indicators is defined and described, as well as the sets of core and supporting indicators reflected. Some of the potential impacts that may be observed when using the indicators proposed are also described.

Chapter Four includes a discussion of the measurement, analysis and data collection methods that may be appropriate for the ESCIA. A list of steps are proposed defining the broad issues to be taken into consideration when preparing for the implementation of the ESCIA. A mixed-method approach to data collection and analysis is proposed, to include a research questionnaire.

Chapter Five deals with monitoring and evaluation (M&E), and end-line analysis. The best practice for all three, including issues with respect to continuous M&E, and problems involved in choosing a point on the M&E time-line to do a comprehensive analysis are discussed. In the final section of the publication what the future entails for ESCIA is discussed, as well as possible improvements to the research design and plans for its implementation.

To summarize, the very essence of these Guidelines is that the wider environment that exists around the creative economy, enabling the creativity, production, consumption and exchange of creative products, is one that must be placed within an analytical framework if policy is to be efficient and effective. This is critical, as this is an innovative segment of the economy where creativity continues to gain momentum via novel information and communication technology.

1. Core Terminology

Impact Assessment (IA) – According to the International Association for Impact Assessment[4], an IA is defined as the process of identifying the future consequences of a current or proposed action. The 'impact' is considered to be the difference between what would happen should the action be pursued, and what would happen without it. The practice of IA relies upon a family of instruments and tools, typically based on the physical, natural and social sciences, in order to predict the expected consequences of possible decisions.

The use of IA aims to provide information for decision-making that results from an analysis of the social, economic and institutional consequences of the actions proposed. Generally, it seeks to:

- promote transparency and participation of the public in decision-making.
- identify procedures and methods for the follow-up (monitoring and mitigation of adverse consequences) of policy, planning and project cycles.
- contribute to environmentally sound and sustainable development.

Depending on the level of effort and the reasoning behind the process, differing degrees of success may be achieved. The issuing of a report only to fulfill a legal compliance for IA may not be the most effective way of practicing it.[5] In some countries the analysis of various alternatives, including the zero alternative of taking no action, is considered the 'heart' of the process.[6] Also, important to the success of IA is the process of follow-up, which assures that the recommendations of the IA are implemented and effective.

Creative Economy – The current terminology used with reference to 'creative activities' includes creative industries, cultural industries and cultural economy, as well as copyright-based industries. A number of these terms are used interchangeably in the literature, while some are used to distinguish specific components of the creative economy. It is worth noting that when a definition is too broad and all-encompassing, it ceases to offer a meaningful basis for precise analysis and comparison. The following will all have a significant impact on the economic, social and cultural development of countries: artists; communities of creators; cultural institutions; creative enterprises; those engaged in commercial, non-commercial and pre-commercial exploitation of copyright-based goods and services. Such created and produced cultural works including; literature (books); dramatic works, (film); music (classical, modern); visual art (paintings) and more, can all be protected by copyright. This network of relationships across content-driven sectors constitutes the subject matter referred to when speaking of creative industries.

In these Guidelines a creative economy is broadly understood to include industries and sectors that operate on the basis of copyright protection or *sui generis* forms of protection for creative expression. This includes, but is not limited to, the music industry, fashion, motion pictures, fine arts, traditional cultural expression and certain segments of the information, communication and technology industry. Modes of creative expression that in some countries may not receive the full benefit of copyright law protection, but may be targeted by copyright policy are also included as activities that constitute the creative economy. The creative economy thus includes all forms of artistic creation and production, including technology-driven creativity (e.g. video games). The term creative economy relates to the innovative application of productive forces to the human experience, producing outputs with both intrinsic and extrinsic value to society. Drawing an outer boundary around the term creative economy, for the practical purposes of data collection and research is contingent upon national differences in cultural practices, market structures and associated political, economic and social priorities

Impacts: For the purposes of this guide, 'impact' is defined as the 'effects', 'influences' and 'consequences' of copyright policies and practices on the creative economy and wider society. The impact of an intervention may be positive or negative, primary or secondary, direct or indirect, and intended or unintended.

In recent years concerns over the relative costs and benefits of the international IP system have been raised by: WIPO Member States, civil society groups, and academics. Most concerns have focused on the costs incurred relative to the economic benefits of certain aspects of the international IP regime. Concerns have also been raised with respect to the potential social and cultural costs incurred relative to the economic benefits.

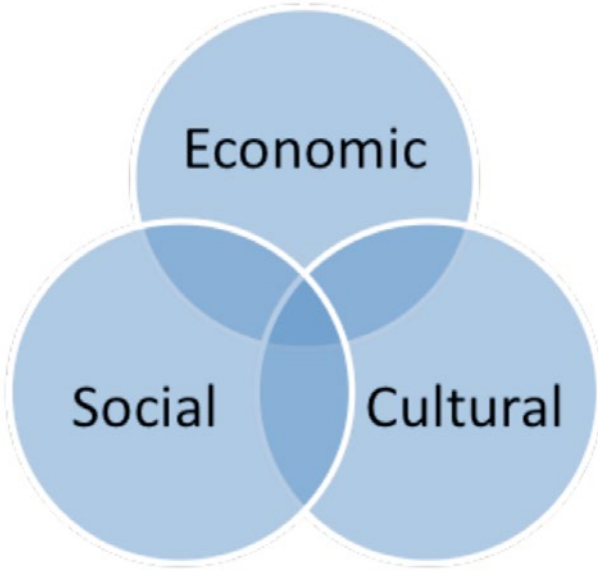
Economic Impacts: Within this guide economic impacts are taken to mean those effects, including incentives and disincentives, of creating and investing in copyright-based goods and services as well as monetary effects which can be attributed (directly or indirectly) to a specific copyright intervention. Such impacts may be related to overall GDP, the overall income generated by copyright-based industries, the financial solvency of copyright-based enterprises, the per capita income of workers in the creative economy or the volume of trade and FDI flow attributable to the creative economy. In short, economic impacts refer to those factors affecting outcomes within the economy, which are directly or indirectly related to a specific copyright intervention.

Social Impacts: Within the context of this guide social impacts refer to all the social outcomes directly or indirectly related to a copyright intervention.[7] Social impacts may be related to monetary impacts in that income provides a basis for social interaction. However, social impacts are much broader than the limited issues often considered under economic impact assessment. Social impacts are considered to be all the issues that affect people, directly or indirectly. Social impacts may be thought of as changes to one or more of a set of variables, including people's ways of life, such as working and living conditions as well as alterations in interactions within their communities. Social impacts also include community impacts, including access to information on legal rights and services and facilities related to the creative economy.

Cultural Impacts: Within the context of this guide a cultural impact is considered to be all those observable cultural effects directly or indirectly related to a specific copyright intervention. Cultural impacts may be related to social impacts in that a repeated and cumulative social impact over time may translate into a cultural shift or new cultural phenomena. Cultural impacts include the impact of the creative economy on meanings, aesthetics and values in societies. The importance of understanding cultural impacts stems from the unique way in which cultural expressions may be converted into an asset that can be harnessed by creators and communities through proprietary rights gained under copyright law. They thereby provide the possibility of recognition and revenue that can drive and sustain diverse cultural and customary traditions and nurture individual and community innovations. This can assist in rendering a certain cultural identity recognizable to the market, which in turn creates an intangible value that all creative products and services from that specific culture may benefit from.

ESC Impact diagram: Economic, Social and Cultural impacts are interrelated and, in reality, are difficult to separate. One way to understand this relationship is to acknowledge that all impacts can be analyzed from an economic, social or cultural perspective. In the diagram below this relationship is illustrated by the intersections of the spheres. For example, an economic policy that aims to attract investment in the creative economy is likely to have a positive social effect on the availability of and access to employment and other social provisions for workers in the creative economy. Thus the impact or event that has occurred can be described in terms of its economic effects (increased investment and employment creation) or its social effects (improved access to employment and social provisions)

Figure 2: ESC Diagram Showing the Interrelated Nature of Impacts



The *value of the ESCIA* will be enhanced by a *research design*, which will include the establishment of a baseline and counterfactual main core analysis, monitoring and evaluation (M&E) and end-line analysis. These will provide ex-post, ex-ante and time-series data that will add value to results obtained from the ESCIA by providing data points against which these results can be compared. This research design is aimed at facilitating the requirement for high quality analysis to support and inform the continuous development of copyright and related rights laws and policies. The empirical research contained in the ESCIA study is aimed at providing robust data and information on the potential and actual economic, social and cultural impacts of copyright on the creative economy. The results can serve as a basis for testing and adjusting policies and strategies aimed at promoting the growth and development of a country's creative economy.

The social and cultural impact assessment of the creative economy is still in its infancy. The ESCIA is a contribution to the effort to produce more sophisticated metrics and as such is a work in progress that will be improved over time with

implementation and experience. With respect to the expected results from the ESCIA Guidelines, it must be appreciated that applying analytical models to social and cultural phenomena can only offer a limited picture of the subject under study. Data are also limited temporally, as they reflect the state of a particular variable at a particular point in time. More fundamental differences in the structures and behavioral norms of the economic, social and cultural realms make developing indicators a challenge. Furthermore such studies are also limited in terms of the resources available. Hence, the ESCIA will provide valuable information, however this will be limited and dependent on several factors.

These Guidelines may prove important for national governments as administrations have begun increasingly to use intellectual property as a key tool in their overall economic development policies. Furthermore, the Guidelines may prove useful to WIPO Member States as they continue to broaden their participation in multilateral, bilateral and plurilateral treaties that entail legal and policy changes to their copyright regimes. As such the ESCIA Guidelines provide the possibility of assessing the potential economic, social and cultural impacts of such obligations prior to their implementation. This is likely to assist governments in making informed, research-based decisions on how new rules should be incorporated into their legal systems to achieve a resultant coherent policy.

The ESCIA Guidelines are, in the first instance, primarily intended for governmental use. However they can also be of use to entities owning and managing large copyright and other related intellectual property assets. They may also be useful for NGOs and other organizations aiming to provide impact assessments of intended copyright laws and policies with respect to specific groups.

2. Levels of Analysis

When designing an ESCIA it is important to consider the level of the economy at which *potential or* actual impacts are likely to occur. Therefore research should focus on impacts at both the macro and/or micro level of the economy. This may involve selecting between impacts that capture the choices of consumers and cultural/creative workers, enterprises and households (micro) or impacts that focus on general employment levels in the creative economy, as well as the size of the creative economy and its contribution to GDP, trade and FDI inflows. Whether an ESCIA focuses on macro- or micro-level impacts will greatly affect the kind of data collected and the way in which policy recommendations will be informed.

Another perspective that may also be useful is to consider the cumulative impact of a particular copyright intervention at each stage of the process of bringing a cultural product to market i.e. from origination, creation, production and distribution to consumption.

Table 1: Levels of Analysis

Macro	National Economy	Society	Government & Institutions
Micro	**Individual**	**Communities**	**Business Community**
	Authors Creators Performers s/citizens Students Artists Cultural and Creative support workers	Cultural Societies Artist Guilds Collective management societies Households NGOs Education Social networks	Enterprise Intermediaries Public institutions (museum etc)

3. Basic Notions of Copyright and Their Relationship to Economic, Social and Cultural Impacts

Copyright and Society

Copyright law provides a set of legal rules based on a specific economic logic that at its heart regulates, shapes and influences the core content of a society's identity. It allocates value, ownership and rights to intellectual assets that emerge from a creator's interaction with a society's social, cultural, historical, economic and political context. Copyright is, thus, given the extremely important task of regulating ownership, value and related rights in the creative expression of identity and the human experience. As such, copyright has a much more important role to play in the constitution of society than is often admitted. These characteristics suggest that successful copyright policies, as with all socio-economic regulations, must be concerned with balancing economic, social and cultural goals.

Copyright is a limited monopoly right[8] to exclude or facilitate dissemination of intellectual works and consists of a bundle of different proprietary rights that account for a range of circumstances under which copyrighted works may be made available to the public. Therefore, its social, cultural and economic significance rests on the fact that it can act as a conduit for, or a barrier to, information. A single creative work may be modified or used differently in several markets. It can be used as a derivative work or in its original form in secondary markets, where different rights may be allocated varying values for each of these markets. Additionally, different values may be accorded to different rights holders.[9] This function of allocating value to creative works and regulating distribution of proprietary rights to rights holders, is the same whether operating under common law derived legal systems or under the civil law tradition of *droit d'auteur*. However, the subtle differences in treatments within civil law and common law derived systems can produce differences in economic, social and cultural impacts.

The Object of Protection: An Economic, Social and Cultural Impact Perspective

In addition to protecting 'industries', copyright and related rights also protect the proprietary rights of individual authors, performing artists and other categories of creators. The copyright and authors' rights system provides protection for intellectual creations as defined further in article 2 of the Berne Convention.[10] Article 2 of the Convention is not an exhaustive list, there may be additional sorts of works that are provided for under national laws, and advancements in information technology can lead to new categories of creative expression that may be covered by copyright. Copyright, thus, provides creators with: the possibility of earning a living from their work; the ability to affect social and cultural discourse via the distribution of their work; and so the opportunity to engender respect for certain creative professions. Without copyright laws within society remuneration, respect, appreciation and the social standing of creativity and creative people may be reduced. Also, the quality of life for creators and the richness of creative and cultural offerings within society would be diminished. Combining copyright protection with other bodies of law and *sui generis* copyright forms can produce economic, social and cultural benefits to society or represent costs. Traditional copyright can sometimes be combined with new approaches to providing access to proprietary information, such as the creative commons.[11] This approach is implemented as a set of private rights which interact dynamically, with the property rights of creators are balanced with those of individual users.

Copyright is sometimes used in tandem with censorship laws[12] to influence public discourse; whether this is desirable is dependent on the circumstances and the intellectual work targeted. Additionally it may also be tempered by competition law which is aimed at preventing rights holders from abusing proprietary rights.[13]

The differences between common law derived copyright and civil law derived authors' rights systems are subtle, but can have significant effects on creators. Common law systems tend to emphasize the protection of the economic rights of a work, while the law and practice of the authors' rights system tends to give the creator's integrity (moral rights) as much weight as economic rights.[14]

Both legal traditions also provide for rights in relation to copyrighted subject matter. This refers to protection for the contributions of natural and legal persons in making works available to the public; or to those who produce subject matter which, while not meeting the threshold for copyright under the systems of many countries, contain sufficient creativity or technical and organizational skill to justify protection.[15] Traditionally, related rights have been granted to performers, producers of phonograms and broadcasting organizations.

Rights

a) Moral Rights: An Economic, Social and Cultural Impact Perspective

Moral rights fulfil an important social and cultural function with respect to the status of creators and their medium of creativity within society. Article 6bis[16] of the Berne Convention for the Protection of Literary and Artistic Works makes provision for the rights of attribution and integrity, which protects the creator's original artistic, intellectual and personal conceptions through consecutive generations.[17] The components of moral rights include the right of divulgation (first publication), the right of paternity (attribution, including the right to stay anonymous or to use a pseudonym) and the right of integrity of a piece of work or performance; many laws in addition grant the right of withdrawal of license in case of non-use by the licensee or in case of change of conviction.[18] Moral rights are treated differently in the civil law tradition of *droit d'auteur* than in the copyright tradition of common law derived legal systems. In the civil law tradition moral rights cannot be waived or alienated in any way, other than by transfer upon the death to the heirs. However common law jurisdictions allow for the possibility of alienating or waiving moral rights, which may lead to *de facto* extinguishment.

As such moral rights cement the link between the original works of a creator and his/her interaction with the social, economic, historical, ethnic, political and artistic traditions of society. Over time a creator's works become bound to the cultural meanings of her/his society, and may become irrevocably associated with that particular culture. The role of Shakespeare in shaping and projecting modern English literary tradition is an example of this. Moral rights provide a useful mechanism through which social and cultural messages bound up in creative works, and broadcast to a society, can be engineered. They accomplish this by providing a mechanism for either protecting or allowing the modification of the messages and meanings in a work. This link between moral rights and the management of social and cultural messages is clearly seen when motion pictures are traded across jurisdictions and cultures.

The cultural, social, economic or political impacts and meanings portrayed in films translate differently in different countries. So, creators may modify their original message to reflect another society's identity. The film industry tends to be more flexible where issues of the integrity of moral rights are concerned. However, the moral rights of sculptures, paintings, poetry and books, which can be more closely tied to the persona and personal integrity of a creator, are not easily modified. Therefore, the notion of moral rights ideates the original creative talent reflected in a work as a proprietary right on an equal footing with economic proprietary rights.

b) Economic Rights: An Economic, Social and Cultural Impact Perspective

Economic rights in an intellectual creation consist of: 1.) exclusive rights; and 2.) statutory[19] remuneration rights. Exclusive rights give rights holders the power to prohibit or authorise determined uses of an intellectual work; accordingly, they constitute property rights in intangible goods. Economic rights ensure that creators will be remunerated for present and future use of their work, thus guaranteeing an income. Such income from their works allows creators to subsist and continue in their chosen creative profession. So, economic rights facilitate the continuation of the creative process and the distribution of the generated work to the public. Where creators are well remunerated for their work and continue to produce, this can add richness to and stimulate a society's cultural life of. Owners of exclusive rights may prohibit third party use of an intellectual work despite the existence of a legally valid contract. In situations where the law provides for exceptions and limitations, the right holder, however, cannot prohibit or authorise relevant usage.[20] In these cases, authors and other rights holders may either not receive any income, or if the law provides for a statutory remuneration for the usage, they may claim this remuneration (mostly via collecting societies). Different ways of administering exclusive rights, either through individual licensing contracts or through collective administration by collecting societies, may result in differing economic and social impacts for creators.[21] In contemporary discussions on *sui generis* protection for traditional cultural expressions, prior informed consent (PIC) is being promoted as an adjunct to statutory remuneration rights and is a concept akin to moral rights protection.[22]

Copyright and Competition Law: An Economic Social and Cultural Impact Perspective

To prevent the abuse of the limited monopoly granted by copyright, most systems provide for a combination or variation of the following safeguards to maintain the appropriate balance between exclusive control and public access, including: the originality requirement; the idea-expression dichotomy; durational limits of copyright; the fair-dealing or fair-use privilege; the exhaustion of rights or first sale doctrine; the parody defence; and the *de minimis* use exception.[23] These safeguards provide a level of public access to a work that can allow it to penetrate further into a society. These provisions take into consideration the use of copyrighted works in education and in the case of the parody defence, the provision of an avenue to challenge and interact with a work. Information and communication technologies have made parodies of intellectual works much easier to form and distribute. However, the aforementioned safeguards against copyright abuse may not adequately address such situations as: (1) the use of copyright to exact concessions from the licensee; (2) restriction of the

licensee's ability to deal with the copyright owner's competitors; (3) dealings that limit another's ability to compete; and (4) the anti-competitive use of the judicial system.[24]

From the previous discussion it is clear that the structure and content of copyright law has profound implications for its social, economic and cultural outcomes in society. As noted earlier in this section, a set of laws that regulates what is essentially an individual's or collective expressions encapsulating a society's history, politics, culture, economy and its very identity must be studied more closely by policy-makers. If governments are to harness not only the economic benefits, but the social and cultural transformative power of copyright, measuring these variables must become more routine and the results must better reflect the intrinsic and extrinsic value of the creative economy to a society.

1. FRAMEWORK FOR ECONOMIC, SOCIAL AND CULTURAL IMPACT ASSESSMENT

WIPO's work on impact assessment of copyright is relatively new. In 2003, the WIPO Guide on the Economic Contribution of the Copyright-based industries was published. To date over 40 countries have implemented these Guidelines. Studies have been conducted in countries as diverse as China, Kenya and the U.S.A. The studies show that even in developing countries, copyright-based industries can contribute more to GDP and employment than many other industries, including traditional sectors of the economy. In 2009, WIPO published the Report on World Intellectual Property Indicators, which demonstrated the increasing importance of intellectual property (IP) to economic performance. Though the report does not address copyright, it is the outcome of a continuing effort by WIPO to provide accurate and timely IP data that is universally accessible.

There are no generally accepted impact assessment guidelines across all fields of intellectual property to date. While complete uniformity may be neither necessary nor desirable, the ESCIA Guidelines are closer to more detailed, credible and useful assessments of the impact of copyright laws and practices in creative economies.

1.1 Objectives of ESCIA Guidelines

The WIPO ESCIA Guidelines provides a framework for achieving the following *objectives*:

- To assess the potential as well as the direct and indirect economic, social and cultural impacts of copyright law and practices in a specific section of the creative economy;
- To track 'change' resulting from specific policy interventions of the national copyright system, including the capturing of changes in a jurisdiction over time, which will ultimately allow for the monitoring and evaluation of the changes identified;
- To identify the benefits and costs related to the operation of the copyright system, including desired and undesired impacts, in order to help countries adjust their copyright-related policies and practices;
- To investigate first-order and/or foreseeable flow-on consequences of a substantive nature of the copyright system on specific stakeholders along the value chain of specific sections of the creative economy and society as a whole;
- To facilitate greater objectivity in the development of policy in the area of copyright and the creative economy and to achieve the broad objectives of national development.

1.2 Guiding Principles

The guiding principles identified here underpin the WIPO ESCIA Guidelines on assessing the economic, social, and cultural impact of copyright law and practices in the creative economy. They are aimed at ensuring that the planning, implementation and evaluation processes advance in a structured, predictable and consistent manner in the assessment of the practical impact of policies and actions.

Assessments of economic, social and cultural impacts of copyright law and practices on the creative economy should be neutral, empirical, dynamic, holistic, flexible, inclusive, beneficial and ethical. Many of these principles are related, and sometimes they overlap. At the same time, the principles sometimes conflict with one another, hence compromises or tradeoffs may be needed. The core principles underpinning these guidelines are described in further detail below. Copyright impact assessments should be:

Neutral – Neutrality is fundamental to the credibility and utility of the impact assessment process. Proper assessment requires an objective investigation of the impact of copyright on the creative economy. It cannot be used to justify predetermined conclusions, in the pre-declared special interests of particular stakeholders, or to lobby for the acceptance of unproven arguments. Whilst the result of an impact assessment is likely to be confirmation or rejection of a belief or hypothesis, the outcome must not be predetermined. Similarly, while assessments are often conducted to evaluate the success of achieving objectives or expectations, only honest evaluations are meaningful. The desire to achieve certain objectives related to a copyright intervention should not overshadow the main aim of the ESCIA, which is to observe and analyze all possible impacts for which it is practicable to do so. Concentrating solely on performance targets or goals will obscure other important effects. Certain assumptions may be necessary, but should be clearly stated. Assessors, therefore, should always be open-minded when testing hypotheses, measuring successes and questioning assumptions. It is always necessary, therefore, to acknowledge any potential bias, and implement generally accepted strategies for minimizing it.

Empirical – The value of any copyright impact assessment rests on its empirical rigor. Empirical assessments, in contrast with theoretical or hypothetical analyses, depend on factual observations of real-world phenomena. This evidence-based approach requires that valid conclusions be drawn from salient, credible and legitimate data.[25] Salient, credible and legitimate data includes not only quantitative or statistical information, but also a range of qualitative data. Narratives, experiences, opinions and impressions can provide valid information for the interpretation of empirical data.[26] It is important to recognize that all data sets are imperfect, and no single source of information is inherently better than any other in all circumstances. When

assessing the impact of complex policy interventions, such as copyright, from a multi-disciplinary perspective, the key is to acquire as much information as possible using various methods, sources and frameworks. Conclusions can then be drawn, questioned or confirmed, through a process of triangulation using all the available data.

Dynamic – The process of assessing the impact of copyright on the creative economy is carried out over time. While a static snapshot can be useful, an analysis that captures the dynamic impact of changes in policy or practice is likely to be more valuable. Moreover, the changes likely to matter the most are changes in human behaviour, such as the real-world actions of creative economy stakeholders, policy-makers or other actors in society. Statistical or other indicators of change are relevant not simply for their own sake, but because of what they reveal about the behaviour of those who copyright policy is intended to affect. Ideally, therefore, quantitative and qualitative indicators of change over time will be captured in longitudinal datasets to facilitate the monitoring and continuous assessment of policy interventions.

Holistic – An assessment should aim to provide as complete an understanding of the impact of copyright on the creative economy as possible. Using a holistic approach the insights obtained from multiple methods, sources and frameworks are integrated in order to develop more reliable conclusions than could be drawn from any single disciplinary perspective, or even a multi-disciplinary but fragmented analysis. Particular emphasis should be placed on points where various analytical frameworks intersect, although the unique contributions that only certain analyses (whether legal, economic, statistical, cultural, anthropological, sociological, or otherwise) offer are also valuable. A truly holistic approach may involve assessors considering the impacts of copyright policies and practices beyond the boundaries of the conventional creative economy. These guidelines, however, are designed specifically for the more manageable task of assessing the impact of copyright within and outside the creative economy. That said, assessors should be mindful of both expected and unanticipated impacts.

Flexible – Due to practical considerations, time constraints and resource limitations flexibility is always required. An unfocused assessment is unlikely to be as useful as a specific and tailored one. The key principle is that, where a holistic, contextual evaluation is not practicable, the necessary boundaries of an assessment should be carefully considered, well justified and expressly stated. Therefore, these guidelines are designed to be useable in a wide variety of economic, social and cultural contexts. They are modular and scalable, so that they can be adapted to different circumstances as needed. Assessors should be flexible in making the best use of the available time and resources, as well as the potentially limited data available. A copyright impact assessment exercise is necessarily designed to generate the best understanding

possible, which, given the nature of the subject and the inherent uncertainties surrounding it, will never be perfect.

Inclusive – Among the principal benefits of an impact assessment is the increased legitimacy of a particular policy intervention, such as copyright reform. Fully to achieve this benefit, however, the process of assessing impacts must be inclusive and participatory. Ideally all stakeholders would be consulted during the process of conducting an impact assessment, and their views and perspectives would be integrated meaningfully into the analysis and conclusions. The process of inclusion and consultation may facilitate stakeholders' sense of ownership of certain copyright policy measures and the possibility of influencing measures. If full, democratic participation in the assessment process is not practicable, at minimum the assessment methodology should be completely transparent and discretionary decisions should be clearly explained and justified.

Beneficial – Copyright impact assessments are performed for the purpose of benefitting society by providing a better understanding of the outcomes of particular policy interventions. The guidelines have been developed on the basis that impact assessments can lead to the use of copyright in the creative economy to promote development, encourage creativity and support for culture, promote entrepreneurship, facilitate economic growth and to enhance opportunities for workers in the creative economy.

Ethical – Copyright impact assessments are very likely to rely on empirical data collected during research involving human subjects, such as interviews, hence a number of important ethical principles will apply. While a typical economic impact assessment might rely on aggregated or anonymous quantitative data, the qualitative data needed to conduct social and cultural impact assessments will sometimes involve requesting personal or private information. So, maintaining participants' confidentiality and privacy may be necessary. Assessors must be sure to obtain the informed consent of anyone asked to participate in the assessment exercise, to avoid research on vulnerable individuals and groups or to take appropriate precautions where such research is unavoidable. Such special precautions include employing the principle of free, prior and informed consent as a matter of best practice when engaging with indigenous groups. Sensitivity to race, ethnicity, religion, gender, age and analogous issues is important. Assessors should be sensitive to the dignity of research subjects as human beings and not merely as a means to achieving the objectives of the assessment. Sharing the benefits and outcomes of the assessment, including any conclusions or recommendations that result, with the participating communities, is also important. In the interpretation or implementation of any of these guiding principles, it is essential to respect and comply with all the applicable laws, social practices and local customs.

Table 2: Summary of ESCIA Principles

ESCIA Guiding Principles	Focus
Neutral	Neutrality involves considering all potential impacts and not limiting research to desired outcomes and performance targets.
Empirical	Research should be based on factual evidence, whether quantitative or qualitative.
Dynamic	The research should capture changes over time in relation to various indicators.
Holistic	A holistic approach entails integrating insights obtained from multiple methods, sources and frameworks to develop reliable conclusions
Flexible	The Guideline provides an approach which is modular and scalable for adaptation to different economic and institutional circumstances.
Inclusive	As much as is practicable, all stakeholders should be consulted and their views incorporated where necessary.
Beneficial	The study should benefit development of the creative economy and promote entrepreneurship.
Ethical	Data collection should be conducted taking into consideration issues of consent, race, gender, and ethnicity and with a view to sharing results with communities.

1.3 ESCIA Research Design

Constructing a design for the research is an important procedure that should be part of the ESCIA process. The research design allows the creation of a timeline, which establishes comparative reference points during the ESCIA. The first reference point on the timeline represents the baseline or the baseline counterfactual, while the third point represents the monitoring and evaluation (M&E) and end-line phases. The research design facilitates comparisons between potential and observed impacts of an existing copyright policy assuming there is no change to the proposed copyright before and after implementation. Once sufficient M&E observations have been recorded of actual impacts, comparisons can be made using the ESCIA impact matrix. Therefore the baseline provides information on the interaction of existing copyright provisions with the chosen economic, social and cultural indicators prior to implementation of new legislation, while the M&E phase collects continuous data with respect to the same indicators following the application of a proposed copyright intervention.

The ESCIA results can then be compared with baseline data to determine the potential change that may occur and to provide information on the process of implementation of the new copyright intervention. ESCIA results can also be compared to data obtained in the M&E phase to determine whether the expected outcomes (and/or impacts) of implementing a new copyright rule were realised. Furthermore, data collected from

the M&E phase can be compared with the baseline to determine whether changes in copyright provisions resulted in the desired improvements.

Each jurisdiction may decide on the appropriate amount of time that should elapse during the M&E phase before the data collected is analyzed. With respect to the amount of time that should elapse between these two data points, it may be prudent to base this on the average timeline for a business cycle in copyright-based industries.

1.3.1 *Distinctions for Identifying and Evaluating Data*

Some distinctions need to be made before launching into the research design.

Distinguishing between correlation and causation is important, as impact assessments are of a substantively different nature than 'mapping and evaluation' exercises, which have gained wide international acceptance. Impact assessment is highly dependent on the central concept of causation; the relationship between an event (the cause) and a second event (the effect), where the second event is understood to be a consequence of the first. It is however, possible that most indicators within the creative economy provide no more than approximate correlations between a stated cause and a possible effect. Within such a complex policy domain, impact assessment is limited to indicating a balance of probabilities. This means that sometimes correlation analysis is likely to provide better analytical results than methods for measuring causation, such as regression analysis.

A further distinction that needs to be made is between those measures that consider impacts at the level of the national economy, such as GDP and industry level performance (macroeconomic), as opposed to those that consider impacts at the company, worker and consumer level (microeconomic). Impacts on users and consumers should also be distinguished from those on owners of copyright assets. These are different filters that facilitate the understanding of the different levels at which copyright interventions have impacts.

Impact assessments can be conducted in relation to incidents that have occurred and those that are yet to occur. For example, Environmental Impact Assessments can be made with respect to the effects of an existing oil spill, or the expected effects of the development of a nuclear power station. Similarly, the research design proposed in the Guidelines offers the possibility of conducting baseline studies on pre-existing copyright laws and policies, as well as conducting an ESCIA study on the potential effects of any newly proposed legislation and policy. In the Guidelines, therefore a set of methods and techniques are suggested for economic, social and cultural analyses that can empirically or descriptively (i.e. by narrative) explain the probable effects of a particular copyright intervention (policy and/or practice) on a specific sector of the creative economy.

Ex post and *ex ante* assessments[27]

The *ex-post* assessment involves undertaking a review of the operation of the national copyright system. It would involve documenting and gathering evidence of what was or was not happening with respect to a particular copyright law. With respect to *ex ante*, research work comprises the identification and examination of probable effects and consequences on the cultural and creative economy that are triggered by a change in a country's copyright law or practice.

1.3.2 *Establishing a Baseline and Counterfactual*

This first stage requires identification of the existing law or policy that is being considered for replacement by a new copyright rule. The purpose of identifying the existing rule is to collect data on the economic, social and cultural effects directly related to the current law. This establishes baseline information for comparison with the results of the ESCIA Study. It also helps to ensure that conditions that existed prior to the implementation of an ESCIA-vetted copyright policy are not erroneously attributed to it.

Establishing a baseline and baseline counterfactual entails the identification of the relevant economic, social and cultural impacts and indicators related to either existing copyright policy or where no copyright policy exists. The baseline and baseline counterfactual are important for recording the scenario for existing copyright policy and for projecting the likely results if no policy change was made. They capture the effect of a rule at a particular point in time as well as its projected future impacts, which can provide valuable information for use in comparative analyses with the ESCIA study and the M&E end-line results to determine the actual change that has occurred. It is important to note here that such a study can be undertaken in its own right in the absence of the prospect of new legislation. It may be used as an information gathering method to indicate how laws already implemented are functioning in the economy and in society.

Baseline data can be obtained from available economic, social and cultural data. Taking the education segment of the publishing industry as an example, it is possible to acquire economic statistics on the size of the copyright-based education industry after a particular copyright provision was put in place, any increases or improvements in persons accessing education etc. If such baseline data are not readily available, countries will need to collect data to establish a baseline and counterfactual for an existing rule before conducting an ESCIA.

1.3.3 *Conducting the ESCIA Core Research*

The next step is to conduct the core research for the ESCIA study. This requires identification of the particular copyright intervention and/or rule to be assessed. This process entails the identification of the ESCIA indicators and potential impacts.

Construct Impact Indicators – This requires, in the first instance, the identification of the rule that assessors are hoping to implement. Based on this and on the structure of the national economy, the market for copyright-based industries and assessors of stakeholder consultations will choose a list of indicators for the ESCIA, which will capture relevant data following standard practices. The indicators chosen for the impact assessment must be specific, measurable, attainable, relevant and time bound (S.M.A.R.T.)

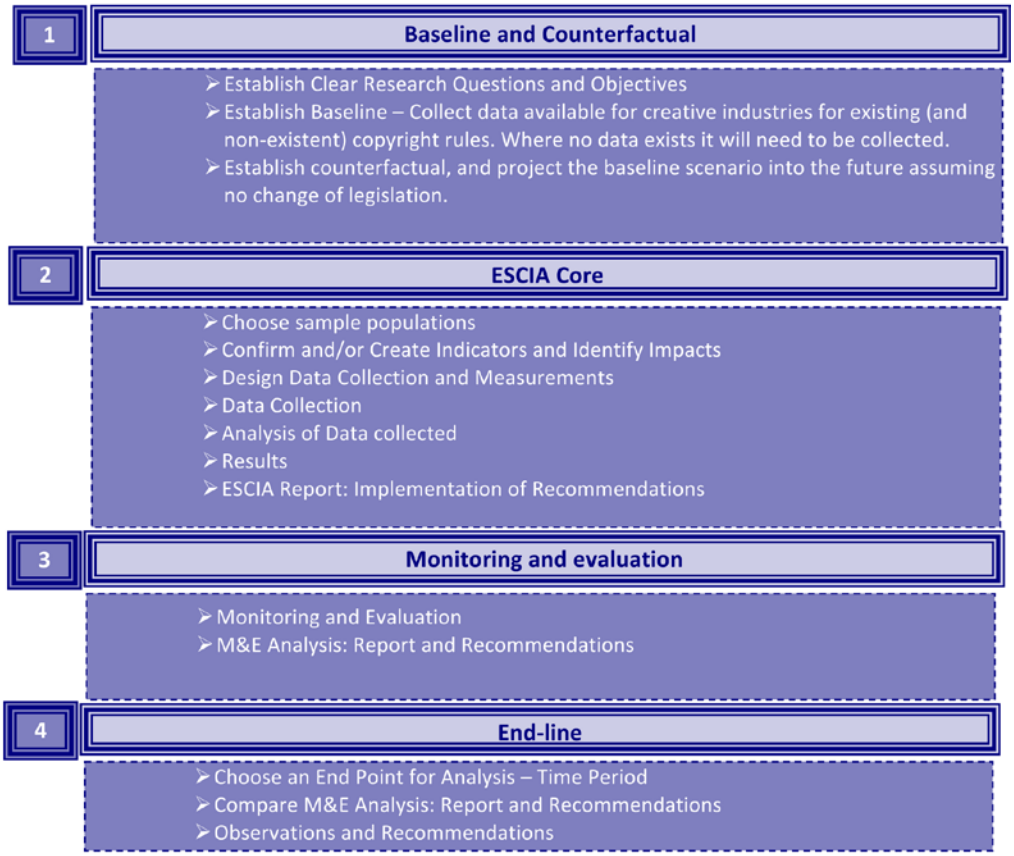
Measurements – A mixed methods approach to measurement is likely to yield the best analytical results from the ESCIA. Such mixed methodology in data collection and analysis involves the combination of qualitative and quantitative research to produce analyses that are not otherwise possible using only one methodology. Mixed method research designs for data collection and analysis groups together two categories: a) *Mixed Model Research*; and b) *Mixed Method Research*.[28]

Analysis and Results – The ESCIA results should provide a clear indication of the likelihood and severity of any economic, social and cultural impacts identified with respect to the indicators previously chosen for the copyright intervention identified. By comparing information from the baseline data with that obtained from the ESCIA study: informed decisions about whether to implement a certain piece of legislation can be made; whether the particular rule needs to be redesigned can be assessed; or whether other kinds of copyright policy interventions may be more likely to deliver the desired result can be determined.

Monitoring and Evaluation – The ESCIA Study will be used to monitor and evaluate the set of indicators and should result in recommendations. This will require that the indicators identified during the ESCIA are monitored and evaluated after the new copyright intervention has been implemented. The purpose of this is to record any changes occurring in response to the newly implemented copyright intervention.

The Endline Survey – This is the comparison of results with the Baseline (survey) findings and a detailed report of the survey (with sufficient narrative content to facilitate understanding and utilization by those with a limited background in statistics). The survey protocols will ensure that the data collected will be unbiased and comparable with the baseline data.

Figure 3: ESCIA Research Design



1.4 Copyright and Related Rights Stakeholders

Identifying the stakeholders in the copyright and related rights fields will be important for assessors carrying out ESCIA studies. These groups must be consulted with respect to the orientation of the impact analysis. If the analysis is intended to build support for the policy among stakeholders, it is important that the consultations are carried out in an open and transparent way. The stakeholders are likely to be those who are affected by the policy and those who may influence the policy.

For the ESCIA to capture a balanced picture of copyright operation and its relative impacts, open negotiations must be undertaken with a broad range of stakeholders. The stakeholder groups will include all those with specific concerns about the economic, social and cultural impact of copyright. For example the stakeholders may include, but are not limited to, governmental representatives, consumer groups, industrial lobbyists, educationalists, representatives of tribal and or ethnic groups and groups from civilian society. Civilian society groups may include a range of players, including societies that are custodians of collections.

In relation to consultations with indigenous and tribal groups, it is important to take note of the specific legal frameworks that apply to them. The concept of 'free

prior and informed consent' (FPIC) is specifically applicable to these groups under international law, and in several jurisdictions under national Law (where national laws do not make provision for FPIC it is, nonetheless, advised as the method of best practice). With respect to FPIC consultations, this process is provided for and elaborated on in the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries. Instruments providing operational guidelines for consulting with indigenous and tribal groups include the International Organization for Standardization's 26000 Responsibility Standard and the International Finance Corporation's (IFC) Performance Standards on Environmental & Social Responsibility, with corresponding Guidance Notes.

Who is consulted will clearly have an effect on the final outcomes of the ESCIA. With whom to consult is both a political and theoretical issue. Thus consultation is a negotiated process, which requires diplomatic skill. In principle, all stakeholders should be consulted as the ultimate value of the ESCIA is undermined if it is viewed as unrepresentative or partial in its overall design. Primary consultations with stakeholder groups should aim to map out the primary areas of concern of all parties. Consultations should include the identification of the likely impact areas for study, and the copyright operational models that are relevant for each stakeholder group. The consultation process with stakeholders will provide information that will enable each jurisdiction to determine its own working definitions of the creative economy and the cultural sector, which are unique to its economic social and cultural circumstances. The areas of concern will always reflect ideological beliefs, political realities and the socio-cultural context. Therefore, it follows that a broad range of academic expertise and methodologies are required to assess the economic, social and cultural impacts. In partnership with stakeholder groups, the delivery team will make informed choices about the operational model, or models, of copyright that are relevant to the study.

The economic, social and cultural externalities of copyright are complex. Therefore at a technical level, how copyright is conceived, and what it is conceived with respect to, are critical when conceiving its impacts. For example the choice of 'operational model' is highly significant in conceptualizing impacts, and is dealt with in more detail elsewhere in this publication. The choice of operational model will have determining effects on later technical aspects of the ESCIA process. Thus, open consultation with all stakeholders is critical in the early stages of the ESCIA process. For the ESCIA process to be valuable, it must become a tool that is useful to all the stakeholders in the jurisdiction in which the assessment is undertaken. Stakeholders should also be involved, as much as is practicable, in the selection of indicators for ESCIA studies.

1.5 Limitations of the ESCIA Guidelines

The ESCIA, though useful, is limited in the sorts of analysis and the quality of the data it can produce. To a significant degree the quality of the ESCIA will be dependent on the quality of economic, social and cultural data that government agencies have the capacity to collect, and the quality of their existing data sets. Furthermore, applying certain analytical models to cultural or social phenomena can only produce an approximate snapshot of what is under study. The data are also limited temporally, as they reflect the state of a particular variable at a particular point in time. There are also more fundamental differences in the structures and behavioral norms of the economic, social and cultural realms. For example, academic economics and legal practice operate with types of categorical thinking that are quite different to those that function in the cultural practice underpinning the creative economy.

While a good deal of flexibility is required to make abstract, categorical systems function, they nevertheless tend towards the development of formal rules. However, a battle against formal systems of categorization has been a fundamental characteristic of much cultural activity in the northern hemisphere for more than a century. 'Avant-gardeism' was the greatest guiding force in cultural development during the 20th century. In visual arts, music, literature, theatre, and dance the desire to challenge 'form', escape from genre, and to slip easy categorization, was regarded as synonymous with creativity, innovation and social, economic and political progress.

Such differences in structure and social, cultural and economic norms are critical. They indicate that a single unified approach to ESCIA is unlikely to yield high quality data. For example, from the perspective of many sociologists, the complexity of social action is rarely captured in economic modeling. The notion of a rational maximization of personal utility, which guides many theoretical models in economics, is perceived as a bizarre abstraction by a sociologist or anthropologist. Within the latter disciplines, such an *a priori* account of human action would blind the researcher to the complexity of the social phenomenon under analysis. Therefore, whether to leave the assessment of the impact of copyright externalities on social action and the fabric of culture to the discipline of econometrics should be considered. Every academic discipline has its limits. Econometrics may be able to provide a reasonable estimate of the financial cost of unintended effects on the system or the society of a given economic measure, but will miss subtle effects that copyright can have on social outcomes and cultural change. The development of ESCIAs, therefore, requires a cross-disciplinary approach. This poses a number of practical problems, which are addressed in the recommendations section of this report.

2. MAJOR CONCEPTUAL CONSIDERATIONS FOR CONSTRUCTING INDICATORS

Contemporary practice for constructing indicators to measure the impact of copyright in the creative economy is heavily focused on economic performance. Among approaches are: WIPO's own fruitful efforts for evaluating the economic contribution of copyright;[29] the United Nations Creative Economy Reports;[30] and UNESCO's Culture for Development Indicator Suite also has an economic focus.[31] These approaches tend to concentrate on indicators such as *share of the copyright-based and creative economy in employment, trade and GDP*. All of the above methods do attempt in some way to grapple with the component of the creative economy involving measurement of the social and cultural impact.

As far as the ESCIA Guidelines are concerned, the added dimension of copyright and the inclusion of social and cultural variables, can pose unique measurement challenges. One reason for this is that in many countries a high proportion of social and cultural activities that could be assigned to the creative economy take place informally. Often this occurs in a manner where creators may not always be aware of, or avail themselves of the benefits of the copyright protections applicable to their creative expression. In more regulated economies, where copyright awareness is high and a significant proportion of social and cultural expression becomes commodified, the channels[32] through which creative goods and services are mass-produced and exchanged become a major source of social and cultural impacts for creators and society at large. Furthermore, non-economic impacts such as the strengthening of cultural identity and community solidarity activities are not always easily measured. Neither is the intrinsic or extrinsic value of measuring these variables always clear to governments and stakeholder groups. However, these non-economic aspects of the creative economy ecosystem are definitely important, as they continually reproduce and renew the creative content that fuels the sustainability of the output of the creative economy. As such, the development of more sophisticated indicators that assist with the understanding of this mutually constitutive relationship is important.

Box 1: Definitions

Copyright-related Indicators are descriptive units of measurements – a filter and an indication of the condition or direction of the economy and society.

Copyright-related Impacts are recorded effects on the economic, social and cultural layers of society, as measured by chosen indicators.

The Study on Creativity Index from the Centre for Cultural Policy Research at the University of Hong Kong has made some useful contributions towards going 'beyond

the economic contributions of creativity', with its 5Cs Creativity Index of Social Capital, Cultural Capital, Human Capital, Structural/Institutional Capital & Outcomes of Creativity.[33] However, as the UN Creative Economy Report demonstrated, available indicators still fall short of measuring the real impact of the creative economy on society as a whole. The creation of indicators that facilitate understanding of how copyright interventions not only affect economic performance, but also social and cultural experiences providing creators and participants with social and cultural capital and a sense of belonging, are useful data sets for understanding the role of copyright in development.[34]

These kinds of data are valuable for policy-makers who design both copyright policy and economic, social and cultural regulatory frameworks, which are integral to the sustainable functioning of copyright as a catalyst for economic growth. In several jurisdictions many of the readily available indicators focus on capturing the performance of copyright in relation to firms and markets, but have not traditionally looked at the social and cultural impacts of copyright on communities of creators. The capacity of the aforementioned indicators to capture social and cultural impacts of copyright law and policy is therefore limited.

Though copyright regimes are primarily intended to regulate a set of economic relations, these relations also shape social and cultural relationships as well as experiences, whether in the creative economy or within the wider society. Therefore indicators that capture the social and cultural impacts of copyright law and policy are necessary in order to gain a holistic picture of the real effects of a specific law or policy intervention. Within the creative economy, copyright as a mode of economic regulation plays a significant role in the distribution of wealth, allocation of proprietary rights and valorisation of cultural forms and creative endeavors. Constructing indicators that capture these processes and their economic, social and cultural impacts is the key component of the ESCIA research design.

Box 2: Economic Social and Cultural Analysis

Economic, social, and cultural impacts are interrelated, integrated, and not mutually exclusive.

ESCIA Economic analysis is primarily interested in the economic value generated by: trade and the marketplace; foreign direct investment; domestic (private) investment; public sector investment and/or subsidies; creation of employment; competitiveness; pricing; production and labor costs; and institutions.

ESCIA Social analysis is concerned with how copyright affects broader social configurations, such as well-being and social connectedness. This involves the analysis of access, participation and equity issues in relation to social resources mediated by copyright or tangentially correlated with copyright including: access, equity and participation with regard to education; employment opportunities*; access to community centers, guilds and unions; social programs, and policy and legal information on copyright.

ESCIA Cultural analysis goes beyond economic concerns and complements social analysis by emphasizing issues of identity, valorization of cultural forms and general issues related to participation, access and equity with regard to cultural resources. These are things such as museums, cinemas, theatres, public technical assistance and funding for cultural groups and cultural forms, as well as issues concerned with the promotion of cultural exchanges, ethnic diversity and the addressing of gender disparities.

* N.B. Here we deal with access to employment and not the creation of employment.

Noting the previous discussion, ESCIA indicators are grouped into *nine main indicators*, each followed by a set of core and supporting indicators. The intention of using this structure is to move from a set of broad indicators to more specific ones that reduce variables to their most discrete form. This facilitates the capturing of qualitative nuances, which are often the hallmark of social and cultural impacts. Thus when impacts are identified, based on the ESCIA indicator framework they may be determined to be economic, social, cultural, or a combination of all three. Once developed this set of economic, social and cultural indicators facilitates carrying out a useful comparative analysis to determine the impacts of the copyright and related rights system. It will also assist in devising targeted and effective approaches for the improvement of copyright law and policy. These ESCIA indicators will be important to all phases of the ESCIA Research Design.

The following boxes summarise some basic issues that each country must consider before and throughout the process of creating specific indicators or choosing and modifying the indicators provided in these Guidelines. It addresses the need

for consistency in using indicators from the baseline through to monitoring and evaluation, the need for indicators to be specific to the phenomena monitored and the importance of value systems and processes of valorisation to influence which indicators are chosen.

Box 3: The Importance of a Consistent Research Design

ESCIA Indicators should be used consistently at each stage of the ESCIA Research Design:

- The ESCIA Framework, main indicators and related core and supporting indicators are indicative, and WIPO Member States may modify them to suit their individual needs.
- It is advisable that the same set of indicators be used at all stages of the ESCIA research design to ensure that the same phenomena are measured at each point, and to enhance the quality and accuracy of the information obtained from any comparative analysis between the baseline, counterfactual, ESCIA results and end-line.
- These ESCIA indicators will allow all institutions relevant to the process to be monitored, in order to establish patterns of accountability for the results of interventions, and to allocate responsibility for any performance targets that may have been set.
- The process is to ensure, as much as is possible, that results for the same phenomena and variables are compared at all stages of the research design.

Box 4: The Importance of Specificity of Indicators

Specificity of Indicators to determine the Economic, Social and Cultural Impact of Copyright in the Creative Economy

- When developing indicators, specificity is of paramount importance. Indicators must have a clear link to the economic, social and cultural experiences of the groups and phenomena targeted by the research.
- Specificity also applies to jurisdictional peculiarities such as the particular market structure of the copyright-based industries, the breadth and depth of the industry and the legal system applicable.
- If clear links are lacking, then the indicators chosen will not produce data that are useful for making judgments about copyright and related rights interventions or policy programs.
- The development of reliable indicators that effectively capture the kind of data which are required by the ESCIA is the basis of a successful ESCIA study. This is particularly important for those indicators that reduce qualitative experiences to discrete forms of social and cultural impacts, which are measurable to a certain degree of accuracy, without losing the richness of the data to a significant degree.
- There are limits to what indicators can capture. It is impossible for indicators to represent information on specific copyright and related rights systems in absolute detail. They can only capture an approximate indication of the phenomena being studied. Many jurisdictions may wish to add a set of indicators. However, the complexity of policy issues, when dealing with the impacts of copyright and related rights interventions on the creative economy, requires that these latter indicators are compatible with the nine thematic categories of ESCIA.

Box 5: Valorisation and Value in the Creative Economy

Identifying potential and actual impacts will be based on differing, but complementary analytical approaches for decoding those variables perceived to be valuable within a given country:

- The differences are influenced by the emphasis placed on different values, how value is measured, and the breadth of the analytic context. The value that each creative/product or service is allocated from an economic, social or cultural perspective within a given country is dependent on a complex set of conditions that produce particular attitudes about whether those creative products or services have intrinsic or extrinsic value. This may be whether creative products and services are valued for their own sake, or whether they are valued because they allow a country to achieve certain economic, social and cultural goals.
- Thus for policy-makers the creative economy may have extrinsic value in that it provides an opportunity to increase exports and broaden the tax base, or socially it may provide a potential opportunity for youth or marginalized groups to participate more effectively in society. The creative economy may also have extrinsic value because it helps to keep certain cultural traditions alive and cement cultural identity and social cohesion.
- Intrinsic value may be more successfully applied to the creative economy from the perspective of the consumer, for whom a cultural performance may be described as being a valuable viewing experience for its own sake. However, workers in the cultural and creative economy may perceive the performance from an extrinsic perspective, in terms of remuneration, social recognition and its contribution to the cultural legacy.

2.1 Characteristics of Reliable Indicators

When designing indicators for ESCIA it is important to consider the kinds of data that will be collected. Are indicators being constructed to facilitate monitoring, evaluation and assessment or with the aim of creating a set of performance targets for different sub-sets of the creative economy in relation to a specific copyright policy intervention? The goal of selecting any indicator, whether social, cultural, or economic, should be to enable the collection of appropriate, high quality data.

For the purposes of evaluation and monitoring, it may be necessary to know how frequently a new law is being used and which sectors of the copyright-based industries are the most frequent users of it. This would allow the targeting of public education and information drives at the social level and at the economic level to ascertain the most copyright-active sectors are hit in terms of production output.

However performance targets (indicators) are useful when attempting to determine the impact of a policy measure in facilitating best outcomes or improvements. For example, copyright and related rights policies dealing with licensing and royalties may set a percentage performance target for increased revenue collection in a particular sector of the industry in relation to enhanced institutional capacity.

Reliable indicators must be context appropriate, should be capable of being benchmarked, revisable, methodological, defensible, reliable, sensitive to cultural diversity, realistic, capture the essence of an issue and be designed via consultation.[35] Reliable indicators also need to be trustworthy. Constructing trustworthy indicators is dependent on the availability or creation of high quality metadata. Metadata should help to construct indicators that display built-in contextual considerations. In some jurisdictions, metadata on certain subjects may not exist or may be of a compromised quality. For this reason the 'stakeholder consultation' portion of the ESCIA is of high importance as it will provide information to close any gaps in metadata. This will ensure that the resultant indicators are designed in a manner that will capture impacts as accurately as possible.

Table 3: Eight Key Questions for Choosing Reliable Indicators[36]

Questions	Examples
What is being measured?	What is being measured should be clear and expressed in discrete terms that are measurable and not easily prone to further reduction. For example: Mechanisms for access to financing in creative industries
Why is it being measured?	It is important for determining whether creative industry stakeholders can take advantage of commercial opportunities created by the implementation of a new copyright policy or law. Legal protection of a copyright asset can only create economic impacts if a structure exists to invest in development and distribution of these asset categories created by law.
How is this indicator actually defined?	From a survey of the actual practice and the policy of lending institutions, governmental agencies, civil society organizations and businesses in relation to investing in the development and distribution of creative industry assets.
Who does it measure?	Here measurements could focus on individual creative and cultural workers and companies, and other organizations involved in the creative economy and cultural sector. Furthermore, indicators may focus on consumers, ethnic groups or gender.
When does it measure?	The temporal point being measured depends on whether we are trying to establish baseline data, conducting the ESCIA itself (*ex-post*), or whether we are at the monitoring and evaluation stage (*ex-ante*).

Table 3: Eight Key Questions for Choosing Reliable Indicators (continued)

Questions	Examples
Where does the data actually come from?	Data may come from the national statistics office, the central bank, the ministry of finance, the ministry of labour, commercial banks, the chamber of commerce, collecting societies, ministries responsible for culture and social services, national legal departments or institutions and development banks.
How accurate and complete will the data be?	The completeness of data on the creative economy is determined both by the baseline definition used and whether there is wide-spread data collection of a high quality. In highly regulated markets, with a high level of e-commerce in products and services of the creative economy, this may be less of a problem than in less regulated markets. Still the criteria for collection will determine how usable the data are.
Are there any caveats/warnings/ problems with the data?	For example non-existent baseline data, incomplete data due to lack of its collection etc., quantitative datasets.

2.1.1 *Reliable Indicators*

Many countries will have sets of indicators that are already in use for measuring economic, social and cultural phenomena. Such indicators may include revenue measures for specific sub-sets of the creative economy (music, film, arts & crafts, publishing, software development etc.). They may also include indicators of public investment and subsidies to those industries and indicators such as household expenditure on entertainment. However, as the UN Creative Economy Report 2010 demonstrates, many indicators are ill suited to the nuanced data collection required for the creative economy or such indicators simply do not exist. For example the Report notes that in 2004 Brazil's Ministry of Culture wanted a mapping exercise to be carried out throughout the country to identify the size of the 'cultural sector'. The first set of data, collected from more than 320,000 cultural enterprises, provided statistical evidence that, during 2003-2005, the cultural industries supported approximately 1.6 million jobs, accounting for 5.7% of the total enterprises and 4 per cent of the country's workforce.[37] Despite the collection of these data, targeted cultural policies were constrained by a lack of national indicators about the supply, demand and access to cultural goods and services. The types of indicators, what they measure, and whether they are suited to the policy goals of a specific jurisdiction is, therefore, very important. The S.M.A.R.T acronym provides a system of checks that allow policy-makers to determine whether existing and newly constructed indicators meet the requirements for targeted data collection informing their stated policy goals.

To enhance the likelihood that indicators will be reliable they should be constructed and selected during the ESCIA Research Design process. This will ensure that all

aspects of the nature of the data to be collected are fully considered. Furthermore, the indicators will be reflective of the policy being studied, the research questions being posed and the sample populations chosen. Such indicators will be specific, measurable, accurate, realistic and timely (SMART). All indicators, whether providing a broad category or playing a core or supporting analytical role, should adhere to these criteria.

Specific – Specific indicators for the copyright-based and creative economy should measure only those outputs, outcomes or impacts which are targeted and overlapping with other variables should be avoided in the research design i.e. there is a need to be discrete. For example, employment in the creative economy may be expressed as an economic or a social indicator. From an economic perspective assessors may choose an indicator measuring the creation of employment triggered by accession to and implementation of the Rome Convention.[38] However, from a social perspective a jurisdiction may choose to construct an indicator based on job security in the creative economy.

Measurable – Measurable indicators are clear and well defined so that all assessors presented with the measurement will measure it in the same way. Defining all of the terms within an indicator, particularly if they lend themselves to subjective interpretation within different contexts will ensure that all measurements flowing from the particular indicator are understood, collected and analysed in the same way. Job security is one such indicator consisting of several supporting indicators and is based on research data for a particular jurisdiction. Thus the factors included in a job security indicator and how it is measured, though based on the same premise, will vary slightly for each jurisdiction.

Accurate – The accuracy of an indicator involves whether responses to it will yield information that best represents reality. For example, if assessors require information on levels of attendance at live performances, an indicator targeted at deducing how many live performances each audience member attended is unlikely to yield an accurate picture. However, an indicator targeted at determining the number of live performances at venues within a jurisdiction and the number of attendees may produce a greater degree of accuracy. The first sample population of 'audience members' may be more suited as an indicator of the qualitative experience, while the second sample population 'live performance venues' will give accurate figures on attendance.

Realistic – The indicators selected must be realistic in terms of the ability to collect appropriate data with the resources available. Depending on how they are constructed and the selection of the sample population some indicators may prove to be expensive and beyond the skills and infrastructure available in a particular jurisdiction. For example, indicators targeting disaggregated data on e-commerce in goods and

services of the copyright-based and creative economy may be beyond the institutions and resources of some jurisdictions. This may be due to the fact that in many economies the creative economy remains highly unregulated and consists of many unregistered businesses or businesses that lack proper record-keeping practices or efficient technological solutions to track e-sales.

Timely – Indicators must be timely in several aspects. Time spent on data collection must be well planned taking into account the resources available to complete the project within a scheduled time frame. For example indicators targeting collection of domestic sales statistics may need reporting cycles and resource constraints of Chambers of Commerce and Departments of National Commerce & Industry factored in. Depending on the size of the sample population surveyed and the complexity of the indicator, the expertise and size of the team can affect the timeliness of the delivery of results. Sometimes trade-offs may be required between the representativeness of the sample and the complexity of the indicator to achieve and timely collection.

A good indicator should also consider issues of Equity. This would consider issues of distributive justice, access and participation. The need for indicators to capture issues of equity is particularly important in considering how economic, social and cultural impacts influence each other. Equity looks at distributional realities on the basis of income, geographic location, generational issues involving the age range of sample populations, gender, ethnicity etc. Additionally, it involves assessments of whether various stakeholders receive compensation proportionate to their investments of labour and capital. Furthermore, it is important that considerations of equity ask the question: 'Equity for what purpose?'. This question may be answered by proposing equity of access to capital, equity of access to information on copyright legislation, equity of access to jobs in the creative economy, and equity of access to cultural resources (theatres, museums etc.). All of these may be considered from the perspective of distributive justice or distributional efficiencies, depending in the goal of the policy.

The following table provides an example of some of the factors to be considered when undertaking the process of choosing or creating economic indicators. The process of going through these questions will help to ensure that indicators are as accurate as possible and help in reducing the margin of error in statistical data derived from indicators.

2.2 Analysis of Indicators and Resultant Impacts

The analysis of the indicators and the resultant impact of copyright policies in the creative economy requires the use of a variety of social scientific research approaches and analytical methods. Analytical methods may involve risk assessment and other approaches to model analysis, while social scientific approaches use mainly

participatory methods. ESCIA research on copyright interventions will involve capturing highly complex data and will, therefore, require the use of a series of methods for measurement; both quantitative and qualitative methods. Some of these are statistically driven methods designed for comparability and scalability; others are qualitatively focused for specificity and are not easily scalable.

2.2.1 *The ESCIA Risk Matrix*

Information on the risk of an impact occurring and its degree of severity gives more specificity to the available information for making policy judgments. Identifying risk allows policy-makers to take calculated decisions about which policies need to be modified, eliminated or retained and in which order of priority. In the proposed ESCIA Risk Matrix there are factors that produce either positive or negative impacts. Managers of large portfolios of copyrighted works can measure the risks of inadvertently infringing the moral rights of creators. This type of risk may be associated with large holders of economic rights in phonograms where the practice of collateralization of copyright works is increasing and can lead to multiple successive transfers of ownership. This increases the likelihood that a creator may not receive due recognition of his/her moral rights. The ESCIA matrix, as described below, can assist copyright managers to analyze their portfolios for this kind of risk in order to identify and avert potential law suits.

ESCIA Risk categories – Five ESCIA risk categories have been identified with respective risks determined for each category. The categories and associated risks are as follows

1. **Financial and Economic Risks –** sub-divided into, but not limited to credit default, budget constraint and funding/investment/subsidy risk. It includes how copyright law and policy may affect investment opportunities for firms and creators. This may involve reduced funding for programmes of copyright and creative economy as well as regulations and policies that affect the operation of collective societies. Such regulations carry the risk of increasing or decreasing revenues and investments for creators and creative enterprises or decreasing the availability of such funds.

2. **Social Risks –** are concerned with society impact risk, which occurs when a copyright law, policy or program has an effect on society. The creation of such risks may not only involve copyright, but also the way which it can complement other laws and policies in creating negative or positive risk outcomes. An example of social risk is the way in which copyright may be used in conjunction with censorship laws to control access to certain kinds of information within a jurisdiction. This is particularly true for creative and copyright-based content transmitted over the internet. Internet providers may be required, by contractual arrangements, to regulate access to copyrighted

data by third parties. This can entail the risk of having a society which is uninformed about specific issues, or supports a jurisdiction's social policy, or a positive risk related to royalty payments.

3. **Cultural Risks –** or cultural relationship risk can be associated with the implementation of large scale changes to law and policy. It involves risks associated with the ability of practitioners to avail themselves of the protection offered by copyright and the risks that such protection may inadvertently harm cultural integrity, development and survival. However, in many cases copyright law and policy are not the original causes of such risks but can often amplify them, or be ineffectual in addressing them.

   These cultural relationship risks often originate within cultural, social, environmental or economic policies within a jurisdiction, which can affect the survival outcomes for cultures, with a logical effect on their forms of cultural expression as well as related copyright-based goods and services they produce. For example, the adoption of the CITES convention, and other similar treaties, by various jurisdictions has affected the production of native art using traditional materials, making such products undesirable and likely to be subject to trade restrictions. However imitations of their designs, mass produced in resin material may be freely traded without such restrictions. It is not clear whether the solutions offered by copyright protection laws would be effective here.

4. **Regulatory and Legal Risks –** are risks sub-divided into litigation and non-compliance within copyright and related rights laws. Copyright laws, policies and regulations vary in each jurisdiction. Changing regulations can impact on royalty revenues and the ability of a creator to enforce their proprietary rights. This is the case particularly where creative enterprises are engaged in intensive copyright cross-jurisdictional investment. This also includes how well informed the public is of the regulation of, and policies on, their use of copyrighted data and whether there is ease of access to licenses to use data. The rise in data-sharing over the internet has created some grey areas regarding copyrighted content. However, it has also opened up the possibility of increasing legal access to copyright-based data. The risk of litigation is great if: rules are not properly followed; the content of rules are not accessible to the public; or when legal and policy mechanisms do not assist with easy access to copyrighted data.

5. **Technological and Operation Risks –** are sub-divided into operational, and performance risks. Operational risk includes lack of methods to control the unauthorized copying for profit over the internet, or the lack of adequate internet platforms to aid distribution. It also includes lack of access to technology to aid the quality and efficiency of production of creative goods

and services. Performance risks include technological limits and quality. This encompasses the availability of support technology/software for the creative economy in a country. The risks associated with this include low or high quality products and adverse or beneficial effects on distribution channels and sales volumes.

The Value of the ESCIA Risk Assessment: The risk matrix enhances the value of the ESCIA as a copyright policy development and implementation tool. When taken together with the baseline, counterfactual and ESCIA results for a specific country or enterprise, a risk score for each thematic category/indicator increases the likely efficiency of policy and business decisions. Risk scores can be calculated using risk assessment techniques, which include *Failure Mode and Effects Analysis (FMEA)*.

Creating a Risk Matrix Requires:

1. Deciding which impacts will be regarded as positive or negative along a descriptive numbered scale, as illustrated in the ESCIA risk matrix in table 9. For example, whether lengthening the duration of copyright protection of exclusive rights after the creator's death beyond 50 years poses a risk to the public domain and the severity of that risk;

2. Which sorts of impact will be prioritized by assessments? This is heavily dependent on which variables are targeted by the copyright intervention in question and the policy and business goals of a jurisdiction or a company;

3. Determining the magnitude of the impact (negative or positive) for stakeholders. Once potential impacts have been identified they can be scored according to the matrix and correlated with the initial copyright intervention;

4. Determining the likelihood that a given impact will occur. This requires the collection of a wide range of both qualitative and quantitative data on the effectiveness of institutions in delivering policy prescriptions, participation, access, investment, trade, employment and a host of other data collected on the basis of the nine thematic indicator categories developed below;

5. Determining which stakeholders or sample populations are most likely to be affected by a copyright policy intervention and the degree to which that impact, whether positive or negative, will be felt. This will assist in designing programmes that mitigate impacts on vulnerable groups.

2.2.2 *Identifying Risk*

Identifying the kinds of risks or factors that are likely to produce positive or negative impacts as a result of a copyright intervention may not be a straightforward task. Because policies affect a broad cross-section of society, the expertise of stakeholders

in the creative economy will be of paramount importance to the identification of such risks or factors. Unidentified risks cannot be assessed. If a risk or other factor is identified after the copyright intervention has already been implemented, this can affect the overall success of a policy in relation to its performance targets. It can also have consequences that may not have been anticipated and, thus, are difficult to mitigate against (negative risk) or take advantage of (positive factor). Among the many risk identification techniques are the gathering of historic data, empirical data, or the opinions of experts such as project stakeholders.[39] Risk identification can be carried out using various techniques including brainstorming, checklists, the Delphi technique, interviewing, scenario analysis, work breakdown structure analysis, surveys, and questionnaires to collect information from similar projects. In some specific scenarios, event tree analysis and/or fault tree analysis can be used for project risk identification.[40]

Table 4: ESCIA Risk and Opportunities Matrix

Impact Probability	Risks					Opportunities				
	Catastrophic A	Critical B	Moderate C	Minor D	Negligible E	Negligible F	Acceptable G	Moderate H	Good I	Excellent J
5 Frequent	5A	5B	5C	5D	5E	5F	5G	5H	5I	5J
4 Likely	4A	4B	4C	4D	4E	4F	4G	4H	4I	4J
3 Occasional	3A	3B	3C	3D	3E	3F	3G	3H	3I	3H
2 Seldom	2A	2B	2C	2D	2E	2F	2G	2H	2I	2J
1 Unlikely	1A	1B	1C	1D	1E	1F	1G	1H	1I	1J
0 Never	0A	0B	0C	0D	0E	0F	0G	0H	0I	0J

From the table above, one can develop an assessment with criteria for determining thresholds at which the risk score should trigger change and at which organizations are responsible for administering the initial policy variables as well as monitoring the change. Additionally, it is possible to derive tabulated scores for the likelihood of occurrences with a qualitative description of what each level of likelihood means, whether positive or negative. In the same manner tabulated scores for the severity of occurrences and a description of the meaning of each designated level of severity can be deduced from the ESCIA Risk Matrix. This, along with the nine thematic categories framework, will facilitate the identification of areas of impact where intervention is required, and the associated policies that need to be modified or eliminated to improve outcomes.

Table 5: Magnitude of Impacts – Risks

Magnitude of Impacts – Risks			
Descriptor	Definition	Rating	Institution to Take Action
	– Destruction of viable copyright sectors and closure of creative economy business – Local talents forced to migrate – Severe erosion of royalties and other payment. – No access to copyright based material – Non ownership and non-recognition of copyrighted works.	A	
Critical	– Inability to collect royalty payments – Widespread unauthorized copying – Infringement of moral rights – Reduced quality of education and information services – Widespread unemployment in the creative economy	B	
Moderate	– High cost of litigation – No access to creative infrastructure – Lack of investment, public funding and technical support for creative economy – Lack of social safety-nets for creative workers.	C	
Minor	– Slow revenue growth for creative enterprises – Slower updating of educational texts	D	
Negligible	– Reduced demand for goods and services produced by the creative economy – Lower numbers entering the creative professions	E	

Table 6: Magnitude of Impacts – Opportunity Scale

Magnitude of Impacts – Opportunity Scale			
Descriptor	Definition	Rating	Institution to Take Action
Excellent	– High rates of growth in trade in the creative economy – High rates of investment in the creative economy – High rates of consumption and production of diverse creative goods and services – High numbers of talents – Robust legislative framework	F	
Good	– Increased numbers of creative enterprises – Increased quality of creative output – Increased numbers entering the creative professions – Higher numbers enrolling for professional training in the creative professions	G	
Moderate	– Social acceptance and respect for the creative professions – Strengthening of creative communities	H	
Acceptable	– Awareness of copyright policy & laws – Existence of copyright policy & laws – Existence of a creative Economy	I	
Negligible	– Limited awareness of copyright policy and laws – Minimal existence of copyright laws and policy – Minimal support for the creative economy	J	

Table 7: Likelihood of Impacts

Likelihood of Impacts			
Descriptor	Definition	Rating	Action
Certain	Definitive empirical evidence that a particular intervention will result in a certain outcome, whether positive or negative	5	
Strong Likelihood	Significant empirical evidence that a certain intervention is correlated with a certain outcome.	4	
Moderate Likelihood	Moderate empirical evidence that a certain kind of intervention may produce a particular type of impact.	3	
Negligible Likelihood	Minor evidence that a certain type of intervention is likely to produce a certain type of outcome	2	
Unlikely	Random or inconsistent evidence that a particular type of intervention will produce a certain kind of outcome.	1	
Never	No empirical evidence that a certain kind of intervention is likely to produce a specific type of outcome.	0	

3. MAIN INDICATORS MEASURING COPYRIGHT IMPACTS

The ESCIA Guidelines propose core and supporting indicators designed to capture both qualitative and quantitative information on impacts, and that clearly cover economic, social and cultural impacts related to copyright in the creative economy. Furthermore, they are a comprehensive set of measures designed to include indicators targeting economic impacts primarily or social and cultural impacts primarily; others may incorporate all three. They have been constructed on the basis of research that identified some of the more common impacts, which are likely to be observed in relation to copyright law and policy in/on the creative economy.

While these thematic categories of ESCIA indicators are not exhaustive, they may be used, bearing in mind that they are indicative and not prescriptive. When using ESCIA indicators, different jurisdictions must take the market structure of their own copyright industries into consideration, as well as any cultural and social peculiarities, in addition to their own economic, legal and policy objectives. As such, national governments may construct their own indicators, reflecting the specific copyright regime. It is important to point out that in certain instances, indicators applied in highly regulated economies with complex copyright laws and large copyright-based industries may differ from those in less regulated economies with smaller and less complex copyright-based industries. The important point, whether choosing pre-existent indicators or constructing ones tailored to a specific country, is that they should reflect: the market structure, policy goals and objectives of the country; the social and cultural norms/practices affected by copyright or that produce copyrightable products and services; and the existent legal and policy environment.

Economic Indicators involves the value added by the creative economy: its contribution to the gross domestic product (GDP) and gross national product (GNP); the employment created; trade facilitated; and economic multiplier effects resulting from their activities. They also consider transactions that take place in the markets involving copyrighted goods and services. This includes the labour market and the behaviour of creators relative to their individual production and employment opportunities. It includes the capital market and the availability of financial resources to support creation and production. It includes the exchange market where copyright goods are sold, where supply and demand meet, and where consumption and sales patterns can be discerned. In all of these areas, market issues of price, cost and wealth allocation are central.

In contrast to economic indicators, social and cultural indicators attempt mainly to capture how stakeholder groups and individuals experience, interact with, or benefit from a particular copyright law or policy intervention in relation to the creative economy. Thus, they are concerned with how copyright policy modifies the social

and cultural experiences of stakeholders. These kinds of indicators are designed to capture qualitative impacts; however with good mixed research methods it is possible to reduce such qualitative impacts to statistically meaningful data. Such indicators are concerned with the social or cultural experiences of a sample population in relation to the creative economy, mediated by copyright law or policy. So they capture impacts on access, equity, participation, governance, communication, transformation/change and quality. For example access indicators may look at how copyright impacts access to technology, education and services and may also look at the quality of that access. These facilitate a nuanced picture of how quantitative economic indicators are related to social and cultural indicators in the copyright-based and creative economy.

Whatever the impacts of copyright and the creative economy on culture, it is necessary to note that culture and the valorisation of culture creates tangible markets for cultural and copyright-based products and services, spurring cultural production and consumption. Mommaas' discussion of cultural valorisation policies that implement deliberate cultural clustering[41] strategies to promote the development of sites of sustainable creative production, demonstrates this complex relationship between cultural valorisation and practice, and the creation of economic value. Pratt's analysis of the function of global commodity, value and production chains with respect to the functioning of the creative economy supports this argument by underlining how culture and creativity interacts with economic structures/policy, and can either be sustained or destroyed by them.[42]

Thus, culture is a societal asset in its own right, valued for its own sake and valued for its ability to create social cohesion as well as economic opportunity and wealth. Therefore, policies that encourage appreciation for and participation in certain cultural forms create an incentive for practitioners to enter the field and foster a consumer perception that attaches both social and economic value to such cultural forms. This creates a market for cultural goods and services. Copyright law and policy can have an impact on deciding which cultural forms are valorised, recognised and allocated a market value. Therefore, the relationship between copyright and culture is mutually constitutive, particularly in highly regulated market economies where cultural output is more likely to be turned into an intellectual asset via copyright law. For less regulated economies copyright holds out significant possibilities for economic growth, which can offer a degree of social and cultural advancement.

Box 6: Main Copyright Indicators

The Nine Main Indicators*

A. **Economic**

1. Creative Economy Output
2. Share of Total Trade in Creative Economy Goods and Services
3. Finance and Investment in the Creative Economy

B. **Social**

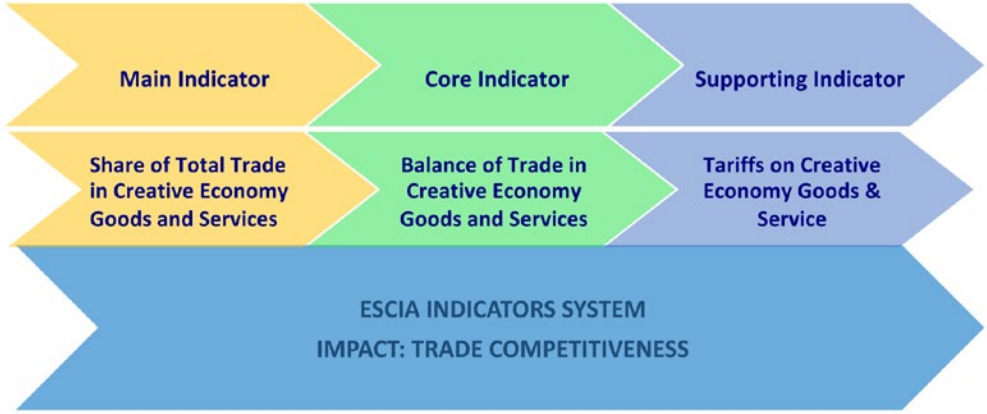
4. Creative Industries Employment
5. Access to Knowledge and Education
6. Use of Information Communications Technologies (ICTs) in the Creative Economy

C. **Cultural**

7. Effectiveness of Regulatory Framework for Culture in the Creative Economy
8. Creative Economy Infrastructure
9. Cultural Representation and Diversity

*: ESCIA Indicators move from the nine main indicators to core and supporting indicators. The definition of each indicator presented in the Guidelines is based on a synthesis of different data sets and studies on the creative economy available from various international organisations, national governments and WIPO's own research on the creative economy.

Figure 4: Example of an ESCIA indicator System



In the above figure it can be seen that the main indicator for the share of total trade in creative goods and services can be made increasingly specific in relation to the kind of impact for which information is being sought. In the example the impact of copyright and related rights on the trade competitiveness of the creative economy in a particular country can be established by collecting statistics on imports and exports of copyright-based creative goods and services. This kind of indicator may result in some of the same problems with respect to establishing BOT for goods and services in other industries, in that factor inputs for a final product or service may represent a combination from several countries.[43] Assessing the impact of copyright on BOT can be made even more specific by constructing an indicator that identifies which copyright-based creative sectors engage in international trade and to what degree.

3.1 Constructing Indicators to Assess Economic, Social and Cultural Impact

3.1.1 *Economic Pillar (A) and Indicators*

The field of economics, in the context of copyright, involves the allocation of capital and technical resources to satisfy competing wants and needs and the forces that direct and constrain that process. It involves choices as to which copyright-based goods and services will be produced, how the production process will be carried out and the channels through which the final output will be exchanged and consumed. Furthermore, economic perspectives of copyright in the creative economy are concerned with: how such markets, industries, and firms are organized and the institutions that affect their operation; the equity of distribution of resources and wealth; and whether the system is functioning optimally. In this context an indicator is considered to be a measure of economic variables if it is concerned with those choices, structures, and processes that are driven by markets for how copyright affects: the production and dissemination of protected works; the distribution costs; prices of resulting goods and services; the benefits of creative endeavours; changes in the exchange of copyright-based goods and services; social and cultural welfare for better or worse.

The fundamental purpose of copyright law is to serve the public interest by fostering greater creativity, development of and access to goods and services through the protection of private interests as a means of achieving public objectives. Due to this purpose, economic indicators must assess effects on both public and private interests. This requires identifying types of impact indicators that determine: the degree of impact on the balance of private and public interests established in domestic laws and international treaties; impacts on the degree to which provisions are enforced; sometimes on concepts of social and cultural welfare, which are not easily measurable.

Box 7: How to Identify Economic Impacts

How to identify Economic Impacts

An economic impact is a discernible effect, a variable in the economic system that one is interested in, and is captured as a change, whether positive or negative in economic relations. The economic approach to impacts is therefore concerned with measuring the wealth generated and employment created by the creative economy, or lost due to insufficient or, possibly, overly restrictive copyright protection. It is concerned with economic relations in trade, production, consumption, investment and employment. Typical measures involve the value added by the creative economy, their contributions to gross domestic product and gross national product, any employment created, balance of trade, direct foreign investment, fiscal incentives and economic multiplier effects resulting from their interaction.

Economic indicators focus on markets, economic activity, the created economic value, and choices made in the creative and cultural economy. They capture the impact of those factors on individuals and firms who create copyright-protected works, their effects on the abilities of communities to impart and receive benefits from those works, and on the institutions that link and coordinate social interactions. Economic indicators of impact provide measures to ascertain whether copyright protections improve the incentives and abilities of individuals and firms to produce works by increasing the economic rewards and whether—and to what extent—they create externalities that may make it difficult to obtain and use works created by others.

Hence, they also capture impacts such as economic and social costs that may arise as a result of the exclusive nature of copyright. For example, without supporting policies that address issues of equity, it is possible for copyright and related rights to exacerbate underlying problems of economic and social exclusion, as well as income inequality.[44] This refers to those who are unable to obtain access to copyrighted knowledge, goods and services due to the expenses created by protections. Exclusion may occur because of the insufficient protection of fair use, inadequate provision of community services such as libraries, and economic constraints. When analysing economic indicators for the latter two factors, it will be important to distinguish which impacts are related to general economic disparities and those which can be correlated with copyright itself.

Economic indicators can measure impacts of copyright-mitigated market forces on an individual's employment opportunities. In a study on the creative economy Markusen *et al.* used employment to measure and propose two distinct ways of conceptualizing creative workers: those employed in the cultural/creative economy and those carrying out cultural/creative occupations.[45] When designing economic indicators to capture

economic impacts of a specific copyright intervention on workers in the creative economy, the aforementioned method provides a more nuanced understanding of employment, not only as an economic activity but also placing it in its social and cultural context. This allows a meaningful link to be made between economic, social and cultural indicators.

To capture this nuanced data, Markusen notes that cultural occupational analysis focuses more closely on what cultural workers do rather than what they make.[46] This concept allows assessors to think through aspects of workforce development in the creative economy and facilitates the acquisition of data about non-remunerated creative activity that can serve as a basis for new expansion of industries. Many workers in the creative economy may not be involved in creative tasks, instead carrying out supporting roles.[47] This can be extrapolated to enterprises in the creative economy.

In assessing the creative economy, issues of access, non-discrimination in the provision and use of creative resources and outputs throughout society are vital. Data and statistics relevant to measuring the overall economic impact of the creative economy have traditionally suffered from gaps in governmental data, although some improvements in more regulated economies have been evident in recent years. Nonetheless, one must ensure that a lack of statistical data does not impede the general goals of the assessment and sometimes a high degree of creativity is needed to overcome the challenge.

Indicators become especially powerful if they permit assessments that determine developmental trends rather than providing a static one-point-in-time overview. Indicators are best employed at regular intervals. They become highly instructive when they can facilitate comparisons at different temporal points in a research design, as prescribed by these Guidelines.

Indicators measuring overall economic value of copyright based the creative economy: Such indicators will aim to capture how copyright law and policy affects the value of economic activity and output in the creative economy. They can be disaggregated by sector in order to collect data on the music industry, fine arts, the technology sector etc. They take into account whether and how copyright alters market operations, the extent to which it affects prices and consumption of copyrighted works, how it influences what copyrighted products are offered, and how it affects the distribution and availability of works. They account for how copyright protection influences wealth creation and the distribution of the wealth amongst those in the copyright value chain, and For how copyright systems allocate value and ownership to works or forms of expression with their origins in traditional knowledge and expression. Facilitated by the ESCIA indicators, economic impact analysis takes into consideration the effects of copyright law and policy on national economies

and on public support for the production of copyrighted works and their acquisition by public organizations (libraries, educational institutions, publicly funded arts and performing arts groups, etc.). They also take into consideration how this affects existing rights, negotiation processes and the distribution of economic power among stakeholders.

Box 8: Indicators

Indicators to Determine Economic Impacts: A Transactions Perspective

- Another way to look at economic indicators is through transactions. This includes financial transactions, transactions in information goods, software, etc. What this translates as is the cost to consumers and creators of participating in the market for copyright-based and creative goods and services.
- Data collection methods capturing these transactions can include surveys of supply and demand that gather data on consumption and sales patterns to show or describe consumer behaviour and decision patterns.
- The basic assumption of the economic approach is that the creative economy harnesses and creates economic value through copyright and related rights protections, contributing to improvements in quality of life, institutions and in society as a whole.

Box 9: Source Data

Source Data for Creative Industries Indicators

- Many useful economic indicators already exist in national and industrial statistical data sources or can be developed in cooperation with relevant industrial organisations and international organisations; UNCTAD, UNESCO, the EU, ILO and UNIDO have all made contributions to the effort to develop more sophisticated indicators for the creative industries.
- In other cases original research must be undertaken to create the appropriate indicators. A significant challenge is that pre-existing indicators are sometimes skewed by the data used or the statistical methods that are employed in gathering the data. Aggregate data, for example, may not account for differences that may exist between the aggregate national level and domestic geographic regions, between urban and rural areas, between wealthier and poorer citizens, or between men and women.
- Care must be taken when adopting existing indicators to ensure that they provide appropriate and adequate information for the phenomenon being measured.

Economic indicators are thus concerned not only with the financial aspects of copyright, but the underlying effects it has on the provision, exchange, and distribution of copyrighted works and the extent to which they serve both the private and public purposes of providing rights and protections. Evidence for economic impact is a change that can be correlated with the presence of copyright and its enforcement, or that can reasonably be attributed to insufficient protection. Research can establish the extent of impact in a number of different ways. Methods for measuring impact on the national economy are well developed and reported in the WIPO Guide on Surveying the Economic Contribution of Copyright-based Industries to national economies.[48] They include means for assessing the value added by copyrighted industries, their contributions to the gross domestic product, and employment created. The ESCIA will add the dimension of international trade to copyright-based and goods and services produced by the creative economy, which is absent from the current Guide on economic contribution.

Many basic creative endeavours in literature, music, art, and performance take place regardless of the existence of copyright because they are an integral part of the human experience. Significant quantities of work have been produced, both historically and contemporaneously, without financial compensation or any expectation of it. During the last century and a half, however, increasing numbers of producers—both individual creators and firms—have come to rely on production

for their livelihoods, and copyright protection is central to their commercial activities. Thus, incentives to produce, or produce more, must take into account production in both contexts.

Impact studies can explore how provision of protections has affected output in copyrighted industries. They can focus on the quantity of overall output, and the range and diversity of output provided. Research on economic impact can investigate how the provision of protections affects the structure of the industry, by introducing income collection and enforcement structures and activities.

The economic impact on production and dissemination can be explored by focusing on the expenses created by copyrighting and the prices for works. Costs added can be explored at various stages in value chains from the use of and payment for copyrighted elements, and how these affect prices for the goods and services created. How price increases due to protections may be studied, and how this affects consumption of copyrighted goods and services. Analysis can focus on how the revenue received from copyrighted goods and services is divided amongst stakeholders in the value chain, and how it affects the income, wealth and wellbeing of various players. It can also focus on the financial costs of enforcing protections through governmental means to society, and of public subsidies, grants, and other support for creative activities.

Based on indicators, economic analysis of impacts can also focus on more driven qualitative issues of the political economy relative to copyright, exploring its impact on the rights of all stakeholders, on how rights and licences use, copy or transfer are traded, and the resulting allocation of power among stakeholders. Efficiency constraints on free markets and on wealth transfer are two other variables that may enhance economic analysis. Due to the range of issues covered by economics, it is both erroneous and insufficient to consider economic impact analysis as merely focusing on monetary issues.

3.1.1.1 Economic Pillar (A): Main Indicator 1: Creative Economy Output

This indicator is concerned with the economic output of the industry through the lens of the relationship between production factors (labour, capital, technology).

Table 8: Theme A.1

Creative Industries Output			
	Core Indicators	Supporting Indicators	E-S-C Impacts
Creative Economy Output	A.1.1 Creative Economy Production	i. Value of creative economy goods and services ii. Number of units of goods and services produced iii. Quality of goods and services produced iv. Cost of factor inputs	• Sustainability of Creative Economy Enterprises • Ability to Attract Foreign Investment • New Business Models • Quality of Creative Goods and Services
	A.1.2 Creative Economy Employment Creation	i. Number of jobs in the creative economy ii. Rate of job creation iii. Quality of job creation	
	A.1.3 Creative Economy as a Percentage of GDP	i. Expenditure on creative goods and services ii. Expenditure for lowest 20% income bracket iii. Expenditure by the highest 20% income bracket	
	A.1.4 Creative Economy Consumption	i. Number of units of creative goods and services consumed per quarter ii. Value of units consumed iii. Prices of creative goods and services iv. Rate of consumption of goods and services produced by the creative economy	

The Core Economic Indicators

A.1.1 Creative Economy Production: focuses on capturing the effect of copyright law and interventions on the production of creative goods and services by core, interdependent, partial and related non-dedicated support industries. This indicator may also include unremunerated copyright-based and creative production. At may include indicators to do with fragmentation of production and value chains.

A.1.2 Creative Economy Employment Creation: as an indicator is intended to capture the effects of copyright interventions and policies on creation of employment in the creative economy, including remuneration, full or part-time employment, and multiple job holders. This indictor assesses jobs in core, interdependent, partial and related non-dedicated support industries.

A.1.3 Creative Economy as a Percentage of GDP: aims to capture every copyright law or policy mitigated economic action within a jurisdiction, whether from the approach of expenditure or income in the creative economy. It may also take into consideration these same variables of the creative industries disaggregated by geographical region and sector. It will measure the value of actions, whether they are public, private or involve e-commerce. It is important to note that GDP does not equate with a state of social or cultural wellbeing in a jurisdiction, it is simply one of the measures considered in defining it.

A.1.4 Creative Economy Consumption: will measure copyright law and policy-related impacts on the consumption of creative goods and services. This will involve metrics to determine impacts on prices, distribution channels such as theatres, the internet and increasing access to digital technology. It will also assess: consumption patterns; which creative goods and services have high or low rates of consumption, the seasonality of such consumption etc.

The Supporting Economic Indicators

A.1.1 Under Creative Economy Production:

i. **Value of creative economy goods and services:** Looks at the monetary value of goods and services produced in the creative economy. To clarify, this reflects the value at production. This indicator can be disaggregated by sector, geographic region and other delineations such as language and ethnicity.

ii. **Number of units of goods and services produced:** This indicator looks at the number of creative goods and services produced in the national economy. This may be disaggregated by sector and geographic region. Because there is a high propensity for creative goods and services to be an agglomeration of different products, expressed in varying ways, this is important.

iii. **Quality (demand) of goods and services produced** will capture the consumer's and industry's perceptions of goods and services produced in each sector of the creative economy. This indicator can be determined by using consumer surveys, industrial standards (or perceptions) and marks of quality, where applicable, to determine the quality of creative goods and services. Together these will provide a subjective measure of quality.

iv. **Cost of factor inputs:** assesses the cost of inputs going into the production of goods and services produced by the creative economy, inclusive of labour and technology.

v. **Total factor productivity:** (TFP) refers to the portion of the creative economy output that is not directly attributable to the amount of inputs used in production.[49] TFP for the creative economy would be determined by how efficiently and intensely inputs are utilized in production. This indicator can be disaggregated by sector and geographic location, as well as by the size of the creative enterprise.

A.1.2 Under CI Employment Creation:

i. **Number of Jobs in the Creative Economy:** addresses employment figures for all industries defined as comprising the creative economy. It may include job figures for industries that are not creative in themselves but depend on the creative economy for sustainability. This can be done for each sector.

ii. **Rate of Job Creation:** is concerned with additional jobs created or additional jobs lost, year-on-year in the creative economy, based on employment figures for the previous year. This can be determined for each sector.

iii. **Quality of Job Creation:** captures the quality of the jobs created based on the median income, the level of education required to execute the job, whether it is part-time or full time employment, the seasonality of jobs, the frequency of payments for work executed etc.

A.1.3 Under Creative Economy as a Percentage of GDP:

i. **Gross value added as a percentage of GDP:** Value added for a sector or industry as a percentage of GDP calculates the net output of a sector after adding up all outputs and subtracting intermediate inputs. It is calculated without making deductions for depreciation of fabricated assets or depletion and degradation of natural resources.[50]

ii. **Expenditure on creative goods and services:** This looks at the value of what is spent in the economy on creative goods and services. This can be disaggregated into public and private expenditure. It can also be disaggregated by geographic region.

iii. **Expenditure for lowest 20% income bracket:** This measures expenditure by those within the lowest income brackets in society. This figure can be produced as a percentage of income or in absolute terms.

iv. **Expenditure by the highest 20% income bracket:** This measures expenditure for the highest earning 20% in society. This figure can be produced as a percentage of income or in absolute terms.

A.1.4 Under Creative Economy Consumption:

i. **Number of Units of Creative Goods and Services Consumed:** assesses the volume of goods and services produced by the creative economy consumed by unit. This can be disaggregated for each sector.

ii. **Value of Units Consumed:** as an indicator addresses the value of the units of goods and services produced by the creative economy consumed by measuring the value of consumption and consumer surplus.[51] This can also be carried out for each sector of the creative economy, by geographic region, for minority groups and at the household level.

iii. **Prices of Creative Economy Goods and Services:** comprises the median prices of creative goods and services by sector and market segmentation. This indicator takes into consideration the properties of the creative good or service (physical or intangible), the date on which it will be available and the location at which it will be available.[52] It should be noted that the availability of creative goods and services on the internet may have varying effects on each component of the price.

iv. Rate **of Consumption of Creative Economy Goods and Services:** is an indicator that will address the measurement of consumption, taking into consideration the intangible nature of cultivating taste, which is involved in consumption in the creative economy. It can be measured using existing approaches to consumption in the arts such as rational addiction, and learning by consuming.[53]

Potential ESC Impacts

- **Sustainability of Creative Economy Enterprises:** is concerned with the ability of creative enterprises to maintain reasonable profit margins and compete domestically and internationally on a long term basis. It may look at rates of closure, solvency issues and employment turnover in areas related to creative enterprises.

- **Ability to Attract Foreign Investment:** is a measure of the overall attractiveness of the creative economy to foreign investors. This is based on: the monetary value of FDI; the numbers of copyright mitigated joint ventures with participating foreign investors; copyright policy related technical assistance and the transfer of knowledge, whether from private or state-owned foreign enterprises. It will measure the influence of copyright policy on the in-flow of foreign capital from public or private sources, or state owned enterprises. It will assess how copyright is integrated into the legal conduits

for FDI i.e. (international investment agreements, investor/state contracts) in order to measure its influence.

- **New Business Models:** are concerned with how copyright law and policy may create incentives for producing new business models in the creative economy. These may be business models involving the production, distribution and sale of creative goods and services. Impacts may also include technology-driven business models
- **Quality of Creative Goods and Services:** is concerned with the impact of copyright law and policy on market perceptions of quality in relation to the export of creative goods and services. The quality of creative goods and services can be measured with an aggregate that comprises: consumer perceptions; industry standards for quality, where applicable; as well as the perceptions of industry; and marks of quality and authenticity (e.g. geographical indications) associated with cultural, artisanal and creative goods and services

3.1.1.2 Economic Pillar (A): Main Indicator 2: Share of Creative Economy Goods and Services in Total Trade

Services are the largest and most dynamic component of the economies of both developed and developing countries. Important in their own right, they also serve as crucial inputs in the production of most goods. Trade in goods encompasses all internationally traded commodities, as well as the import and export of copyright-protected goods and services.[54] E-commerce is also considered and will be accounted for as a share of the trade in goods and services produced by the creative economy. This may be measured from the number of individuals (natural or legal) participating in the trade of goods on the internet. Another way of measuring this is to determine the number of transactions and the value per unit.

Table 9: Theme A.2

Share of Creative Economy Goods and Services in Total Trade			
	Core Indicators	Supporting Indicators	E-S-C Impacts
Share of Creative Economy Goods and Services in Total Trade	A.2.1 Balance of Trade	i. Exports of creative goods and services ii. Imports of creative goods and services iii. Trade deficit or surplus in creative goods and services iv. Trade competitiveness in creative goods and services	• Access to and availability of creative goods and services • Diversity of creative goods and services • Competitiveness • Trade and investment flow
	A.2.2 Trade Facilitation	i. Tariffs on creative goods and services ii. Creative goods and services as percentage of e-commerce iii. Effectiveness of legal framework facilitating trade in creative services:	
	A.2.3 Employment Creation	i. Number of jobs ii. Quality of jobs iii. Stability of jobs	
	A.2.4 Creative Economy Production	i. Number of performances ii. Number of recordings iii. Number of published works	
	A.2.5 Functionality and Enforcement	i. Number and effectiveness of institutions dedicated to enforcement and policy implementation ii. Efficiency of institutions iii. Access to institutions and implementation mechanisms	

The Core Economic Indicators

A.2.1. Balance of Trade: is intended to capture the balance of traded goods and services in the creative and copyright-based industries. This is determined from a country's imports of creative goods and services minus its exports. It is a component of the Balance of Payments that will facilitate the determination of the competitiveness of a country's creative economy:

A.2.2. Trade Facilitation: will focus on the manner in which copyright interventions and policy affect cross border import and export regulations and other customs procedures and controls that affect trade in creative goods and services.

A.2.3. Employment Creation: will capture information on the creation of jobs in the creative economy, which are related to a copyright policy or intervention. It will also look at the approximate numbers of jobs in the sector. As noted elsewhere, the creative economy provides creators with work as well as producing additional jobs for support workers.

A.2.4. Creative Economy Production: documents domestic works created, such as the number of hours of local radio and television, the number of audio recordings produced, the number of performances, and numbers of works of art and exhibitions. Additional analyses can explore incentives and disincentives for production and the range and sorts of works made available;

A.2.5. Functionality and Enforcement: assesses the extent to which compliance with policy, law, and regulation is made possible by the effective collection and distribution of rights payments, whether enforcement is pursued by authorities, whether adequate resources are available to ensure the system functions, and the overall effectiveness of the system.

The Supporting Economic Indicators

A.2.1 Under Balance of Trade:

i. **Exports of Creative Goods and Services:** may look at both the currency value and the unit volume of export of creative goods and services. The accuracy of national trade statistics and definitions are important for this indicator.

ii. **Imports of Creative Goods and Services:** This indicator determines the currency value and unit volume of imports of creative goods and services. Again accuracy is dependent on national trade statistics and definitions. It will assess which sectors receive the most or the least imports and gauge the competitiveness of the domestic sector.

iii. **Trade Deficit or Surplus in Creative Goods and Services:** is the difference between the imports and exports of goods and services produced by the creative industry in relation to specific trading partners. It also attempts to ascertain the composition of the sectors with a short fall or surplus.

iv. **Trade Competitiveness in Creative Goods and Services:** examines export performance in relation to regional and global partners.For example, by measuring its impact on the quality of goods and the ability

of creators to respond to market demands to deliver high quality and diverse creative goods and services

A.2.2 Under Trade Facilitation:

i. **Tariffs on Creative Goods and Services:** will identify whether and how copyright interventions and policy impact tariffs on creative goods and services and how this affects demand, prices, distribution channels and trade.

ii. **Creative Goods and Services as a Percentage of e-Commerce:** looks at the share of cross border on-line trade that can be categorized as copyright-based or associated with the creative industries.

iii. **Effectiveness of Legal Framework Facilitating Trade in Creative Services:** examines whether, how frequently and how difficult it is for performers, creators and other service-oriented workers in the creative industry to make use of GATS provisions. This could help to identify protectionist trends in the creative economy.

iv. **Cross-border Provision of Creative Goods and Services:** focusses on the way in which copyright law and policy interacts with the regulations within a specific jurisdiction and those of its export markets, impacting ease of trade, trade volume, prices etc. This indicator can be disaggregated by creative industry sector and by enterprise size.

A.2.3 Under Employment Creation:

i. **Number of Jobs Created in the Creative Sector, Employment Trends**

ii. **Quality of Jobs- Educational Skills, Level of Remuneration:** refers to the educational level required to perform the standard tasks expected for a particular job. It also includes the skills needed for a particular job or job function and the level of expertise required. This may also include the level of remuneration associated with the skills, education and experience for each job.

iii. **Stability of Jobs in the Creative Economy:** The data for this indicator would be similar to that of the ILO status in the employment indicator. This refers to a set of discrete values, which can be assigned to the variable 'type of contract that a person has with other people or organizations when performing a particular job' when it is measured in a statistical survey or registered in other administrative files. The 'type of contract' for a job is determined by the type of economic risks and authority involved when carrying out the tasks and duties of the job.

A.2.4 Under Creative Economy Production:

i. **Number of Performances:** This indicator can examine large scale commercial performances, as well as smaller scale performances supported by public funding, the community and cultural groups. It can also be disaggregated according to the performance sort, such as concerts, plays etc.

ii. **Number of Recordings of All Types:** per quarter refers to music recordings as well as other types of recordings such as audio books.

iii. **Number of Published Works:** will look at works published in hard copy as well as e-publishing. It should attempt to disaggregate between educational publishing and other market sectors. Educational publishing can also be sub-divided into indicators for measuring impacts in primary, secondary and tertiary publishing market segments. It can also be further disaggregated to measure impacts on specific disciplines.

A.2.5 Under Functionality and Enforcement:

i. **Number and Effectiveness of Institutions Dedicated to Enforcement and Policy Implementation:** looks at the number of both institutional and legal mechanisms created in relation to a specific policy objective and whether the institutions tasked with maintaining them are effective. This includes legal systems that process and settle access to, and information on, policies on the creative economy and whether they are effective in ensuring that polices are applied and that beneficiaries are aware of policies targeted at their sector.

ii. **Efficiency of Institutions:** looks at issues of efficiency in institutions that may have to deal with processing requests, enforcing resources, the success rate of enforcement activity etc. In terms of legal mechanisms it deals with whether legal mechanisms offer effective protection and redress for infringements.

iii. **Access to Institutions and Implementation Mechanisms:** This indicator will look at the ease of physical access to institutions dealing with the implementation, enforcement and service provision. It will also look at the costs associated with access. Certain countries may require indicators about linguistic accessibility.

Potential ESC Impacts

- **Access to and Availability of Creative Goods and Services:** The core and supporting indicators, previously outlined, will facilitate identification of impacts on the access to and availability of creative goods and services; providing data on the efficiency of distribution channels, cost of access etc. It may be possible to identify impacts on prices, availability, demand etc.
- **Diversity of Creative Goods and Services:** Impacts on diversity of creative goods and services relate to the breadth of consumer choice in music, film, software etc; it also involves impacts related to how copyright interventions support culturally diverse offerings in the market. This diversity also relates to the availability of the goods and services represented and those directed at minority groups.
- **Competitiveness:** The ability of the creative economy successfully to export goods and services to other markets.
- **Trade and Investment Flow:** By establishing impacts on international demand and the rate of outflow and inflow of creative goods and services, the aforementioned indicators should demonstrate whether creative goods and services of a particular jurisdiction are competitive in the market place.

3.1.1.3 Economic Pillar (A): Main Indicator 3: Finance and Investment in the Creative Economy

Table 10: Theme A.3

Finance and Investment in the Creative Economy			
	Core Indicators	Supporting Indicators	E-S-C Impacts
A.3 Finance and Investment	A.3.1 Direct Foreign Investment	i. Inward investment flows in the creative economy ii. Outward investment flows in the creative economy iii. Ease of doing business iv. Number of functional international investment agreements in force v. Knowledge and Technology Transfer vi. FDI related purchase and sale of licences	• Competitiveness • Sustainability of creative enterprises • Export markets • Diversity of Creative Offerings • Tax revenues • Financial Stability • Quality of Creative Goods and Services • Creative Communities • Creative Infrastructure • Professionalism of Enterprises and Creators
	A.3.2 Tax and Fiscal Incentives	i. Tax burden on the creative economy in comparison to other industries ii. Contribution of creative economy to tax revenues iii. Tax incentives targeted at the creative economy	
	A.3.3 Public Investment	i. Domestic public investment ii. Foreign public investment iii. iDomestic and foreign public – private investment	
	A.3.4 Subsidies	i. Grants available for creative industry projects ii. Technical assistance and capacity building available to the creative economy	
	A.3.5 Private Investment	i. Domestic private investment ii. Foreign private investment	

The Core Economic Indicators

A.3.1 Foreign Direct Investment: This indicator is designed to capture the impact of copyright laws and policy on the ability of the creative and copyright-based economy to attract direct foreign investment and the quantum of that investment. Again this can be disaggregated by sector, geographic region etc.

A.3.2 Tax, Fiscal and Regulatory Incentives: This indicator is intended to capture any impacts that copyright law and policy interventions may have on the state's tax revenues, the quantum of tax contributed by the creative and copyright based industries. It may also include the value of tax incentives available to the creative economy.

A.3.3 Public Investment: This indicator focuses on investment by state owned corporations or sovereign wealth funds, whether domestic or international. This differs from subsidies in that state owned enterprises and sovereign wealth funds invest predominantly on the basis of market principles. It must be noted that many state corporations have little to no direction from national governments and often operate in the same way as private entities.

A.3.4 Subsidies: Subsidies focus on grants and other kinds of funding as well as technical assistance that may be affected by copyright interventions and policies. These are different from public investments as they do not operate on market principles but on principles of social and cultural value. They usually involve direct action of national governments in their sovereign capacity and are not similar to the market driven decisions of state owned corporations.

A.3.5 Private Investment: This indicator aims to capture how copyright policy and intervention affect both domestic and foreign private investment in the copyright based and creative economy. Hence it looks at how the quantum of FDI flows and domestic investment in the creative economy is affected by copyright policy.

The Supporting Economic Indicators

A.3.1 Under Foreign Direct Investment (FDI)

i. **Inward Investment Flows in the Creative Economy:** This indicator looks at the quantum and rate of investment inflows in the creative and copyright-based economy.

ii. **Outward Investment Flows in the Creative Economy:** This indicator looks at thequantum and rate of investment outflows in the creative and copyright-based economy.

iii. **Ease of Doing Business:** is an index created by the World Bank during its Doing Business Project.[55] Here it is a suggested index that can be tailored to measure the impact of legal copyright and policy interventions on the ease of doing business in the creativeeconomy.[56] It can be disaggregated according to sector, geographic region or minority group.[57]

iv. **Number of Functional International Investment Agreements (IIAs) in Force:** This indicator addresses the impact of copyright law and policy on the number of IIAs in force within a jurisdiction and the levels of

investment inflows and outflows generated by these agreements within creative and copyright-based economies.

v. **Knowledge and Technology Transfer:** This indicator will capture the impact of legal copyright and policy interventions on FDI-related transfer of knowledge and technology. It addresses, in the context of investment operations, the influence of copyright law and policy on the exchange of proprietary information. It may be disaggregated by geographic region and sector of the creative economy.

A.3.2 Under Tax and Fiscal Incentive

i. **Tax Burden on the Creative Economy:** This indicator looks at the average and median levels of tax paid by enterprises and workers in the creative economy. This may be disaggregated on the basis of sector, geographic region, minority group etc.

ii. **Contribution of the Creative Economy to Tax Revenues:** This indicator looks at the overall percentage of tax revenues contributed by the creative economy. This figure can be differentiated according to the sector of the creative economy. It may also investigate rates of increase and/or decrease in those percentages.

iii. **Tax Incentives Targeted at the Creative Economy:** This indicator looks at tax policies that may be targeted at creating business opportunities and increasing competitiveness within the creative economy.

A.3.3 Under Public Investment

i. **Domestic Public Investment:** This indicator will capture the impact of legal copyright and policy interventions on the quantum and rate of investment by national state-owned organizations within their domestic creative economies. The data captured may be differentiated by sector of the creative economy, geographic region and minority groups. It may also be disaggregated according to the creative production process stage receiving investment.

ii. **External Public Investment:** This indicator will look at the impact of copyright law and policy on the quantum and rate of investment in the creative economy by foreign state-owned corporations and sovereign wealth funds. This can be measured for each sector of the creative economy, for geographic region and for minority groups. It may also be differentiated according to the stage of the creative production process receiving investment.

iii. **Domestic and Foreign Public-Private Investment:** as an indicator aims to assess the impact of legal copyright and policy interventions on public–private partnership investment in a particular jurisdiction. This can be differentiated on the bases of sector, geographic region, and minority group etc. This takes into consideration partnerships such as those between state agencies and private commercial or philanthropic investors.

A.3.4 Under Subsidies

i. **Grants Available for creative Economy Activities:** captures the impact of legal copyright and policy interventions on the availability of and access to grants. This indicator can be disaggregated by sector, geographic region, minority group or language. It may also disaggregate grants according to their function i.e. support for creative communities, such as cultural groups and artists guilds or grants aimed at the production of creative enterprises.

ii. **Technical Assistance and Capacity Building Available to Creative Economy Initiatives:** This indicator looks at the impact of legal copyright and policy interventions on the availability of and access to programs to increase knowledge and skills as well as the quality of the output of the creative economy. It may be disaggregated by geographic region, sector, minority group, and language. It may also differentiate between programs intended for developing the capacity for creative production and those targeted at developing human capital and supporting development and preservation of cultural expression

A.3.5 Under Private Investment

i. **Domestic Private Investment:** as an indicator focusses on the impact of legal copyright and policy interventions on investments in the creative economy by the national private sector. This indicator can be disaggregated by sector, geographic region and minority groups.

ii. **Foreign Private Investment:** as an indicator, captures the impact of legal copyright and policy interventions on investments in national creative economies by foreign private investors. This indicator includes impacts on both private commercial and philanthropic investment. This can be disaggregated by sector, geographic region, and minority group.

Potential ESC Impacts

- **Sustainability:** is concerned with the ability of creative enterprises to break even or make a profit consistently, withstand economic set-backs, service their debts, retain employees and to improve their products and services. Sustainability also refers to the ability of cultural communities to continue cultural/creative traditions and the viability of these as a sustainable livelihood.
- **Competitiveness:** refers to the ability of creative enterprises and individual contractors to compete with others within their market sector on price, quality, skills, innovation, products offered, cultural projection and in attracting capital. This applies to both domestic and international markets.
- **Diversity of Creative Offerings:** refers to the availability of creative goods and services in different sectors of the creative economy or the economy, the availability of creative offerings in different regions, the availability of offerings representing different ethnic, linguistic and cultural groups as well as the diversity of subject matter available as products of creative goods and services.
- **Creative Infrastructure:** refers to the availability of an infrastructure and institutions to support the creative economy. This includes theatres, museums, community centers, universities and ICT.
- **Quality of Creative Goods and Services:** refers to both subjective and objective quality of creative goods and services, which can be garnered from consumer and audience surveys, or, where applicable, from international standards and seals of quality/authenticity.
- **Professionalism of Enterprises and Creators:** refers to the availability of professionals and enterprises with the requisite skills to service the demand in creative markets. These skills maybe acquired through both formal training and practice. This also includes the manner in which such skills are deployed in production processes.

3.1.2 *Social Pillar (B) and indicators*

The *Social Pillar* of the Guidelines is based on an approach used to study *sociological and anthropological factors in society*. It surveys those activities that condition an individual's and a society's living circumstances and wellbeing beyond indicators traditionally considered in economic approaches to social variables. The goal is to conduct research that is directly relevant to the impact of copyright law and policy on the qualitative social experiences of communities and individuals. This can better inform both social and copyright policy.

Box 10: Social Impact Assessment

What is Social Impact Assessment?

- Social impact assessment is the process of analyzing and managing the social consequences of development. While surveys play a role, social impact assessments typically use multiple methods. Secondary data is used when available, but often it is not, hence primary data is very important. There are also social effects of an activity on the social fabric of the community and the wellbeing of individuals and families.
- The social impact approach is primarily concerned with effects on social life, (how people live, work and play and generally relate to one another on a day-to-day basis) social wellbeing norms, and so issues such as equity, mobility and sustainability.
- With respect to copyright and creative industries, this approach is concerned with the social effects of copyright including: the availability of protected materials; fair use; protection of culture, folklore and folk art; the ability to access knowledge and culture; and psychological connectedness locally, domestically, and internationally.

Social indicators are statistical or qualitative measures of social impacts used 'to monitor the social system, helping to identify changes and to guide intervention to alter the course of social change'.[58] The process of constructing indicators and conceptualizing the potential impacts of a proposed copyright policy can prove challenging because of the diversity of stakeholders affected. The thinking behind the World Bank (WB) 10-point check-list for the conduct of *Poverty and Social Impact Analysis* with respect to new economic policies can be applied in modified form as a six point check-list for the creative economy. The list provides a guide for assessing 'the distributional impact of policy reforms on the well-being or welfare of different stakeholder groups, with a particular focus on the poor and the vulnerable'. It does not replace the ESCIA, but provides a method for conceptualizing impacts relative to each other.

Modified six-point check-list:

1. Analyse the link between copyright policy interventions and their poverty and social impacts
2. Consider trade-offs among reforms on the basis of their distributional impacts
3. Enhance the positive impacts of reforms and minimize their adverse impacts (Supported by ESCIA Risk Assessment)

4. Design mitigating measures and risk management systems

5. Assess the risks of policy reform

6. Build country's ownership and capacity for analysis

Box 11: Example of Copyright-Mitigated Social Impact

TEACH Act and Social Impact

- An example of social impacts of copyright law and policy involves the provision of distance or online education in the USA and the *TEACH Act*, which addressed the electronic transmission of copyrighted instructional information. As the cost of education soars, particularly at the tertiary level, people have increasingly turned to distance learning in order to access knowledge and skills and become productive members of society.
- The USA. put the Technology, Education, Copyright and Harmonization Act in place in 2002. Its purpose was to permit limited use of copyrighted materials in distance education. The *TEACH Act* is potentially applicable to any 'transmission' of copyrighted content to students. The context may be a formal distance education course, which replicates the classroom environment, or copyrighted education data posted on a server in virtual-learning environments.
- The *TEACH Act* applies only to transmissions of content. Hence it applies not only to the physical transmission of paper materials, but also to the distribution of educational materials online. It addressed a lacuna in previous laws applied to copyrighted material used in education, which limited the availability and diversity of distant education materials.

There is no standard methodological template to assess the social impact of policy, as the WB itself admits. However, the guidelines from the bank offer a template for good practice, which is useful for considering impacts within the framework of ESCIAs. In some instances WIPO Member States, who are considering introducing new *sui generis* IP reforms such as TCEs, may find the guidelines a useful starting point for thinking about social impacts and indicators when creating an ESCIA research design.

Legal copyright and policy interventions can create and distribute social impacts over a wide range of different stakeholder groups and these impacts may vary in magnitude. This can create tensions and difficulties in designing a copyright policy when deciding how it will be applied. The ultimate decision requires an ESCIA risk analysis that considers issues of distributive justice[59], magnitude and likelihood with respect to potential impacts. Government agencies have to balance the potential

positive or negative risks for each stakeholder group that an impact carries with it, when designing legal and policy interventions.

Indicators for measuring social impacts Within the context of ESCIAs for copyright law and policy in the creative economy, social indicators must be formulated in relation to proposed copyright interventions. Therefore, the pertinent question is: 'What kinds of impacts, if any, will a particular copyright intervention have on overall societal wellbeing; on various stakeholder groups and on the wellbeing of individuals?' A secondary question would be: 'Which sorts of indicators best capture social phenomena attributable in part, or in their entirety, to a copyright intervention?'

Social indicators that may be useful for an ESCIA on copyright interventions in the creative industries include, but are not limited to: access to employment in the creative economy; access to pensions or unemployment benefits for workers in the creative economy; or availability of professional education for these workers. Social indicators may also look at access to information on proprietary rights and access to simple, cost effective means of exercising those rights.

A good ESCIA research design should also include social indicators that are crafted to capture the social experience of consumers related to copyright and should not solely reflect phenomena associated with rights holders and copyright-based workers. Social indicators capturing the potential impacts of a copyright intervention on all stakeholder groups should be the primary aim. From this, a set of indicators can be chosen, modified or created to provide information about the quality of life (wellbeing) of individuals and stakeholder groups affected by legal copyright and policy interventions in the creative economy.

Choosing Qualitative and Quantitative Terminology for Indicators

The terminology used for social indicators is aimed at expressing a social experience or social event for a particular group, or for individuals in discrete (well defined) terms, so that they are statistically measurable but descriptive enough (qualitative) to provide rich data on the areas under study. Such social indicators are very useful in that they can provide qualitative information on the social impacts of a copyright intervention on, for example, performers, while also providing statistical data on the frequency or infrequency of a particular experience within the same group. Within an ESCIA Research Design social indicators must be formulated relative to the copyright interventions proposed. Therefore the pertinent question is: 'What kinds of impacts, if any, will a particular copyright intervention have on overall societal wellbeing; on various groups of stakeholders and on the wellbeing of individuals'? A secondary question would be: 'Which kinds of indicators best capture the social phenomena attributable, in part or in their entirety, to a copyright intervention'?

The choice of social indicators should be salient, credible and legitimate. The use of qualitative data, i.e. storytelling, is useful when analyzing social impact. Whether one is selecting, modifying or creating social indicators for an ESCIA research design, there will be certain standard social indicators that will be necessary such as access to employment, education, finance and subsidies or access to housing and healthcare. In this case such indicators will be studied in relation to individuals and groups within the creative economy and the cultural sector. However, for an ESCIA some social indicators will be specific to the creative economy or to a particular national jurisdiction; they may also vary based on the structure of the creative economy, as well as due to information gathered from stakeholders.

3.1.2.1 Social Pillar (B): Main Indicator 1: Creative Economy Employment

The sum of the employed and the unemployed population within the creative economy measured for a short reference period would be equivalent to the creative economy's labor force, or the current economically active population[60]. This theme also covers access to employment, bargaining power relationships, collective representation and welfare issues. Employment in the creative economy in general should be considered, taking into consideration WIPO's technical definition used previously (core, interdependent, partial, non-dedicated support services); it may also address informal or unremunerated employment activity. Obtaining the unemployment figures for the creative economy may be from use of self-reported professions, previously-reported professions or multiple-reported professions. This can also target the two-way mobility between the creative economy and other industries.

Table 11: Theme B.1

Creative Economy, Employment & Income			
	Core Indicators	**Supporting Indicators**	**E-S-C Impacts**
B.1 Creative Economy Employment	B.1.1 Access to Employment	i. Job security Index[61] ii. Skills and employability iii. Existence and efficiency of professional organizations iv. Size of creative employment market	• Stability of creative job markets • Poverty • Social security • Income Inequality • Equality of opportunity in creative job markets • Social Status • Minority participation in creative job markets. • Level of use of system of enforcement
	B.1.2 Income in the Creative Economy	i. Median income in creative economy[62] ii. Income of highest earning and lowest earning 20% in the creative economy iii. Rates of increase and decrease for incomes in creative industries iv. Consumption of highest earning and lowest earning 20% in the creative economy	
	B.1.3 Employment of Minority Groups in the Creative Economy	i. Skills and employability ii. Representation in employment in the creative industries sector, disaggregated by minority group iii. Cultural representation in the creative economy	
	B.1.4 Efficiency of Remuneration Schemes	i. Participation in collecting societies by creators ii. Rate and speed of royalty distribution iii. Cases of infringement brought before the courts	

The Core Social Indicators

B.1.1 Access to Employment: This indicator may assess the impact of copyright law and policy interventions on: job security, as defined by the International Labour Organization; on the ability of workers to access jobs in their field of creative specialisation; whether creative workers hold multiple jobs and which job is their primary income source. Additionally, it may look at the skills levels and employability of workers in relation to the available jobs.

B.1.2 Income in the Creative Economy: This indicator is aimed at capturing median income levels among workers in the creative industry in comparison to other sectors of the national economy. It can be disaggregated according to job function, whether it is a supportive or a creative function. It can also be disaggregated according to the various sectors of the creative economy such as, music, publishing, motion pictures, fine art and crafts. It can also target income inequality in the creative economy in comparison with other national industries. This indicator can also cover consumption patterns for income groups identified within the creative economy.

B.1.3 Minority Groups in Creative Economy Employment: This indicator aims to capture the impacts of copyright law and policy on disadvantaged or under-represented social groups. For example, how copyright may affect the employment and income of the blind, those speaking minority languages, women and minority ethnic groups. Additionally, how does copyright law and policy affect the social capital of minority groups?

B.1.4 Efficiency of Remuneration Schemes: attempts to capture a second income dimension in relation to workers in the creative economy. It targets the efficiency of collecting societies and other remuneration channels in distributing royalty payments, whether adequate resources are available to ensure that systems function appropriately, and the level of participation of creative workers in such societies and remuneration schemes.

The Supporting Social Indicators

B.1.1 Under Access to Employment

i. **Job Security:** as an indicator refers to what the ILO describes as impact on the ability of creative workers to have a degree of control over the content of their job, what they actually do and the opportunity to build a sustainable career. Another way of presenting job security is to refer to property rights in work executed. So, whereas employment security refers to the sense of attachment to a current enterprise or establishment, job security refers to the sense of attachment to a particular job or range of tasks.[63]

ii. **Skills and Employability:** targets the possible effects of copyright law and policy interventions on the level of professional skills and education of workers in the creative economy in relation to their occupation. It also aims to capture information on the relationship between skills, professional training and employability or likelihood of employment in any chosen creative field. This kind of indicator may be disaggregated according to the sector of the creative economy.

iii. **Existence and Efficiency of Professional Organizations:**

iv. **Size of the Creative Employment Market:**

B.1.2 Under Income in the Creative Economy

i. **Median Income:** captures copyright policy mitigated impacts on median income in various sectors of the creative economy. It can also be used to disaggregate these figures according to geographic location, gender and minority group.

ii. **Income of Highest Earning and Lowest Earning 20%:** This indicator captures copyright policy mitigated impacts on earnings in the creative industries at the two ends of the spectrum of the creative economy. It can be disaggregated by sector or other distinctions such as gender, disability, language and ethnicity.

iii. **Rates of Increase and Decrease for Incomes in the Creative Economy:** This indicator captures copyright policy mitigated rates of increase and decrease in income within various sectors of the creative economy. It can also be used to disaggregate these figures according to geographic location, gender and minority groups.

iv. **Consumption for the Highest Earning and Lowest Earning 20%:** This indicator captures copyright policy related impacts on consumption at the two ends of the income spectrum in the various sectors of the creative and copyright-based economy. It can also be used to disaggregate these impacts according to geographic location, gender and minority groups.

B.1.3 Under Minority Groups in Creative Economy Employment

i. **Skills and Employability:** addresses possible effects of copyright law and policy interventions on the level of professional skills and education among minority groups in the creative economy in relation to their occupation. It is also aimed at capturing information on the relationship between skills, professional training and employability or likelihood of employment in a chosen creative field. This kind of indicator may be disaggregated by sector of the creative economy and geographic region.

ii. **Minority Group Representation in Creative Economy Workforce:** looks at the numbers and percentages of members of minority groups employed in the creative economy. This indicator targets information on whether copyright policy and law affects the quality of access to employment for groups according to ethnicity, gender, different linguistic needs and sight and hearing challenges. This includes whether copyright-protected material is available in forms accessible to them. It may also include access to cultural products and services.

iii. **Cultural Representation in the Creative Economy:** This indicator is aimed at capturing how copyright law and policy affects the diversity of cultural representation embodied in creative goods and services. It addresses whether minority cultures are adversely or beneficially impacted by copyright law and policy.

B.1.4 Under Efficiency of Remuneration Schemes

i. **Cases of Infringement Brought Before the Courts:** This indicator looks at the number of cases of infringement reaching the courts relative to the number of claims filed.

ii. **Affordability and Ease of Access to Information Protected by Copyright:** This looks at whether there are publicly funded advisory services on copyright, and, if there are, whether there are any costs attached to them, and access for various geographic regions etc.

iii. **Ease and Affordability of Access to Licensing:** This indicator addresses the availability of channels to access copyrighted data, the cost of access to these licensing channels and any special technological requirements associated with them. Educational, entertainment and cultural content are all included.

Potential ESC Impacts

- **Stability of Creative Job Markets:** This impact captures the effect of variables such as the probability of job losses, employment protection laws, the likelihood of being engaged in seasonal employment, the likelihood of being employed short-term and the likelihood of being engaged in multiple jobs, compared to other economic sectors.[64]

- **Poverty:** as an impact captures income inequality in the creative economy, and the percentage of workers in the creative economy who fall within the World Bank criteria for assigning poverty, compared to other sectors.

- **Social Security:** as an impact encompasses availability of pensions, employment insurance, health insurance and other social protections in the creative sector compared to other sectors of the national economy.
- **Equality of Opportunity in Creative Job Markets:** as an impact focusses on the ability to access opportunities in creative job markets according to gender, ethnicity, income bracket or disability.
- **Social Status:** This impact is concerned with perceptions of the social status of creative workers within their communities, in addition to preconceptions attached to creative occupations with respect to them being seen as respected and viable forms of employment
- **Membership/Participation in Community Groups:** refers to levels of participation in creative community groups, which may include artists' guilds, collecting societies and cultural groups.
- **Level of Use of System of Enforcement:** as an impact is concerned with how often creators and other copyright holders use or attempt to use the enforcement system to protect their property rights.

3.1.2.2 Social Pillar (B): Main Indicator 2: Access to Knowledge and Education

This indicator will aim to capture impacts on *access to education*. Measures may include availability of educational material in different languages, cost of providing education, cultural and social content of educational material, ease of access (including education by distance-learning), and access to professional education for the cultural and creative economy. These are just a few of the impacts that this indicator should target. Education is not only about training practice, but about assessing impacts on the extent to which knowledge of the copyright system and proprietary rights are successfully conveyed to owners, users and creators. Plus, assessment of investment in, and evaluation of the functioning of the copyright earnings infrastructure

Table 12: Theme B.2

Access to Knowledge and Education			
	Core Indicators	Supporting Indicators	E-S-C Impacts
B.2 Access to Knowledge and Education	B.2.1 Availability of Copyright Instruments	i. Existence of licensing schemes ii. Limitations and exceptions iii. Legal and technical barriers to access iv. Public policy	• Freedom of expression • Diffusion of knowledge • Social and cultural identity • Social cohesion and connectedness: • Cultural diversity
	B.2.2 Distribution channels for creative goods and services	i. Channels of Distribution ii. Diversity of published works iii. Availability of published works iv. E-publishing v. Number of creative works released	
	B.2.3 Availability of skilled creative professionals	i. Professional training ii. Number of authors, artists, researchers etc. iii. Number of national publications	

The Core Social Indicators

B.2.1 Availability of Copyright Instruments: as an indicator focuses on the impact of copyright law and policy interventions on the ability of institutions, such as universities, schools, libraries, museums etc. to execute their social functions.

B.2.2 Distribution Channels for Creative Goods and Services: focus on the existence, availability and efficiency of distribution channels for creative content.

B.2.3 Availability of Skilled Creative Professionals: This indicator assesses the impact of copyright law and policy on the wages and remuneration of authors and other skilled creators, their standing in society and their ability to organise to be collectively represented etc.

The Supporting Social Indicators

B.2.1 Under Availability of Copyright Instruments:

i. **Existence of Licensing Schemes:** as an indicator addresses the availability of mechanisms through which users can obtain licenses for copyrighted data and where creators can license their creative works. It assesses how easy it is, for both users and creators, to access and use these schemes.

ii. **Limitations and Exceptions:** captures the impact of legal copyright and policy interventions on provisions for limitations and exception in domestic laws of a jurisdiction and in relevant international treaties to which the jurisdiction is party. This may be disaggregated on a sectoral, geographical and minority groups basis. It must also be noted that copyright related limitations and exceptions may also exist in laws not expressly dealing with copyright and in international treaties not solely focussed on this domain.

iii. **Legal and Technical Barriers to Access:** as an indicator looks at the impact of copyright law and policy on the ability of consumers and creators to access copyrighted data. It may be disaggregated according to sector of the creative economy, geography, language, ethnicity, gender and disability.

iv. **Public Policy:** addresses the impact of copyright law and policy on other policy areas within a jurisdiction such as education, media and communication, and cultural policy. It can be disaggregated based on each policy sector and further disaggregated according to how it affects different sectors of the creative industries.

B.2.2 Under Distribution Channels for Creative Goods and Services:

i. **Channels of Distribution** are concerned with the impact of copyright law and policy on the distribution mechanisms for goods and services produced by the creative economy. Issues relating to the number of distribution channels, the effectiveness of these channels and which sectors of the creative economy benefit most or least from the distribution channels are involved. How easy it is for consumers and creators to use distribution channels may be looked at.

ii. **Diversity of Published Works:** This indicator will look at the effect of copyright on the diversity of languages in which educational material is offered, and how this affects, in educational material, the representation of minorities, gender issues etc. Also, for example, how copyright may affect access to educational and other kinds of literature by the blind and how copyright law and policy may affect portrayals of women and other groups in educational material, films, radio and televisions broadcasts.

iii. **Availability of Published Works:** is concerned with the impact of copyright law and policy on the availability of books, newspapers, magazines, scientific journals and other printed material. It looks at how the content of works, the number of works published, and the diversity of works may be affected.

iv. **E-publishing:** This indicator assesses how copyright law and policy influence the use of e-publishing by various publishing industry segments, whether educational, research, fiction or other categories.

v. **Number of Creative Works Released:** assesses the effect of copyright law and policy on the number of creative works released in a jurisdiction. This may be disaggregated by sector of the creative economy and by content type.

B.2.3 Under Availability of Skilled Creative Professionals

i. **Professional Training:** is concerned with how copyright law and policy affects access, availability and quality of professional training for persons in creative professions. It also looks at how this can also affect access to training in other professions within a jurisdiction. This can be disaggregated by geographic region and sector of the creative economy.

ii. **Number of Authors, Artists, Researchers, etc.** considers how creative law and policy affects the willingness of persons to enter the creative professions (writing, music, art etc.). It also looks at the impact on the number of persons in these professions. This can be disaggregated by sector and geographic region

iii. **Number of National Publications** looks at how copyright law and policy affects the number of national publications, including newspapers, scientific journals, magazines, books of fiction and entertainment and other kinds of publications

Potential ESC Impacts

- **Freedom of Expression:** as an impact concerned with what the previous indicators say about the effect of copyright law and policy on the freedom to create and distributed the works created; the freedom to have control over the content of intellectual creations; the freedom to receive copyrighted and cultural information from different cultures and jurisdictions; and the freedom to publicly display and participate in different forms of intellectual creation.

- **Diffusion of Knowledge:** as an impact concerns how copyright through the lens of the previously outline indicators affects the dissemination of knowledge in society; whether by geographic region, income bracket, race, ethnicity, gender and disability.

- **Social and Cultural Identity:** as an impact is concerned with the way in which copyright, through the lens of the previous indicators foster shifts in social and cultural identity. It may concern how these influence social interaction and the content of culture.

- **Social Cohesion and Connectedness:** as an impact concerns the way in which copyright, through the lens of the previous indicators affects the quality of social relations, social capital of individuals and groups in society and community participation.
- **Cultural Diversity:** as an impact is concerned with how copyright, through the lens of the preceding indicators affects representation cultural diversity in creative goods and services, diversity creative workforces and valorisation of diversity in society.

3.1.2.3 Social Pillar (B): Main Indicator 3: Use of Information Communication Technology (ICT) in the Creative Economy

This addresses how ICT facilitates: business in the creative economy; development of creative economic expression; social sharing of creative expression and exchange of creative ideas. The human tendency to want to share creative experiences or content with others and to participate in social and cultural experiences with others is facilitated by ICT. In many cases there is no monetary exchange between the participants; however several platforms have used ICT to create a successful business model.

Table 13: Theme B.3

Use of Information and Communication Technology (ICT) in the Creative Economy			
	Core Indicators	Supporting Indicators	E-S-C Impacts
B. 3 Use of Information and Communication Technology (ICT) in the Creative Economy	B.3.1 Access to digital networks	i. Broadband penetration ii. Access to the internet iii. Access to digital network services iv. Barriers to entry	• Quality of goods and services • Geographic reach of goods and services • Cultural exchange and identity • Production output • Geographic reach of goods and services
	B.3.2 Use of copyright-related software to enable creation	i. Use in the creative sectors ii. Software expertise and training iii. Copyright-based business models iv. Number of licenses	
	B.3.3 Use of ICT for social sharing of products and services of the creative economy	i. ICT as a support media for sharing ii. Level of internet-based social sharing of creative goods and services	

The Core Social Indicators

B.3.1 Under Access to Digital Networks: as an indicator is intended to capture the impact of copyright law and policy on access to the internet. It may address the price of access, the technology required for access, the geographic distribution of digital network-related infrastructures, the geographic distribution of use and access according to income bracket.

B.3.2 Under Use of Copyright-Related Software to Enable Creation: examines how copyright affects access to software that enables and improves the quality of creative goods and services, in addition to giving users the capacity to purchase, use and interact with copyrighted content. It may be assessed from the perspective of each sector of the creative economy. It may also be assessed based on the size of enterprises using such technology, whether SMEs or large corporations.

B.3.3 Under Use of ICT for Social Sharing of Products and Services of the Creative economy products and services: This may look at the impact of copyright legislation and policy interventions on creative commons licensing schemes, on the use of interactive sites such as YouTube for social sharing, and on innovative forms of ICT for social sharing in jurisdictions with a low computer density.

The Supporting Social Indicators

B.3.1 Under Access to Digital Networks

i. **Broadband Penetration:** looks at the impact of copyright law and policy interventions on the number of people and enterprises within a jurisdiction with access to high-speed internet. Assessing the number of people and enterprises as a whole, rather than just those in the creative economy will provide information on the numbers with the technological capacity to develop, sell, distribute, purchase, use and share copyright-protected information as it is expressed via new forms of new. This may be disaggregated, in particular, by geographic region of the jurisdiction.

ii. **Access to the Internet:** is concerned with the impact of copyright law and policy on the number of people and enterprises within a specific jurisdiction with access to the internet, whether high-speed or not. It may also look at how these policies affect the mechanisms via which both people and enterprises access the internet (mobile devices or lap tops). This indicator may also be disaggregated according to each sector of the creative economy and geographic region. It may look further at their effects on the cost of access.

iii. **Access to Digital Network Services:** addresses how copyright law and policy interventions affect access to copyright services that are internet-based. These include online mechanisms for purchasing licenses and facilities for downloading and using copyright-protected content from the internet

iv. **Barriers to Entry:** addresses the effects of copyright law and policy on barriers to access todigital networks and IT. It may look at the effects on the barriers for enterprises (whether SMEs or large corporations), individual creators and individual consumers.

B.3.2 Under Use of Copyright-related Software to Enable Creation:

i. **Use in the Creative Sectors:** addresses the effect of copyright law and policy on the use of ICT to enhance creation, improve distribution of works and develop new creative goods and services. This may be disaggregated according to the sector of the industry as well as by geographic region. Whether businesses are SMEs or large corporations may also be addressed.

ii. **Software Expertise and Training:** addresses the effect of copyright law and policy interventions on creators' skill at using novel enabling software and the availability of skills training for its use. With respect to skills, it may look at the numbers of creators with such skills, whether they were obtained formally or through practice. It may further disaggregate attainment of skills and their use according to the sector and size of the enterprise. In relation to training it may look at the availability and cost of training (where formal training is needed). It may also look at the number of people skilled in new technologies according to the sector of the creative economy and the size of the enterprise.

iii. **Copyright-Based Business Models:** addresses the effect of copyright law and policy on the use of ICT for enabling changes and dynamism in business models in the creative economy. Essentially this refers to the ability of creative enterprises' and individual creators' abilities to develop novel ways of producing and distributing their goods and services, and of interacting with consumers. It may also look into the effects that these ICT-facilitated new business models have on the profits and sustainability of creative enterprises.

iv. **Number of Licences:** This indicator concerns the number of software licenses purchased by enterprises and individual creators within the creative economy. It may disaggregate this figure according to the sector of the creative economy and the size of the enterprises concerned.

B.3.3 Under Use of ICT for Social Sharing of Creative Economy Products and Services:

i. **ICT as a Support Media for Sharing:** addresses the effect of copyright law and policy on the social sharing of copyrighted information. It addresses sectors of the creative economy with products and services that are most likely to be shared, in addition to addressing the effects of social sharing on profitability and sustainability. It further addresses how copyright law and policy interventions affect the functionality of platforms for sharing.

ii. **Levels of Internet-based Social Sharing of Creative Goods and Services:** This indicator is concerned with addressing the impact of copyright law and policy interventions on the magnitude of non-commercial, internet-based sharing of copyright-protected data. It may be disaggregated according to sector.

iii. **Access to Software Licenses:** This may include the availability, costs and training with respect to the professionally-oriented software used in motion pictures and music production.

iv. **Use of Censorship:** The use of censorship laws, which may be complimented by functioning copyright laws, to exclude information from public access online and through other distribution channels.

Potential ESC Impacts

- **Quality of Goods and Services:** as an impact addresses the impact on the perception of consumers, creators and the industry with respect to the objective and subjective characteristics of quality with respect to creative goods and services.
- **Geographic Reach of Goods and Services:** This impact may look at how the geographic distribution of goods is impacted through the lens of the aforementioned indicators.
- **Cultural Exchange and Identity:** This impact looks at the effects of copyright interventions on the ability to access and transmit creative goods and services across cultures. It also addresses impacts on access and transmission with respect to minorities and other vulnerable populations within the society.
- **Production Output:** This impact looks at how copyright interventions affect the ability of minority and other vulnerable groups to produce creative and cultural output for profit. It also looks at the impact copyright interventions can have on their ability to practice specific forms of cultural expression and traditional artistic professions.

3.1.3 *Cultural Pillar (C) and Indicators*

Cultural impact is the discernible impact of measures in the copyright field aimed at valorizing: cultural and creative resources; cultural and creative participation; as well as the cultural and creative sectors. There is a recognition of the need for the development of indicators (may be survey-based) of identity, meaning, sense of self, value and history. They must note and measure the material base of artifacts (the sustainability): museums and curatorial resources; and training. [Can a community sustain its culture – and pass it on to future generations and share it with other cultures]. There is a measure of the degree to which over time cultures change – the drift towards commodification, or sacredness of parts of culture [unless you monitor this as part of 1, you cannot trigger a response to protect or sustain it; and hence engage point 2]

All of these allow an evaluation of whether copyright is helping or hindering the maintenance of the 'cultural stock' and whether it contributes to exchange and dissemination across other cultures. Here, the question arises as to how to create a measure that allows the examination of the changing balance of the commercial/non-commercial as critical assets that have meaning now and in the future, but are also assets with future commercial value. Another critical question examines the ontology of culture compared to raw materials. In both fields it is possible to discuss the management of sustainable systems. However with culture, historical and contemporary materials: (a) have intrinsic values; and (b) are a source of future value and innovation. So sustainability from the point of view of Humanity is about preserving the past, managing current resources and exploiting resources to trigger innovation within the economy and society.

Impact in the cultural field is concerned with measuring the cultural changes due to copyright. The cultural impact of copyright is very much dependent on the economic and legal structures within a jurisdiction and the way in which the structures allocate value to cultural activities in the transformative power over individuals, society and the economy.

The cultural impacts of copyright on the creative economy are many. They can be distinguished as three types of impact:

1. Impact of copyright on intercultural and cultural practices and activities
   - Give values to artistic activities through legal protection granted to artists and the promotion of cultural resources and values as an objective in the public interest.
   - Promote the importance of culture as a resource for knowledge and social integration (education, social policy).
   - Encourage cultural practices and participation by valuing the creation, production and distribution of cultural goods and services

2. Impact of copyright on cultural functions
   - Incentive creation (creation function)
   - Promote private investment in cultural production (production function)
   - Encourage entrepreneurship in the distribution of cultural goods and services (dissemination function)
   - Enable the protection of cultural heritage (preservation function).
   - Generate the infrastructure to support cultural activities; for example, management of collective rights or financial/tax schemes to attract investment (management function)

3. Impact of copyright on the economic and social dimension of culture
   - Support the development of the economic sector contributing to a country's GDP
   - Provide employment
   - Risk reinforcing monopolistic behaviour in certain cultural domains due to excessive copyrighted material under control.
   - Contribute to the branding of a city, region or state as being 'creative' and, therefore, attractive as a work place.
   - Generate innovation (through artistic or creative intervention generating a disruptive vision conducive to creativity in businesses or society)
   - Support creative spillover from the creative economy into other sectors (tourism, ICT, health etc)

The *cultural* approach is anthropological as well as industrial and ethnographic; it is the study of cultural activities and the collection of data on the contribution of copyright (as a legal norm):

- to cultural development (expression of creative ideas or beliefs)
- to cultural memory (preservation of the cultural heritage) and
- to cultural values (diversity, societal norms and prescriptions, creativity).

The cultural approach is intrinsically linked to a territory and geography.

Culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.[65] Thus culture produces creative activities, experiences and outputs that represent a mutual relationship between artists and creators, and the society that consumes these activities, experiences and outputs. Applying copyright law to this relationship converts these outputs into copyright-based assets, for which proprietary rights can be transferred or shared with enterprises within the creative economy, producing an economy in creative products and services. It is the cultural impact of this process of transformation, distribution and exchange, facilitated by copyright law and policy that cultural indicators should seek to capture. It is the cultural and creative activities and

outputs covered by copyright law that should form the core meta data for creating cultural indicators.

Furthermore, cultural indicators should seek to capture impacts for: creators and creative workers; consumers; communities; and specific cultural groups where applicable i.e. those groups for which cultural shifts are significant. Assessors may also seek to create indicators that capture how cultural shifts affect the production and consumption of copyrightable materials, therefore giving economic effects to firms. Other kinds of indicators attempting to capture cultural shift due to a copyright intervention may attempt to capture its impact on the freedom of cultural expression. Indicators should also focus on: capturing data on the availability of cultural products and services; consumption of cultural goods and services; changes in cultural practices that produce copyrightable output; and cultural promotion. When choosing cultural indicators the level of development of the country, the structure of the market for copyrightable products and services, and the way in which people consume and produce creative products and services should be taken into consideration. Cultural indicators such as the number of cinemas, cinema ticket sales etc., may be suitable in economies with highly developed entertainment industries but may not be effective for capturing a large proportion of data in countries where these statistics may be unreliable, not collected, or where a significant proportion of creative and cultural goods are distributed through different channels.[66] Each jurisdiction will be able to determine for itself how to craft cultural indicators to capture cultural realities related to consumption and production and the culturally transformative influence of copyright law and policy.

Cultural indicators are closely linked to economic and social indicators. Indicators are most frequently used to track social and economic changes and developments. Creating indicators to track cultural changes related to the impact of a copyright intervention is not a simple task. The concept of cultural transformations and their relationship to legal, social and economic phenomena is complex and nuanced. Constructing indicators that capture these subtleties requires precision and attention to core national cultural concerns. Overall, cultural indicators should be aimed at capturing the level of cultural activities in relation to a particular copyright law or policy. Most impact indicators in the cultural sector provide no more than approximate correlations between a stated cause and a possible effect. The UNESCO Culture for Development Indicator Suite may be used, in addition to the ESCIA prescriptions on creating Good SMART indicators, as a guide for developing effective indicators. The UNESCO indicators were designed with the objective of measuring the contribution of culture to development processes, while the ESCIA is focused on measuring the impact of copyright on the creative economy and on cultural processes. TheUNESCO indicator suite includes 20 indicators from seven different dimensions. As with the ESCIA research mixed methods research design the UNESCO indicators are a

combination of quantitative and qualitative data, with the aim of providing a significant degree of qualitative analysis.

This assessment would consider the degree of:

- Cultural participation – the ability of civil society and citizens to engage with the arts, and to participate in artistic and cultural activities.
- Cultural capital – intellectual capacity and knowledge developed through access to cultural activities and goods/services.
- Cultural offering – the amount and diversity of cultural goods and services available in the country.
- Regulatory incentives – policy measures aimed at supporting the production or distribution of cultural goods and services.
- Creative economy output – the production of cultural goods originating from indigenous cultures and the creative economy (books, sound recordings, films etc)

While it is important to measure participation, this alone is insufficient. The 'quality' of participation is an extremely important aspect of the value of cultural diversity. The UNESCO Declaration on Cultural Diversity lists among States Parties commitments, '12.) *Encouraging the production, safeguarding and dissemination of diversified contents in the media and global information networks and, to that end, promoting the role of public radio and television services in the development of audiovisual productions of good quality, in particular by fostering the establishment of cooperative mechanisms to facilitate their distribution.*'

Cultural diversity contributes to the quality of creative and cultural products. Thus quality as seen through the lens of diversity becomes an important consideration when formulating copyright policy that protects and nurtures the cultural source of creative products, as a way of maintaining the continued economic viability and dynamism of creative industries.

As such, some of the questions that will need to be addressed by impact assessments are concerned with: whether a particular copyright rule or policy is promoting or constraining diversity in production, or in distribution; whether it contributes to the development of a local creative economy that supports development, the emergence of talents representative of local cultures and expression of local creativity; whether it supports cultural participation and access to cultural knowledge; and whether copyright rules contribute to the valorisation of cultural assets in a given country. To answer these, the types of cultural activities must be measured; the diversity of activities or cultures is as important as participation. This will enable time use survey analysis to determine whether people

engage in a wide range of cultural activities. Therefore, attention to the range and diversity of cultural activities are critical, in time and in place; for example it may only be possible to access a diversity of cultural outputs in one city and not another. As such, this raises the issue of whether copyright regimes may sustain particular distributions (spatial or geographical), as well as structural frameworks, of access to a cultural resource.

3.1.3.1 Cultural Pillar (C): Main Indicator 1: Effectiveness of Regulatory Framework to Stimulate the Creative Economy

This indicator aims to cover impacts of copyright laws and policies on the availability of social programmes for creative and cultural workers. It may also look at how copyright affects access and provision of socially-based literature and the information used in such programmes.

Table 14: Theme C.1

Effectiveness of Regulatory Frameworks for Culture in the Creative Economy – documents the extent to which intellectual property protections and official mechanisms exist to encourage the growth of culture as a catalyst for the creative economy. This main indicator will address the extent to which different stakeholder groups within the creative economy and cultural sectors are covered by copyright legislation and the mechanisms for its enforcement. Furthermore, it addresses how different policies affect the viability of cultural communities.			
	Core Indicators	Supporting Indicators	E-S-C Impacts
Effectiveness of Regulatory Framework for Culture in the Creative Economy	Tax and fiscal incentives for activities in cultural and creative economy	i. Tax payment methods for self-employed cultural workers ii. Tax contribution of cultural and creative workers iii. Tax payment methods for small and medium cultural and creative enterprises iv. Tax contribution of cultural and creative economy SMEs	• Sustainability of copyright-based businesses • Social status of creators • Availability of creative content/cultural diversity • Equitable remuneration to creators • Rule of law • Investment climate
	Social status security and pension arrangements for cultural and creative economy workers	i. Pensions in the creative economy ii. Employment insurance iii. Healthcare	
	Remuneration collected by cultural workers, authors, performers and producers	i. Cultural capital ii. Regulatory knowledge iii. Number and ease of access to public institutions iv. Government subsidized cultural programmes	
	Cultural and Creative Institutions		

The Core Cultural Indicators

C.1.1 Fiscal and Regulatory Incentives for Cultural and Creative Economy

Activities: Specific tax regimes to support the development of culture and the creative economy (for instance reduced VAT rates on cultural goods, tax shelters to attract investment in films, concessionary tax rates for cultural organizations and enterprises, quotas, investment obligations etc)

C.1.2 Social Security and Pension Arrangements for Cultural and Creative Economy Workers: This indicator is aimed at capturing how cultural workers and creators in the copyright and creative economy are covered by national pension schemes, company pension schemes, and their own pension arrangements based on royalty earnings. It will address how these are affected by national copyright law and policy, and also considers the level of access workers in cultural industries and the creative economy have to social provisions.

C.1.3 Remuneration Collected by Cultural Workers, Authors, Performers and Producers: This addresses the effects on income of the standard of copyright and related rights granted by national legislation to authors, artists and producers/ publishers/media distributors. It looks at the importance of remuneration for cultural workers to maintaining the sustainability of cultural communities.

C.1.4 Penalties for Copyright Infringements: addresses the level and effectiveness of sanctions to discourage the infringement of creators' rights. It also addresses the sorts of deterrent programmes and awareness activities that are applied to different sectors of the creative economy. The aim of this indicator is to provide information on how copyright law and policy affects these efforts and to identify best practice in different sectors of the industry.

The Supporting Cultural Indicator

C.1.1 Under Tax Breaks for Creative Economy Activities

i. **Tax Payment Methods for Self-Employed Cultural Workers:** A high proportion of creative workers are often self-employed and may face difficulties with procedures for tax payments and tax systems. This indicator looks at whether jurisdictions have systems in place for such people and whether these systems facilitate the ease of use and access. It also looks at whether there are tax policies, including tax breaks, which encourage the self-employed to pay taxes.

ii. **Tax Contribution of Cultural and Creative workers:** This indicator looks at the numbers claiming to have creative occupations who pay taxes. It also looks at the value of the tax contribution made by these workers. It may also consider the number of workers claiming to have a creative occupation and who are behind on tax payments.

iii. **Tax Payment Methods for Small and Medium Enterprises in the Cultural Industries:** In economies that do not have a high degree of regulation, or where regulation is sometimes ineffective, many small and medium enterprises go unregistered and often do not pay taxes. This represents revenue loss for the state and can sometimes exclude such businesses from the benefits of business development policies,

which are tied to tax incentives. This indicator looks at whether a country has tax systems that encourage businesses to register and pay taxes in exchange for benefits tied to tax policy. It looks at the ease of access and the cost to small and medium enterprises for the use of tax payment systems.

iv. **Tax Contribution of Cultural and Creative Economy SMEs:** This indicator looks at the number of creative and copyright-based SMEs registered to pay taxes. It also looks at the quantum of their tax contributions and may also consider the number of creative and copyright-based enterprises that are behind in tax payments.

C.1.2 Under Social Security and Pension Arrangements

i. **Cultural and Creative Economy Pensions:** This considers effects on the availability, adequacy, quality and content of pension arrangements in the creative economy in comparison to the rest of the economy. It will consider how licensing arrangements and payment structures in the creative economy influence these factors.

ii. **Employment Insurance:** This indicator will consider the availability of employment safety-nets, such as employment insurance for creative workers, since such workers tend to have precarious employment arrangements. Again, how the structure of payments in these industries, influenced by copyright law and policy affect these kinds of social arrangements is considered.

iii. **Healthcare:** How choice of occupation in the creative economy correlates with access to healthcare. How effective payment systems for copyright affect incomes, which in turn affects access to healthcare.

C.1.3 Under Remuneration Collected by Cultural Practitioners, Authors, Performers and Producers

i. **Cultural Capital:** This indicator looks at how creators, performers and artists: form cultural relationships within society; their ties to cultural communities; their status within communities; and their access to facilities and resources to improve their craft.

ii. **Regulatory Knowledge:** This indicator attempts to capture the depth and breadth of knowledge of cultural practitioners, creators, performers and artists, about copyright protection, copyright policy and government funding programs. It will also look at the geographic spread of this knowledge, as well as a sector by sector disaggregation.

iii. **Number and Ease of Access to Public Institutions:** This includes numbers of and access to libraries, concert halls, museums, community centers, educational facilities etc. This also includes issues of geographic

distribution and availability in relation to the income levels and ethnicity of communities.

iv. **Government-subsidized Cultural Programs:** This indicator addresses the impact of copyright laws and policy interventions on the government funding for cultural activities, and whether they are classified as traditional or contemporary. Funding allocations can be disaggregated according to the type of cultural activity (traditional or contemporary). It may also be disaggregated according to the geographic region and for some jurisdictions the language and minority group may also be an important classifier.

C.1.4 Under Cultural and Creative Institutions:

i. **Access to Cultural Institutions, Cultural Clubs, Museums, Educational Institutions and Associations:** This indicator addresses the impact of copyright laws and policy interventions on the access of cultural practitioners and creators to institutions that enhance the cultural and creative life of a society and thereby help in sustaining the creative economy. It can be disaggregated according to sector of the creative economy and geographic distribution.

ii. **Functionality of Cultural Institutions:** This indicator looks at how copyright policy and legal interventions affect the way in which cultural institutions function and whether they are able to carry out their mandate, as well as expand and improve the services their offer. This may be disaggregated according to sector of the cultural and creative economy, as well as by geographic region.

iii. **Effectiveness of Compliance Focused Institutions:** This indicator addresses how copyright laws and policy interventions affect the ability of cultural practitioners and creators to make use of the services offered by cultural and creative institutions. It addresses whether institutional services are well tailored to the different sectors of the cultural and creative economy and whether they provide a basis for sustainability of cultural and creative traditions.

Potential ESC Impacts

- **Sustainability of Cultural and Copyright-Based Businesses:** is concerned with whether the creative economy and copyright-based businesses are able to withstand economic shocks, international competition (Hollywood for instance), to service debt, pay employees, produce consistently in terms of volume and quality, and maintain their market share domestically and/or internationally.

- **Social Status of Cultural Practitioners and Creators:** refers to the positive and negative attitudes that copyright law and policy may foster towards the respect and dignity of creators, the perception of professions in the creative economy as viable career choices and the community role of cultural practitioners.
- **Availability and Cultural Diversity of Creative Content:** is an impact which is concerned with: cultural diversity in the available creative content; diversity of product offerings by sector; availability of products by geographic region, via e-commerce and international trade.
- **Remuneration for Cultural Workers and Creators:** looks at effects, whether positive or negative, on the remuneration levels of creators in comparison to other industries. This may also be considered between the different sectors of the creative economy and for women, minority groups and the disabled.
- **Rule of Law:** looks at whether copyright law and policy engenders respect of, adherence to, knowledge of and promotion of copyright law.
- **Investment Climate:** is concerned with the effects of copyright law and policy on the willingness of both foreign and domestic investors to invest in the creative economy. This can be examined by sector and geographic region.
- **Adequate Retail Infrastructure:** for the dissemination of cultural goods and services

3.1.3.2 Cultural Pillar (C): Main Indicator 2: Creative Economy Infrastructure

This indicator is concerned with the way in which copyright law and policy interact with those public and private institutions that act as centers for the development of creative ideas, and facilitate creative production, distribution and consumption. These institutions include, but are not limited to, theatres, museums, art galleries, universities, libraries, community centers, heritage sites and other public spaces used for cultural and creative exchange. Broadcasting channels and cinemas, newspapers, magazines, performance and exhibition facilities may all also be included. This theme is generally concerned with the extent to which the infrastructure of the creative economy is available to and accessed throughout a country and by different groups of the population. It is aimed at measuring how the economic, social and cultural costs and benefits of a particular copyright intervention within the creative infrastructure are distributed throughout a specific jurisdiction. It also includes the distribution of resources, wealth, and power amongst copyright stakeholders.

Table 15: Theme C.2

Creative Economy Infrastructure			
	Core Indicators	Supporting Indicators	E-S-C Impacts
Creative Economy Infrastructure	Existence of institutions and mechanisms supporting creative communities	i. Number of creative institutions ii. Functioning collecting societies iii. Allocations to creative institutions iv. Existence of a cultural and creative economy policy	• Enabling creative environment • Availability of creative content • Sustainability • Political commitment • Social equity • National policy formulation
	Access to services provided by creative institutions	i. Cost of access ii. Scope and coverage iii. Access to creative output iv. Legal and technical barriers to access	
	Functioning of creative institutions and mechanisms	i. Participation in creative exchanges ii. Dynamism of creative markets iii. Public debate on the functioning of creative institutions iv. Self-assessment by creative institutions	

The Core Cultural Indicators

C.2.1 Existence of Institutions and Mechanisms Supporting Creative Communities: This indicator is aimed at capturing the impact of legal copyright and policy interventions on the availability of an enabling environment that fosters the vibrancy of cultural and creative institutions that support the sustainability of creative communities. This indicator may be disaggregated according to geographic region, linguistic, ethnic and minority group, as well as income bracket.

C.2.2 Access to Services Provided by Creative Institutions: This indicator aims to investigate the impact of copyright law and policy on the ways in which people can access, experience and participate in the production and consumption of cultural output and through which channels. Therefore, it may take into consideration how copyright impacts on institutions through which people access cultural products and services; these institutions include, among others, cinemas, theatres, museums and community centres. It will also take into consideration their numbers and geographic concentration within the creative economy. It is also concerned with the ability of the public in general and specific sub-groups in particular, to access services provided by institutions in the creative economy. Access includes price and costs incurred to use

services, the geographic scope and the scope of the sector covered, including access to output and legal and technical barriers that affect access to services offered by creative institutions.

C.2.3 Functioning of Creative Institutions and Mechanisms: is concerned with capturing the impact of copyright law and policy interventions on whether creative institutions and mechanisms are able to discharge the functions for which they were established and enhance the services offered. This also includes: whether enforcement is pursued by authorities; whether adequate resources are available to ensure the system functions; and the overall effectiveness of the system. This can be disaggregated according to geographic region and the sector of the creative economy.

The Supporting Cultural Indicators

C.2 Under Existence of Institutions and Mechanisms Supporting Creative Communities

i. **Number of Creative Institutions:** as an indicator is concerned with the impact of copyright law and policy interventions on the number of creative institutions within a jurisdiction available to the public. This may be disaggregated according to sector of the creative economy, geographic distribution, the number catering for different linguistic groups, income brackets etc.

ii. **Existence and Functioning Collective Rights Management Bodies:** as an indicator looks at the impact of copyright law and policy on the ability of collecting societies to discharge their duties with respect to the economic rights of creators. This may be disaggregated according to the sector of the creative economy.

iii. **Allocations to Creative Institutions:** as an indicator addresses the impact of copyright law and policy interventions on recurrent allocations made in national budgets to support the existence and functioning of creative institutions. This may be disaggregated according to geographic region, ethnic, linguistic and minority group. It may also be disaggregated with respect to the sector of the creative economy.

iv. **Existence of Cultural and Creative Economic Policy:** addresses the impact of the copyright and policy intervention on the existence, functioning and content of cultural and creative economic policy. This indicator may be disaggregated according to each sector of the creative economy.

C.3 Under Access to Services Provided by Creative Institutions

i. **Cost of Access:** as an indicator is aimed at capturing the impact of copyright law and policy on the existence, magnitude and frequency of fees charged to access the services of creative institutions. Cost of

access also includes costs, which may be incurred to get to a geographic location where a service may be used or use of the internet is required to access services. Cost of access also considers whether subsidies are available to disadvantaged groups for accessing services.

ii. **Scope and Coverage:** as an indicator is concerned with the impact of copyright law on the ability of creative institutions to provide services to a broad range of groups, and to provide services that reflect a broad range of subject matter and sectors of the creative economy. It is also concerned with the geographic, linguistic, cultural and ethnic penetration of the services offered by these institutions.

iii. **Access to Creative Output:** is concerned with the impact of copyright law and policy intervention on the ability of creative institutions to provide access to creative output. This looks at the costs of providing access to these institutions and whether schemes exist to subsidize them. This may be disaggregated according to the geographic region and sector of the creative economy.

iv. **Legal and Technical Barriers to Access:** are concerned with how creative law and policy interventions may act, on their own or in conjunction with other laws such as those related to censorship, competition or religion, to create both legal and factual barriers to accessing the services of institutions in the creative economy. This may be disaggregated according to the sector of the creative industry, geographic region, ethnic and other minority and linguistic groups, including women and the disabled.

C.3 Under Functioning of Creative Institutions and Mechanisms

i. **Participation in Creative Exchange:** as an indicator is concerned with the impact of copyright law and policy interventions on the ability of creative institutions to foster exchange of creative and cultural ideas, creative and cultural products and services, general cultural exchange and societal participation. It can be disaggregated by geographic region, ethnic and linguistic group, as well as according to minorities, including women and the disabled.

ii. **Dynamism of Creative Markets:** addresses the way in which copyright law and policy interventions can impact on the ability of cultural institutions to foster dynamic markets for the exchange and consumption of creative and cultural goods and services. Cultural institutions act as centers for incubating creativity and culture and thus provide the raw materials for the development of creative and cultural goods and services.

iii. **Public Debate on the Functioning of Creative Institutions:** as an indicator is concerned with whether copyright law and policy interventions foster national dialogue on the functioning, efficiency and role of creative institutions in not only encouraging production, but protecting, preserving and projecting, national identity, culture, language and values. This indicator can be disaggregated by geographic region, sector of the creative economy and may also focus on minority cultural and creative institutions.

iv. **Self-assessment by Creative Institutions:** is concerned with whether copyright law and policy interventions provide mechanisms that allow creative institutions to assess for themselves, their efficacy in carrying out their mandatory activities and services, and their capacity to expand and increase the quality of the services they provide. This can be disaggregated according to geographic region and sector of the creative economy and may also take minority cultural and creative institutions into consideration.

Potential ESC Impact

- **Enabling a Creative Environment:** as an impact is concerned with whether copyright law and policy fosters a national environment that stimulates cultural and creative ideas, and the production, distribution, trade and consumption of creative goods and services. It os also concerned with whether policies target all those components of the national infrastructure, legal and political systems as well as the economy and creative/cultural communities, which can produce a vibrant environment for creativity.
- **Availability of Creative Content:** as an impact is concerned with the availability of content across sectors, languages, ethnic and minority groups, geographic regions and income brackets.
- **Sustainability:** focusses on how all of the aforementioned indicators can provide creative communities, enterprises and cultural groups with the tools to remain sustainable.
- **Political Commitment:** is concerned with how copyright policy and law can encourage political, social and cultural engagement by the members of society. The sense of belonging created by the valorisation of culture through copyright law can have a role in the societal participation of citizens.
- **Social Equity:** looks at how the aforementioned indicators capture the effects of the copyright system on the existence and magnitude of, and ethnic, linguistic as well as gender distribution of inequality. Inequality here refers to

inequalities in the creative economy, but it may also refer to other inequalities that may be exacerbated or ameliorated by copyright law and policy.

- **National Policy Formulation:** is concerned with gaging whether national policy formulation for the creative economy and also for other policy sectors have been adversely or positively impacted by copyright law and policy interventions.

3.1.3.3 Cultural Pillar (C): Main Indicator 3: Cultural Representation and Diversity

The impact of copyright law and policy on the valorisation, promotion, vitality and survival of under-represented cultural groups, cultural forms, culturally specific languages, cultural diversity etc. It is also meant to capture copyright-related shifts in dominant cultures of a specific jurisdiction. It is also aimed at capturing information on the impact of copyright on popular cultural output as opposed to what would be considered to be more traditional for a particular jurisdiction. Furthermore, it also covers how copyright influences the consumption and valorisation of non-indigenous and indigenous cultural output.

Cultural Output not Covered by Copyright Law and Policy: This is aimed at capturing impacts on cultural forms, which because of their nature may not lend themselves easily to copyright protection. The manner in which certain kinds of traditional cultural output are produced and ownership allocated, may make regulation by certain conventional approaches to copyright difficult.

Table 16: Theme C.3

Cultural Representation and Diversity			
	Core Indicators	Supporting Indicators	E-S-C Impacts
Cultural Representation and Diversity	Cultural identity	i. Copyright facilitated native cultural production ii. Cultural preservation iii. Value attached to national culture by society	• Participation in cultural practices • Copyright awareness and access to institutions among minority groups • Cultural Expression • National cultural appreciation
	Diversity	i. Ethnic diversity in copyright-based production ii. Linguistic diversity iii. Government subsidies for diversity iv. Cultural institution representing minority groups	
	Representation	i. Share of minority groups in cultural production ii. Subsidies and other investments for minority productions iii. Barriers to cultural participation of minority groups	

The Core Cultural Indicators

C.3.1 Cultural Identity: as an indicator is concerned with the unique social, political, religious, linguistic, economic and historical factors that combine to produce a sense of collective self for a nation or ethnic group. It is a narrative of the collective self of a society in every aspect of its endeavour. It is often expressed in symbolic terms in song, dance, poetry, prose, sculpture, paintings and films. Hence, this indicator is concerned with capturing the impact of copyright law and policy on this collective selfhood and the media through which it is expressed. One can disaggregate this indicator according to geographic region, ethnic, group, language and income levels.

C.3.2 Diversity: as an indicator refers to issues involving the impact of copyright law and policy interventions on the experiences of all ethnic groups within a society, including minority groups (women and the disabled). It looks at how copyright affects access to creative works, professions, participation in creative productions etc. Experiences for each group can also be differentiated on the basis of their income and geographic distribution.

C.3.3 Representation: as an indicator is concerned with the impact of copyright law and policy on how all ethnic groups and minorities are depicted in intellectual works. It also looks at how copyright affects their representation in the cultural professions, as owners of cultural businesses and sustainability of their cultural lifestyle. This indicator may also consider issues of linguistic representation. This can be disaggregated by geographic region and income bracket, as well as the sector of the creative economy.

The Supporting Cultural Indicators

C.3.1 Under Cultural identity

i. **Native Cultural Production:** as an indicator is concerned with the impact of copyright law and policy interventions on native cultural production. Native cultural production includes works rooted in a specific cultural, linguistic or ethnic group, in addition to works broadly representative of a nation. This indicator will capture the differences in impact on the works of different cultural groups within a jurisdiction and the differences in impact in relation to foreign cultural goods and services.

ii. **Cultural Preservation:** as an indicator is aimed at capturing impacts of copyright law and policy on the protection, preservation and perpetuation of the cultural forms of all national ethnic groups within a given jurisdiction. This can be disaggregated according to geographic region. It may also take into consideration how national copyright systems deal with cultural censorship.

iii. **Value Attached to National Culture by Society:** as an indicator is aimed at capturing the impact of copyright law and policy on the extrinsic and intrinsic value of cultural forms for the population of a specific jurisdiction. Valorisation may be measured from: the level of attendance at national cultural festivals; domestic sales figures for national cultural works; the incorporation of such works and traditions into education in professions of the creative economy in order to promote these unique cultural expressions abroad. It is also important to determine which national cultures, ethnic groups and sectors of the creative economy are most, as well as least, likely to benefit from such copyright-facilitated cultural valorisation.

C.3.2 Under Diversity

i. **National Ethnic Diversity in Copyright-Based Production:** as an indicator is aimed at capturing the impact of copyright law and policy interventions on which cultures and ethnicities are most and least likely to be represented in the production of creative goods and services. It is

important to note that this indicator is concerned with the percentages of cultural good and services that reflect specific cultural and ethnic groups.

ii. **Linguistic Diversity:** as an indicator is simply concerned with the effect of copyright law and policy on the availability of creative goods and services in national and minority languages. It also considers how copyright law and policy interventions may affect the ability of national linguistic groups to create, publish and perform in their languages.

iii. **Government Subsidies for Diversity:** as an indicator is concerned with the effect of copyright law and policy interventions on the availability, magnitude and frequency of government subsidies for cultural production of all national cultural groups and minorities including women and the disabled.

iv. **Cultural Institutions Representing Minority Groups:** looks at the effect of legal copyright and policy interventions on access to, availability of, financial support and freedom of the ethnic minority cultural institutions. This may be disaggregated according to geographic region and language.

C.3.3 Under Representation:

i. **Share of Minority Groups in Cultural Production:** concerns the effect of copyright law and policy on the participation of ethnic minority groups in the production and distribution of cultural goods and services. This may be disaggregated by geographic region, income bracket and language. This can be measured by tracking labour and business statistics of minorities reporting production of culture as their occupation or as the function of their businesses.

ii. **Subsidies and Other Investments for Productions by Minorities:** looks at how copyright law and policy may affect the availability, magnitude and frequency of government funding for cultural production by minorities. This may be disaggregated by sector, language, geographic region and income bracket.

iii. **Barriers to the Cultural Participation of Minority Groups:** will capture the impact of legal copyright and policy interventions on how easy it is for minority cultural, ethnic and linguistic groups to participate in national festivals, cultural productions, to distribute their cultural forms and have access to state institutions and services that assist with these endeavours. This can be disaggregated according to geographic region and income bracket.

Potential Cultural Impacts

- **Participation in Cultural Practices:** as an impact discloses the extent to which the public is involved in cultural activities (volunteer work for cultural organizations, amateur participation in an artistic activity, or cultural hobby). Time-use surveys in this context would be important for identifying, in particular, time spent participating in unpaid/volunteer cultural work by individuals. This would be useful, as such cultural activities are generally under-recorded or not recorded at all in economic surveys. Time-use surveys with respect to cultural activities would increase our understanding of the boundaries of cultural activities as a fraction of GDP within the system of national accounting.

- **Copyright Awareness and Access to Institutions Among Minority Groups:** as an impact is aimed at expressing whether cultural practitioners are aware of the copyright laws and policies regulating their cultural output and whether they have made use of them or been affected by them. It is also concerned with the ease of access to copyright law and policy information through institutional facilitation. This may involve any costs that may be related to access or the geographic location of institutions and their outreach points.

- **Cultural Expression:** as an impact focusses on the effect of copyright law and policy on freedom to partake in, receive, transmit and create cultural output, and to engage in cultural and social debate in the public and private domain. It is related in part to the following indicator on cultural hierarchies, as cultural freedom can often be related to existing cultural hierarchies.

- **National Cultural Appreciation:** as an impact will look at how copyright law and related polices affect perceptions of the value of art and culture in society and whether laws and policies are related to good or bad perceptions of artistic and cultural output in a specific society.

- **Cultural Projection and Integrity:** as an impact is concerned with how all of the aforementioned variables allow a national jurisdiction to preserve and transmit its cultural values to its inhabitants. It may also be concerned with how all of the aforementioned factors contribute to the projection of its national culture, cultural values and products and services abroad. In summary, how copyright facilitates projects of soft power and cultural diplomacy.

3.2 Assessing ESC Impacts

Summary of E-S-C Indicators: The actual number and specific indicators of the nine main indicators will need to be used when determining the breadth and depth of the impact assessment that is agreed upon. These indicators may be interpreted as having a positive or negative effect.

Translating the nine main indicators along with their core and supporting indicators into impacts would result in:

Figure 5: Translating Indicators into Impacts

The figure above represents income (Core Indicator) as measured by median wages (Supporting Indicator) in the creative economy, with resultant impact on sustainable livelihoods.

Understanding impacts requires that assessors understand that the local context influences the range of impact possibilities. Social programmes instituted by governments or NGOs in certain jurisdictions might invest more in arts programs because of a perceived greater (social or monetary) return on investment. In some cases poor national economic performance or mere changes of policy direction may make spending on such programs less desirable and may result in a corresponding reduction in investment. Groups such as women, minorities, the disabled, etc. may be further disadvantaged because dominant social groups, and the societal structures supporting them, may create situations where minority groups are systematically excluded from benefitting from copyright policies. It may also result in exclusion from the creative and cultural fields. For example in her book *Designing for Diversity: Gender, Race and Ethnicity in The Architectural Profession*, Kathryn H. Anthony noted that in 1996 26 U.S. States had five or less African Americans who were licensed to practice.[67] Alternatively, where there is effective application of policy for all groups, minority groups will tend to benefit from potential earnings through creative activities, while also achieving the associated social and cultural benefits.

Impact on Social Cohesion and Connectedness: A range of measures exist to quantify this, including the extent of overt (evident) and covert (not evident) violence and/or tension within the community. In multi-cultural societies (or at least in societies with a dominant culture) copyright has the potential to lead to further domination by the dominant culture.

4. MEASUREMENT AND ANALYSIS APPROACHES

4.1 ESCIA Measurement and Analytical Methods

Choosing suitable measurement and analytic approaches is best accomplished with a clear outline of what is required during the data collection and collation stage of the ESCIA. Here, it is stressed that research approaches to measuring and analyzing data must reflect the fact that it is impossible to attribute all observed improvements or changes in the creative and copyright-based economy to one the intervention of one specific policy. Exogenous variables will be present in the form of laws and policies external to the copyright system[68], in addition to real world economic, social and cultural events. This shows how other legal regimes, such as investment and tax law, can and do affect the prospects for sustainability of creative enterprises. When designing indicator sets and questionnaires it is, therefore, prudent to include indicators and questions that take into consideration the possible direct or indirect impacts of other laws. As noted elsewhere, relationships between the intervention and the change are best described as a correlation or *a balance of probabilities*, because only a proportion of the observed change is likely to be related to the copyright policy or legal intervention. An ESCIA study may well indicate that other related laws have a more significant role to play in observed impacts, suggesting that an adjustment of these rules may be more beneficial. In essence, in choosing the methodology for data analysis one should be mindful not to overstate or understate the significance of a particular copyright policy or legal intervention.

The selection of a methodology for measurement must encompass the data collection and collation phase, as well as the analysis phase. Whatever method is chosen (qualitative, quantitative, or mixed methodology) it should be applied simultaneously to data collection and collation, as well as data analysis. With this in mind, assessors must have a clear idea of the chosen research methodology or paradigm prior to the commencement of data collection and collation, as this is likely to influence the choice of methods for data analysis. Research completed to establish the baseline will help to narrow down what primary data needs to be collected. Prior to the data collection, collation and analysis parts of the ESCIA project, it is important to consider carefully what steps are necessary to lay the foundations for the ESCIA research design. Here is a more detailed restatement of the ESCIA process.

1. **Establish Clear Research Questions** based on the scope and content of the copyright intervention being studied. This will facilitate precision in the selection of sample populations, construction of indicators, identification of potential impacts, and will also assist with establishing the limitations of the study.

2. **Establish a Baseline Scenario.** The importance of the baseline is in determining the impact of the existing law or policy that assessors would like to replace with a new copyright intervention. It is prudent to ascertain the impact of existing legislation so that comparisons can be made with impact data collected for the new intervention.

3. **Establish a Baseline Projection.** In essence the projection extrapolates the results of the baseline study into the future assuming no copyright policy or legislative change. This provides a time-sensitive, approximation for comparative purposes. The initial baseline findings are a snapshot in time; projecting these results into the future facilitates a more accurate picture for comparing with the new intervention.

4. **Choose Sample Populations or Groups** for the ESCIA study based on the scope of the intervention being considered, and the research questions which have been formulated. This will add further precision to choosing which economic, social and cultural variables need to be studied, as opposed to those which do not provide any useful information for the research question asked.

5. **Construct Indicators and Identify Impacts:** Another process that will add precision to understanding the variables under consideration is choosing indicators, outlining potential impacts based on these indicators, and setting out performance targets. The previous chapters explain the process of choosing indicators, impacts and setting out performance targets.

6. **Choose a Suitable Research Methodology for Both Data Collection and Analysis.** The choice of research methodology should be guided by the nature of the variables being studied, the questions being asked from data, and the sample populations being studied. Attempting to study economic, social and cultural variables simultaneously requires a methodology that integrates both qualitative and quantitative data collection and analytic techniques. Therefore, it would be advisable to use a mixed methodology approach.

7. **Choose Suitable Data Collection and Analytic Tools Based on the Research Methodology.** Data collection and analytic tools designed on the basis of a mixed methodology can include questionnaires with a mixture of types of question, including those that elicit discrete quantitative responses and those that require open-ended descriptive responses. In this way it is possible to obtain rich descriptions and analyses of quantitative data, as well as the opposite.

    a) Qualitative data collection methods may include focus groups or interviews, while quantitative data collection methods may include statistics gathering and administering close-ended quantifiable questionnaires.

    b) Qualitative analytic methods may involve using approaches such as phenomenology to analyse data from interviews and focus groups. On the other hand quantitative analytical methods may involve carrying out correlation or regression analysis onthe available statistical data or new statistics gathered from questionnaires.

In a mixed method research design qualitative and quantitative data collection and analytical techniques are used in parallel or sequential phases.[69] This means that assessors may use both qualitative and quantitative approaches within the same data collection phase or data collection tool;[70] they may choose to use a quantitative approach for one phase of the research process and a qualitative approach in another phase.

Once a research methodology is decided upon it will be necessary to define the sample population or populations being targeted for the study. Because the ESCIA deals with economic, social and cultural phenomena, the groups used as sample populations for an ESCIA study of these variables are likely to be different. Whilst recording companies may be an appropriate sample population for studying copyright policy impacts on revenue generation by music enterprises, they are unlikely to be a useful sample population for capturing impacts on employment security, or social or cultural impacts associated with a copyright law and policy interventions. Once the sample populations have been identified it will then be possible to choose quantitative or qualitative data collection and analytical methods best suited to the sample populations. It is important not to confuse data collection methods with analytical methods. For example, while close-ended questionnaires (collection method) may be used to elicit quantifiable data, regression analysis or correlation analysis may be used to analyze relationships within the data collected from that questionnaire.

Qualitative methods for data collection may include, but are not limited to stakeholder surveys, telephone or face-to-face interviews, focus groups and case studies. Quantitative data collection methods include, but are not limited to, close-ended

questionnaires and the collation of national statistics available for the creative economy. The question of which industries or activities may be included or excluded is important for collection and determining which statistics to use. This will also be based on which industries and activities are included in the creative economy sector within a given jurisdiction. For example, many jurisdictions may have events-based tourism for which music festivals and other copyright-intensive activities may be important. Payments for copyrights in this case may be counted as part of the revenues for tourism or for the music industry. Thus assessors may decide to collect statistics for such copyright-intensive events without including the entire industry.

Establishing a Baseline Projection

Establishing a baseline projection or a 'control' facilitates the creation of a longitudinal scenario, which shows the possible impact trajectory if no copyright intervention takes place. A baseline projection, establishing the potential outcomes which will be produced by the ESCIA is likely to be the most feasible approach to creating a control for comparison, in order better to understand any changes that may have occurred after implementation of a new legal copyright or policy intervention. As the aim is to look at outcomes in the creative economy, best practice would argue against using a different industry, where there was no legal or policy intervention, as a control group. Each industry has peculiarities that would make such a control ineffectual for the purposes of comparing and analysing impact.

The baseline projection would imagine an impact trajectory, where the creative economy, or a section of it, was not exposed to the proposed intervention. As mentioned before, the chosen sample population is crucial. The sample population will depend on the intervention in question, whether it targets a specific section of the creative economy, or whether it is aimed at the entire sector. For impact analysis and comparison purposes the sample populations for the baseline, the counterfactual and the ESCIA study should be the same, as the goal is to measure impacts for the same sample population.

Collecting and Analysing Data

Once the process of organising the plan for data collection and analysis is complete, applying this framework should be the next step. Often, social and cultural data are not recorded by national accounts in the same ways as economic data, therefore different approaches to collecting and analyzing data on the overall impact of copyright must be used. As mentioned in the outline above, such approaches are likely to require a combination of quantitative and qualitative data collection and analytical techniques. A single research approach such as a mixed methodology, which can accommodate the different fundamental characteristics of economic, social and cultural phenomena, while holding out the possibility for cross comparison and cross analysis of variables is likely to produce the best results. This will allow

different measurement and analytic approaches to be used in tandem. Given the multi-disciplinary nature of the concepts and variables, a mixed methods approach or research design is likely to provide the best framework for data collection and the best options for data analysis.

A mixed methods approach is suitable for the ESCIA as it deals with economic, social and cultural phenomena, each of which exhibit different characteristics, which may favour either quantitative or qualitative approaches, depending on the research context and the data sought. A mixed methodology involves combining qualitative and quantitative approaches in varying ways to produce a research design that is likely to result in better quality and richer data, which is a more accurate. Using this approach will allow also allow assessors to apply qualitative methods to economic data and quantitative methods to social and cultural data. The traditional research approach to economic indicators is to rely solely on quantitative analysis, but methods that provide context can help to give a more nuanced understanding of statistical data. In the same way, using both quantitative and qualitative approaches to social and cultural phenomena can facilitate a more nuanced understanding of data.

4.1.1 *Economic Measurement Approach*

Evaluation of economic concerns requires employing a variety of research methods including national accounts analyses, industrial organization analyses, market analyses, input/output analyses, value chain analyses, incentive/disincentive analyses, elasticity analyses, and social welfare analyses. It requires a variety of economic research methods because some of the issues considered are systemic and involve the aggregate impact of the creative economy, whereas others involve relationships, processes, and exchanges involving specific creation, production, distribution and consumption activities.

Much of the information needed to employ these methods exists in data from national statistical sources, but some information will need to be specifically collected for some analyses via interviews, focus group discussions and surveys. The latter are particularly important for establishing: relationships and interactions in markets and industries; incentives and disincentives; and policy rationales and objectives.

Due to the range of economic analyses that may be undertaken, a number of approaches to measurement are relevant. These include both quantitative and qualitative methods.

- **Statistical analyses** based on a review of available data on the creation, production, and consumption of copyrighted goods, the individuals and firms involved, and the system in which they take place.

- **Econometric analyses** based on modelling incentives, disincentives, and interactions amongst copyright stakeholders to identify efficiency and inefficiency in the allocation of resources.
- **Cost-benefit analyses** seek to identify the optimal outcomes for copyright stakeholders and society based on the values and preferences guiding social and public decisions by balancing benefits with direct costs and indirect costs.
- **Risk-based analyses** that identify potential negative outcomes of policy action or inaction, assess their probability, and determine how to manage the risks.
- **Outcome mapping analyses** establish how policies and developments in markets have affected the behaviour of copyright stakeholders.

One of the greatest challenges with all analyses is the establishment of causality. Finding relationships between indicators does not necessarily establish causality or impact, caution must be exercised in interpreting results. If a country has a vibrant music industry, for example, it may be due to 100 years of copyright protection, or it may be the result of centuries of deeply rooted domestic musical traditions and appreciation. A strong theatrical sector in a country may be the result of copyright and related rights protection, or the existence of long-standing financial support from markets or the state. Thus, the existence of the creative economy is not completely dependent upon the existence of copyrights, there is a separation with respect to creative activities and the existence of copyrights that must be sorted out before causality can be directly asserted.

Evaluation of economic concerns requires employing a variety of research methods including analyses of national accounts, analyses of industrial organizations, analyses of markets, analyses of inputs/outputs, value chain analyses, incentive/disincentive analyses, elasticity analyses, and social welfare analyses. A variety of economic research methods are required, as some of the issues under consideration are systemic and involve the aggregate impact of the creative economy, whereas others involve relationships, processes, exchange, production, distribution and consumption activities.

Much of the information needed to employ these methods is available from national statistical sources, but some information will need to be specifically collected through interviews, focus group discussions and surveys. The latter are particularly important for establishing relationships and interactions in markets and industries, incentives and disincentives, and policy rationales and objectives.

Practical Aspects of Economic Impact Measurement

Against the baseline, projections or trajectories will normally have to be developed to measure how the creative sector will evolve if relevant changes are made in the copyright laws or practices. This can be achieved with a variety of comparative quantitative and qualitative analyses that use all the relevant data domains. A triangulation mechanism can then be used that brings stakeholders together to reconcile the information from the data domains and arrive at the final impact measures. For a country with functioning copyright laws and practices, the measures should seek to compare the functioning of the market for copyright-based activities versus other activities in the creative sector. While not exhaustive, the following table provides information on many of the kinds of questions that should be considered in measuring economic impact. The table recommends giving priority to growth trajectories, as they are easier to work with when making comparisons, but all the indicators mentioned can be used in level form.

Just as with the use of the baseline trajectories, sensitivity and risk analysis should accompany the assessments of the economic impact of changing copyright laws and practices.

4.1.2 *Social Outcome Approach*

Social research methods may be divided into two broad categories:

- **Quantitative analysis** approaches social phenomena with quantifiable evidence, and often relies on statistical analysis of many cases (or across intentionally designed treatments in an experiment) to formulate valid and reliable general claims
- **Qualitative analysis** emphasizes the understanding of social phenomena using direct observation, communication with participants, or the analysis of texts, and may stress contextual and subjective accuracy over generality

The choice of method often depends largely on what the researcher intends to investigate. For example, a researcher concerned with generalizing statistically across an entire population may administer a survey questionnaire to a representative sample population. In contrast a researcher who seeks full contextual understanding of an individual's social actions may choose ethnographic participant observation or open-ended interviews. Reports/studies will commonly combine, or 'triangulate', quantitative and qualitative methods as part of a 'multi-strategy' design. For instance, a quantitative study may be performed to determine statistical patterns of a target sample, and then combined with a qualitative interview to determine the play of agency.

4.1.3 *Cultural Approach*

The area of public policy-making that relates to and governs activities related to the arts and culture: a look through the 'policy' prism.

The evaluation of cultural concerns requires the employment of a variety of research methods including analyses of national accounts, and market, consumption, behavioral and input/output analyses. It requires a variety of research methods. Much of the information needed to employ these methods exists in data from national statistical sources, but some information will need to be specifically collected for some analyses from interviews, focus group discussions, and surveys. The latter are particularly important to establish relations and interactions in the rationale and objectives of policies.

With respect to measuring social participation in culture, anthropologists use a variety of methods, including participant observation, interviews and surveys. Their research is often called fieldwork because it involves the anthropologist spending an extended period of time at the research location. One of the most common methods for collecting data in a cultural (ethnographic) study is direct, first-hand observation of daily participation. This can include participant observation. Another common method is interviewing, which may include conversations of different forms and levels; anything between small talk and long interviews.

- Promotion of cultural diversity;
- Accessibility to culture;
- Social participation in culture;
- Cultural practices;
- Cultural identity;
- Valorisation of indigenous communities;
- Analyses of historical dynamics.

With reference specifically to State-public support for:

- Heritage, battlefields and historic preservation sites;
- Libraries and museums (fine arts, scientific, historical);
- Visual arts (film, painting, sculpture, pottery, architecture);
- Performing arts (symphonic, chamber and choral music; jazz, hip-hop and folk music; ballet, ballroom and modern dance; opera and musical theatre; circus performances, rodeos and marching bands);
- Public humanities programs (public broadcasting, creative writing, poetry).

4.2 Quantitative Data Collection and Analytical Methods

Mixed Method Questionnaires

Mixed method questionnaires are data collection tools using both close-ended questions geared to quantitative assessments, and opened-ended questions designed to elicit descriptive responses for qualitative assessments. The ordering and the subject matter of each question in relation to the others are important when creating this type of questionnaire. Ideally, the open-ended questions for qualitative information gathering on a particular subject should follow close-ended questions for quantitative information gathering on the same subject. This means that the open-ended questions will provide qualitative information on the quantitative data obtained from the questionnaire. The advantage of this design is that it is time and resource efficient in that both quantitative and qualitative data can be gathered from the same research tool in one research exercise. It also allows assessors to identify clearly correlations in the data at an early stage without the need for complex software programs.

i. **Qualitative data collection** methods that may be useful for researching the economic, social and cultural impacts of copyright in the creative economy include structured and in-depth interviews, case studies, ethnography and purposive sampling.

ii. **Collection of quantitative data** may be carried out from population censuses, national labour statistics, existing sample surveys on the creative economy, national trade statistics and national income statistics.

Analysing Correlation

The research design that has been used provides baseline and end-line measurements that facilitate the detection of changes in impact for different indicators at different points in time. However, it does not indicate the degree to which a specific impact is related to an intervention. For the purposes of copyright policy formulation and implementation, it is inadequate simply to record the changes in impacts that have taken place at selected points in time relative to a copyright intervention. For the data collected to be useful it is important to know the strength of the correlation between the intervention and the impact.

In Chapter One of the Guidelines the difficulty of establishing causation between a copyright intervention and a particular impact was underlined. Causation seeks to establish that the impact or change witnessed in one variable is directly attributable to the change in another selected variable. However, as noted previously the relationship between an impact and an intervention in the creative economy can best be described as an approximate correlation. A copyright intervention is only one

amongst a great number of variables that may have an impact on the performance of selected indicators in the creative economy. For example, increased revenues in the music industry may be impacted by several factors including: a copyright intervention facilitating easy payment for copyrighted content; higher disposable incomes of consumers; or technological advances in the sharing of music content. An ESCIA study would be concerned with establishing the strength of the correlation between the copyright intervention and the observed or potential economic, social and cultural impacts. In contrast, measuring attribution is aimed at establishing a causal link between impacts and interventions.

Measuring correlation facilitates a nuanced analysis of impacts, rather than just recording the changes that occurred. It is important to stress that multiple factors can account for the outcomes recorded for stakeholder groups, individuals, companies and institutions. Other factors that may produce impacts for these stakeholder groups within the evaluation period include overall economic downturn and technological advances. Thus impact assessment goes further than providing a factual assessment of changed circumstances for specific groups after a copyright intervention. It must be aimed at teasing out the *added value* of the copyright intervention under consideration, separately and apart from these other factors, which will inevitably contribute to the overall outcomes for society and the creative economy. Baseline data and end-line data, as mentioned previously in this publication, capture the factual situation over time, but by themselves they do not provide an analysis of what would have occurred in the absence of the intervention. This is where the baseline counterfactual, the ESCIA study, the ESCIA Risk Matrix and monitoring and evaluation help to produce a rich analysis of policy.

4.3 Qualitative Data Collection and Analysis Methods

Several methods may be utilized for qualitative data collection. Data collection methods such as time-use surveys may be a useful approach for the creative economy because of the variable, and sometimes unstable, nature of the activities of individuals in this industry. Such surveys are also used to determine social impacts, hence it is important to distinguish between social and cultural impacts and indicators.

Qualitative impacts are best captured from the narratives of people describing how they perform creative activities as part of a group or community, and how current and proposed copyright policy interventions impact them. Qualitative techniques also allow stakeholders to provide rich descriptions of how their creative communities and systems operate. It also fosters an in-depth understanding of how policies may impact their social and cultural relationships.

SWOT Analysis is a strategic planning method used to evaluate the *'Strengths, Weaknesses, Opportunities and Threats'* involved in a project or in a business venture. It involves specifying the objective of the business venture or project and identifying

the internal and external factors that are favorable and unfavorable in achieving that objective. – *See Pratt and reference to CMOs*.

Techniques for organizing and conducting the research successfully: *'Techniques are sensitive to the object of investigation'*.

a) **Case study research** – six steps that are usually used:
   1. Determine and define the research questions
   2. Select the cases and determine data gathering and analytical techniques
   3. Prepare to collect the data
   4. Collect data in the field
   5. Evaluate and analyse the data
   6. Prepare the report

Case studies are complex because they generally involve multiple sources of data, may include multiple cases within a study, and produce a large amount of data for analysis. Researchers from many disciplines use the case study method to build upon theory, to produce new theories, to dispute or challenge theories, to explain a situation, to provide a basis for applying solutions to situations, to explore, or to describe an object or phenomenon. The advantages of the case study method are its applicability to real-life, contemporary, human situations and its public accessibility through written reports. Case study results relate directly to the common reader's everyday experiences and facilitate an understanding of complex real-life situations.

The term case study can also be defined as a research strategy; an empirical inquiry investigating a phenomenon within its real-life context.

b) **Use of Surveys**;

c) **Sampling (purposeful sampling)**;

d) **Interviews with social stakeholders:** labour- and resource-intensive; requires careful and deliberate thought at the outset in the design phase.

4.4 Risk Measurement Technique

- Assessing the impact of an additional dollar of funding to program X
- Assessing the impact of country Y's contribution to a particular intervention
- Assessing the impact of copyright intervention Z

5. MONITORING, EVALUATION AND END-LINE ANALYSIS

Once an *ex ante* economic, social and cultural impact analysis has been completed for a specific legal copyright or policy intervention and all of the positive and negative risks have been assessed, an intervention may or may not be implemented. Assuming that the legal or policy intervention is implemented, government agencies will need to know the actual effects of a policy and whether these effects are within the desired policy outcomes and performance targets or are unanticipated or peripheral impacts. The success or failure of a policy measure is not only assessed according to the performance targets achieved or missed. Success or failure may also be measured by positive gains or negative outcomes, which are not necessarily expected but nonetheless occur. Monitoring and evaluation mechanisms must be sensitive enough to capture results in each of these cases. Above all results from the monitoring and evaluation (M&E) phase should inform the process of the policy. Data should have been gathered that: highlights successes and best practices, which can be replicated or further improved; identifies areas in need of different or modified policy approaches to obtain more favorable results.

How to Monitor and Evaluate

Ideally, M&E for the ESCIA should be a continuous data collection process rooted in the various assessment tools outlined in this publication. Continuous monitoring and evaluation should be based on the three pillars (economic, social and cultural), the nine thematic indicators and their supporting indicators, the ESCIA Risk Matrix and the various indices outlined as part of the set of indicators. Because the ESCIA seeks to add the social and cultural dimension to copyright law impact assessment, assessors will need to track not only economic outcomes, but social and cultural ones. Cases may arise where an impact has characteristics of all three or just two of the pillars. Whichever outcomes are being monitored, the variables tracked will be dependent on the policy being analyzed.

The first important point for putting M&E into operation is that it must correspond precisely with each stage of the ESCIA research design. The same measures, terminology, sample populations, and stakeholder groups used for creating the research design must be used to monitor the progress of the policy. The specificity of the measures used in the ESCIA Research Design mean, for example, that using the ESCIA indicators to monitor any other sample population than that for which it was specifically developed would not yield very useful results. Such a practice would also invalidate the research questions and the underlying assumptions in the research design. If assessors wish to monitor a specific sample population not previously considered, indicators would need to be developed for that group.

A second point of importance concerns the institutions that will carry out the monitoring of the policy for the duration of the observation period. Consideration needs to be given to the resources available to institutions in the form of human capital, funds, technology, whether these institutions have full research schedules and turnover within the institutions. Considerations needs to be given to the relationships between monitoring institutions and other organizations that provide primary and secondary data such as chambers of commerce, collecting societies, courts, social services, national budget departments and other institutions. Thus, M&E requires institutional synergies and for each organization to be aware of its role in monitoring the copyright policy intervention, even though these institutions may not be directly tasked with M&E. So it is important to hold information sessions with agencies perceived to be important for the process, designating individuals and departments responsible for cooperation and monitoring functions. It is anticipated that many national statistics offices may not collect or monitor and evaluate data for many of the indicators proposed. Therefore resource allocations for additional resources will be required or these indicators will need to be built into routine business and social statistical data collection, monitoring and evaluation.

Time Frame for Validation

While continuous monitoring allows assessors to keep pace with trends in relation to ESCIA indicators an end-line analysis can provide a more comprehensive picture of what has happened since a policy has been implemented. It may be slightly misleading to call this an end-line analysis, as this does not necessarily indicate the end of the application of the copyright policy or law, though in some cases this may be the end-line for the application of a particular policy or law. This is the case as such an analysis may provide for the discontinuation of a policy or law or its modification.

Conducting end-line analyses that are not flagged-up by the end of the life of a policy may pose problems with respect to what the right time is to make such an assessment. Should an end-line analysis be completed after two, three or four years? Choosing an arbitrary time for end-line analysis is not advised. The duration of time lapses before an end-line analysis is conducted should take into consideration variables such as: the sector of the copyright industry targeted; whether the policy or law is more general in scope; the average duration of cyclical economic forces and the average period required to see the creative economy (by sector) break-even or produce a profit.

For M&E of social and cultural impacts the time period allowed to lapse before an end-line analysis is conducted may be longer than that for economic and commercially oriented indicators. The simple reason for this is that the social and cultural effects of a law or policy are likely to require a longer period before visible impacts can be recorded. Furthermore, there is a period of knowledge diffusion, learning and

awareness, which must take place when a policy or law is implemented to encourage use and uptake. This learning phase is applicable to all segments of society affected by a policy: business communities, creative and cultural communities, civil society groups and individual creators. For social and cultural impacts this learning period prior to a policy or law actually being used can be long for the simple fact that certain groups targeted may not have an obvious vested interest in learning about and using a law or policy. For business communities such periods of learning may be short because profit margins and business sustainability may be reliant on this legal and policy learning phase.

In summary, the time that should be allowed to elapse before an end-line analysis is carried out is dependent on several variables. Considering the specific issues raised in the preceding paragraphs will guide assessors towards making an educated and jurisdiction-specific decision on the appropriate duration for periods prior to end-line analyses.

The Way Forward for ESCIA

The ESCIA Guidelines have documented the existing possibilities to go beyond the WIPO economic contribution studies, toward assessment of social and cultural impacts of copyright on the creative economy. The indicators and research design developed have also shown the potential to provide a more nuanced understanding of the synergies among the economic, social and cultural pillars of the ESCIA.

Despite the progress made towards creating a framework that answers the need for qualitative and quantitative indicators and data on the social and cultural impacts of copyright on the creative economy, this is and remains the beginning. In the near future WIPO will test the ESCIA Research Design in selected Member States. The pilot phase will provide valuable feedback on practical issues that may arise in attempting to collect, measure and analyse within a jurisdiction. Conducting a pilot study will facilitate further refinement of the ESCIA Research Design

Future expectations for the ESCIA are that it will become a set of indicators, which are continuously updated and improved year on year, and that countries will use the indicators and research methodology. WIPO hopes that results arising from the application of the ESCIA, by Member States implementing it, can form part of a dedicated web-based network on the subject.

ACKNOWLEDGEMENTS

WIPO wishes to thank the following contributors who worked on these Guidelines:
Prof. Andy Pratt
Prof. Frank Vanclay
Prof. Jeremy de Beer
Prof. Richard Watt
Prof. Robert Picard
Philip Kern
Prof. Silke Von Lewinski
Prof. Vanus James
WIPO Consultant
Kimani F. Goddard

WIPO Creative Industries Section Staff
Dimiter Gantchev
Donna M.A. Hill
Christopher Kalanje

LIST OF ACRONYMS

WIPO	WORLD INTELLECTUAL PROPERTY ORGANIZATION
UNESCO	UNITED NATIONS EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANIZATION
UNCTAD	UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
NHS	NATIONAL HEALTH SERVICE (UK)
WTO	WORLD TRADE ORGANIZATION
UNIDO	UNITED NATIONS INDUSTRIA
DCMS	DEPARTMENT FOR CULTURE MEDIA AND SPORT (UK)
IP	INTELLECTUAL PROPERTY
TRIPS	AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

GLOSSARY

Copyright-based Industries

The core copyright-based industries, as identified in the WIPO Guide (pg. 28) are those which exist to create, produce, and/or distribute copyright-protected materials. Creation and production include performance, broadcasting, communication and exhibition. These include

1. Press and literature;
2. Music; theatrical productions, operas; motion pictures and videos;
3. Radio and television;
4. Photography;
5. Software and databases;
6. Visual and graphic arts; design
7. Advertising services

Copyright collective management societies.

The *nine broad sectors* can be further divided into sub-groups depending on national classification, but the WIPO categories stay intact. The WIPO Guidelines categorizes the copyright-based industries into four categories including: the core copyright industries, the interdependent copyright industries, the partial copyright industries and the non-dedicated support industries. See WIPO Guidelines on the difference between interdependent, partial, and non-dedicated copyright industries.

The aforementioned nine sectors can also be used to determine impact on industries such as architecture, the craft industry and heritage (heritage sites etc). This list of industries is not exhaustive. The national contexts of the cultural and creative economy may differ, depending on the scope of protection granted under copyright.

Convention on Cultural Diversity

Refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only by the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also by the diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used.

Collecting Societies

Collecting societies are organizations that perform the role of administering rights in creative works held by multiple owners. Their role is essential to the proper functioning of the copyright system. Without these societies it would be difficult for rights holders in many jurisdictions to collect royalties for their works.[71] These

organizations perform a management function on behalf of the rights holders they represent including authors, publishers, performers and production companies. They provide an easy and effective way for users to acquire and pay for a licence for the use of copyrighted works. They engage in the negotiation of licence fees as well as the collection and distribution of royalties. Furthermore they monitor the use of copyrighted works, which aids the enforcement of copyright law.

Copyright and Related Rights

Copyright is the legal designation for a set of proprietary rights given to creators of literary and artistic works. In the majority of European jurisdictions copyright is referred to as authors' rights. The term copyright is associated with common law based jurisdictions, which include the legal systems of the 50 American states and the federal law of the union. Works covered by copyright include: literary works such as novels, poems and plays, reference works, newspapers, computer programs and databases; films; musical compositions and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright comprises economic rights, which allow the rights owner to derive financial reward from the use of his works by others. They also include moral rights allowing the author to take certain actions to preserve the personal link between himself and the work.

Clusters

Clusters are localized/concentrated zones of production and industrial activity where several enterprises within the same industry, or input-producing factors for a specific industry gather in a geographic location to take advantage of economies of scale. This type of behaviour, particularly among small and medium enterprises allows them to benefit from a similar kind of organisational structure as large corporations. It promotes proximity to suppliers and clients, reduces transportation costs and may also promote the formation of joint ventures and exchange of ideas. Since the creative economy is characterised by high numbers of small and medium enterprises as well as individual creators, clusters become particularly important for encouraging enterprise sustainability. Creative clusters follow similar patterns of formation to those observed in other industries, where enterprises are attracted to an area due to its suitability as a market for their products and services, or due to the existence of a technological institution or larger firm in the area. Creative clusters often occur as a natural adjunct to the existence of creative communities (the West End in London and Gauteng in South Africa).This geographical concentration facilitates collaboration between small-to-medium sized firms in investment, production and distribution of content.

Culture

Culture is defined by UNESCO as being 'the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or social group.

It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs' (Gordon & Beilby-Orrin, 2007: p.10). Such a definition is consistent with the anthropological and sociological understandings of the concept. Culture is an attribute of a group of people (a society), not of an individual. It is continuously produced and reproduced and therefore it is dynamic, not static. All societies have subcultures, with variations on the dominant culture occurring amongst different ages, genders and interest groups. As a result of migration and globalisation all (at least most) contemporary societies have multiple cultures, and thus 'society' and 'culture' are not synonymous.

Cultural Industries

WIPO (2003: p.85) defines the cultural industries as those: 'industries, which produce products that have culturally significant content that is reproduced on an industrial scale. The cultural industries are an independent economic segment within the cultural sector. Whereas cultural industries denote cultural activities that are profit-oriented, the cultural sector refers to all cultural expression and activity that may or may not be commoditized. It encompasses cultural activities that are practiced for their intrinsic social value, where such activities are linked to cultural identity and perform the important function of strengthening community bonds and creating social capital for the people and groups involved. They include the not for profit sector and institutions that are supported by the state or local public authorities (State TV, Museums, Orchestras, Ballets) or private donors (foundations). Some traditional forms of expression and policy activities aimed at preserving them may fall into this category.

It is generally agreed that this term applies to those industries that combine the creation, production and commercialization of content, which is intangible and cultural in nature. These contents are typically protected by copyright law and they can take the form of goods or services'. Such a definition is more-or-less adequate, but the issue of 'industrial scale' can be problematic. The intention here is, of course, to refer to cultural production from businesses and cultural institutions as well as self-employed artists. However, it needs to be understood that many societies and cultures can have traditional creations (art, design, music etc) that can be appropriated by others. One of the most important social issues (and potential negative impacts) of copyrighting could be its impact on traditional creativity.

Cultural Policy

Cultural Policy comprises a set of policy measures taken by public institutions (local, national or international) to support the arts, the practice of cultural activities, access to culture, the diversity of expressions, the promotion of minority languages and the development of local cultural industries and institutions.

Cultural Content
This refers to the symbolic meaning, artistic dimension and cultural values that originate from or express cultural identities.

Cultural Expressions
Those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.

Cultural Activities, Goods and Services
Refers to those activities, goods and services, which at the time they are considered to be a specific attribute or to have a use or purpose, embody or convey cultural expressions and values, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services. They are usually related to copyright.

Creative Economy
The 'creative economy' consists of the transactions in (the resulting) creative products. Each transaction may have two complementary values: the value of the intangible, intellectual property and the value of the physical carrier or platform (if any). In some industries, such as digital software, the intellectual property value is higher, while in others, such as art, the unit cost of the physical object is higher.

Creative Industries
WIPO (2003: p.85) defines the creative industries as those 'industries that include the cultural industries plus all cultural or artistic production, whether live or produced as an individual unit. The creative industries are those in which the product or service contains a substantial element of culture which enters into the process of other economic sectors and becomes a creative input in the production of non-cultural goods'. This definition, notwithstanding the 'cultural sector', also forms part of the creative industries and primarily encompasses the non-profit sector and institutions supported by the state, local public authorities or private donors and foundations (e.g. State TV, Museums, Orchestras, Ballets, Traditional Cultural Festivals etc). The 'cultural sector' as a term captures an important set of activities, which are intertwined with the creative industries but where the objective is preservation of cultural heritage, social cohesion, education etc., rather than commercial gain. So, it is unambiguous that in discussing the creative industries, issues associated with cultural industries are included. In this context it is broadly understood that the cultural and creative industries are industries that operate on the basis of copyright protection. This definition is closely linked to the definition of copyright-based industries.

Digital Economy
'The Digital Economy' represents a pervasive use of IT (hardware, software, applications and telecommunications) in all aspects of the economy, including: the internal operations of organizations (businesses, governments and non-profit-making

organizations); transactions between organizations; and transactions between individual consumers, citizens and organizations. The technologies underlying the digital economy also go far beyond the internet and personal computers. IT is embedded in a vast array of products, not just technological ones, such as cell phones, GPS Units, PDAs, MP3 players and digital cameras. IT is used in everyday products including washing machines, cars and credit cards and in industrial products such as computer-numerically controlled machine tools, lasers and robots. Indeed, in 2006, 70% of microprocessors did not go into computers, but into cars, planes, HDTVs etc., enabling their digital functions and connectivity.[72] The term is also used to describe the network of suppliers and users of digital content and technologies that enable everyday life. Digital content and technologies are ubiquitous and critical to almost every activity in our economy and society. These applications: enable businesses to be innovative and productive; help governments to provide services; and allow citizens to interact, transmit and share information and knowledge. (Canada's Digital Economy, digitaleconomy.gc.ca)

Economic Impacts

Economics impacts are those that affect participation in the creation and distribution of copyrighted goods. They involve the creation of incentives and disincentives to take part, the creation of financial value and wealth, and the distribution of that wealth.

Informal Economy

Several terms have been used throughout history to describe the 'informal economy'. They include 'the irregular economy', 'the subterranean economy', 'the underground economy', 'the black economy', 'the shadow economy', and finally the 'informal sector'. In the 1990s the International Labor Conference discussed the dilemma of the informal sector. The term informal sector was first used by the International Labor Organization 30 years ago in relation to employment among the poor, which was for the most part unrecognized and unrecorded, and not entailing the possibility of protection by the authorities. The informal sector is increasingly referred to as the informal economy to get away from the idea that informality is confined to a specific sector of economic activity and rather that it cuts across many sectors. 'Informal economy' also emphasizes the existence of a continuum from the informal to the formal extremes of the economy and thus the interdependence of the two sides. (http://rru.worldbank.org/Documents/PapersLinks/Sida.pdf) – See also ILO.

Risk Assessment

Risk assessment is a method for estimating the probability of identifiable potentially negative outcomes from an action and determining what might be done to ameliorate that risk should the action go forward.

The Experience Economy

This is an economy where people no longer buy a service, but an experience that provides memories or sensations. Experiences are events that engage individuals in a personal way. The ability to engage people in a personal way is a strong feature of culture-based creativity as it is capable of generating emotions, values and vision.

It is the experience of the goods, a paying experience, rather than the goods themselves which are a feature of consumption today in many countries. The economy is dematerialized with consumption associated with a social experience. This dematerialization is also linked to the development of the digital economy; renting, subscriptions, and streaming act as a substitute for sales, downloads and ownership. The objective becomes a consumed experience answering a desire or a quest for a sensation.

BIBLIOGRAPHY

[1] Anthony, Kathryn H., *Designing for Diversity: Gender, Race and Ethnicity in the Architectural Profession*, University of Illinois Press: Chicago, 2001

[2] Cash, D., Clark, W., Alcock, F., Dickson, N., Eckley, N., Guston, D., Jäger, J. & Mitchell, R. Knowledge systems for sustainable development, *Proceedings of the National Academy of Sciences USA*, 100(14), 8086-8091, 2003

[3] Cotter, Thomas F.,'Gutenberg's Legacy: Copyright, Censorship, and Religious Pluralism, *California Law Review*, 91:2, 2003

[4] Cross, John T., and Peter K. Yu, 'Competition Law and Copyright Misuse', *Drake Law Review*, 56, 2008, 428-462

[5] Handke, Christian & Ruth Towse, 'Economics of Copyright Collecting Societies', *International Review of Intellectual Property and Competition Law*, 38:8, 937-957, 2007

[6] Kwall, Roberta, *The Soul of Creativity: Forging a Moral Rights Law for the United States*, Stanford University Press: Stanford, 2010,

[7] Lévy-Garboua, Louis and Claude Montmarquette, 'Demand', in Ruth Towse, *A Handbook of Cultural Economics*, Edward Elgar Publishing: Cheltenham, 2011

[8] Loren, Lydia Pallas, 'Building a Reliable Semi-Commons of Creative Works: Enforcement of Creative Licenses and Limited Abandonment of Copyright', *George Mason Law Review*, 14, 2006

[9] Merges, Robert, 'A New Dynamism in the Public Domain', *University of Chicago Law Review*, 71, 2004,

[10] Piotraut, Jean Luc,' An Author's Rights-Based Copyright Law: The Fairness and Morality of French and American Law Compared', *Cardozo Arts and Entertainment*, 24: 2006

[11] Samuelson, Pamela, 'Copyright and Freedom of Expression in Historical Perspective', *Journal of Intellectual Property Law*, 10, 2002,

[12] Throsby, David, 'The Production and Consumption of the Arts: A View of Cultural Economics', *Journal of Economic Literature*, 32:1, 1994, 1-29,

[13] Towse, Ruth, Christian Handke and Paul Stepan, The Economics of Copyright Law: A Stocktake of the Literature', *Review of Economic Research and Copyright Issues*, 5:1, 2008, 1-22

[14] Vanclay, F. 2012 Guidance for the Design of Qualitative Case Study Evaluation: A short report to DG Regio, Faculty of Spatial Sciences, University of Groningen. Published on the website of the European Commission's Directorate General for Regional Policy, http://ec.europa.eu/regional_policy/impact /evaluation/performance_en.cfm

[15] Vanclay, Frank, 2003 'International Principles for Social Impact Assessment', *Impact Assessment & Project Appraisal* 21(1), 5-11.

[16] World Intellectual Property Organization, 'Understanding Copyright and Related Rights', WIPO,http://www.wipo.int/export/sites/www/freepublications/en/intproperty/909/wipo_pub_909.pdf

ENDNOTES

1 Stuart Cunningham, 'A New Economics for Creative Industries and Development', *WIPO International Conference on Intellectual Property and the Creative Industries*, http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_ind_ge_07/ wipo_ip_ind_ge_07_4.pdf, October 2007, See also Richard Wilder, 'Inventors' and Creators' Rights as Basic Human Rights: Intellectual Property', *Forum on Creativity and Inventions – A Better Future for Humanity in the 21st Century*, http://www.wipo.int/edocs/mdocs/innovation/en/wipo_ip_hel_00/wipo_ip_hel_00_15.pdf, 2000

2 Ibid

3 See *WIPO Guide on Assessing the Economic Contribution of the Copyright-Based Industries*.

4 Definition is taken from the International Association for Impact Assessment, International Headquarters. www.iaia.org.

5 IAIA, What is Impact Assessment? http://www.iaia.org/publicdocuments/special-publications/What%20is%20IA_web.pdf

6 §1502.14 Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

7 Vanclay, Frank, 2003 'International Principles for Social Impact Assessment', *Impact Assessment & Project Appraisal* 21(1), 5-11.

8 For a discussion on the use of copyright to bolster monopolistic market positions see John T. Cross and Peter K. Yu, 'Competition Law and Copyright Misuse', *Drake Law Review*, 56, 2008, 428-462

9 Ruth Towse, Christian Handke and Paul Stepan, The Economics of Copyright Law: A Stocktake of the Literature', *Review of Economic Research and Copyright Issues*, 5:1, 2008, 1-22

10 1) The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

[11] Robert Merges, 'A New Dynamism in the Public Domain', *University of Chicago Law Review*, 71, 2004, see also Lydia Pallas Loren, 'Building a Reliable Semi-Commons of Creative Works: Enforcement of Creative Licenses and Limited Abandonment of Copyright', *George Mason Law Review*, 14, 2006

[12] For a discussion of copyright, censorship and free expression see Pamela Samuelson, 'Copyright and Freedom of Expression in Historical Perspective', *Journal of Intellectual Property Law*, 10, 2002, see also Thomas F. Cotter, 'Gutenberg's Legacy: Copyright, Censorship, and Religious Pluralism', California Law Review, 91:2, 2003

[13] For a discussion on the use of copyright to bolster monopolistic market positions see John T. Cross and Peter K. Yu, 'Competition Law and Copyright Misuse', *Drake Law Review*, 56, 2008, 428-462

[14] Roberta Kwall, The Soul of Creativity : Forging a Moral Rights Law for the United States, Stanford University Press: Stanford, 2010, see also Jean Luc Piotraut, ' An Authors' Rights-Based Copyright Law: The Fairness and Morality of French and American Law Compared', *Cardozo Arts and Entertainment*, 24: 2006

[15] World Intellectual Property Organization, 'Understanding Copyright and Related Rights', *WIPO*, http://www.wipo.int/export/sites/www/freepublications/en/intproperty/909/wipo_pub_909.pdf

[16] The Berne Convention states that 'the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.'

[17] For a discussion on the incorporation of moral rights in U.S. copyright law (common law based) see Roberta Kwall, *The Soul of Creativity : Forging a Moral Rights Law for the United States*, Stanford University Press: Stanford, 2010

[18] Justin Hughes, 'American Moral Rights and Fixing the Dastar Gap', *Utah Law Review*, 3, 2007, 659-713.

[19] As regards statutory remuneration rights, they are most commonly provided in the context with exceptions and limitations, and in particular for private reproduction (be it reproduction of audiovisual media, such as music CDs or DVDs carrying films, or reprographic reproduction of texts); other examples are remuneration rights for reproduction of texts in school books or for other educational purposes. The most important examples are the resale right for art works (here, a certain percentage of the resale price on the occasion of resale of art works in auctions or by commercial galleries has to be paid to the author) and remuneration rights for public lending of books and other objects lent in public libraries and similar institutions.

[20] The individual rights regularly covered today by most national laws are, for authors, exclusive rights of reproduction, distribution by sale or otherwise by transfer of property, rental, broadcasting by wireless means, such as Hertzian waves or by satellite, and by wire, such as cable transmissions; rebroadcasting and retransmission by cable; direct public performance or public recitals (readings) by personal presentation to a public (such as in a concert or on theatre stage), the playing of music from a CD to the public in a bar, restaurant or otherwise to the public; the playing of a radio or television program to a gathered public; the showing of a movie in a cinema theatre; the transmission of music and images from a room to an adjacent room by screen and loudspeaker, and the right of making works and other subject matter available over the internet. While all these rights are granted in most national laws, right owners may further differentiate (for example between different forms of reproduction such as analogue or digital, or reproduction in form of a paperback edition or a hardcover edition) when they licence their rights.

[21] Christian Handke & Ruth Towse, 'Economics of Copyright Collecting Societies', *International Review of Intellectual Property and Competition Law*, 38:8, 937-957, 2007

[22] Silke von Lewinski, Unpublished WIPO paper on copyright

[23] See John T. Cross and Peter K. Yu, 'Competition Law and Copyright Misuse', *Drake Law Review*, 56, 2008, 428-462.

[24] John T. Cross and Peter K. Yu, 'Competition Law and Copyright Misuse', *Drake Law Review*, 56, 2008, 428-462

[25] Cash, D., Clark, W., Alcock, F., Dickson, N., Eckley, N., Guston, D., Jäger, J. & Mitchell, R. 2003 Knowledge systems for sustainable development, *Proceedings of the National Academy of Sciences USA*, 100(14), 8086-8091.

[26] Vanclay, F. 2012 *Guidance for the Design of Qualitative Case Study Evaluation: A short report to DG Regio*, Faculty of Spatial Sciences, University of Groningen. Published on the website of the European Commission's Directorate General for Regional Policy: http://ec.europa.eu/regional_policy/impact/evaluation/performance_en.cfm

[27] The *ex post* perspective (looking backwards) will look at the impact of implemented copyright policies and practices in the creative industries. The *ex ante* perspective (forward looking) will look at a proposal of change in copyright law, policy or practice.

[28] To date, thirty such studies have been completed and published and 10 more have been implemented. Thus far the contribution to GDP ranges across countries from over 10% (USA, Australia), to under 2% for Brunei, with ¾ of countries recording a contribution of between 4 and 6.5%. Contribution to employment of the copyright based industries to GDP averaged about 5.9% of total employment. See WIPO Studies on the Economic Contribution of the Copyright Industries, http://www.wipo.int/ip-development/en/creative_industry/pdf/economic_contribution_analysis_2012.pdf, 2012, See also WIPO Guide on Surveying the Economic Contribution of the Copyright Based Industries, http://www.wipo.int/freepublications/en/copyright/893/wipo_pub_893.pdf, 2003

[29] To date, thirty such studies have been completed and published and 10 more have been implemented. Thus far the contribution to GDP ranges across countries from over 10% (USA, Australia), to under 2% for Brunei, with ¾ of countries recording a contribution of between 4 and 6.5%. Contribution to employment of the copyright based industries to GDP averaged about 5.9% of total employment. See WIPO Studies on the Economic Contribution of the Copyright Industries, http://www.wipo.int/ip-development/en/creative_industry/pdf/economic_contribution_analysis_2012.pdf, 2012, See also WIPO Guide on Surveying the

Economic Contribution of the Copyright Based Industries, http://www.wipo.int/freepublications/en/copyright/893/wipo_pub_893.pdf, 2003

30 The 2010 UNCTAD Report on the Creative Economy concentrates significantly on economic indicators and looks toward cross border trade and public investment in what it terms the 'Creative Economy'. However it does point out that despite the proliferation of methodologies being developed to measure the 'creative economy' existing economic indicators require more refinement and also acknowledges the necessity of reliable cultural and social indicators that can capture intangible societal impacts that are important for the sustainability of creative industries. See UNCTAD, Creative Economy Report 2010, http://unctad.org/en/Docs/ditctab20103_en.pdf, 2010

31 UNESCO's Suite of Indicators looks at the contribution of culture to development. While development is not strictly economic in nature, a significant proportion of what is traditionally covered under development falls within this category. Also it is necessary to point out that cultural metrics for development may be wholly unrelated to impacts of copyright or the creative industries. See UNESCO Culture for Development Indicator Suite, http://www.unesco.org/new/en/culture/themes/cultural-diversity/diversity-of-cultural-expressions/programmes/culture-for-development-indicators/about-the-indicator-suite/, 2012

32 For a discussion on production and distribution channels in creative industries and their social and cultural significance see Australia Department of Communications, Information Technology and Arts, Creative Industries Cluster Study: Stage 1 Report, http://www.archive.dcita.gov.au/__data/assets/pdf_file/0015/21705/Creative_Industries_Cluster_Study_Report _Stage_1_28may.pdf, 2002 see also Cutler & Company for the Australia Department of Communications, Information Technology and Arts, Producing Digital Content, http://www.archive.dcita.gov.au/__data/assets/pdf_file/0011/18956 /Cluster_Study_Stage_2_Report.pdf, 2002

33 Home Affairs Bureau, The Hong Kong Special Administrative Region Government & Centre for Cultural Policy Research, University of Hong Kong, *A Study in Creativity Index*, 2005

34 For a discussion on social and cultural capital and their relationship to economic processes see, Robert D. Putnam, 'The Prosperous Community: Social Capital and Public Life', The American Prospect, 2000, See also Robert D. Putnam, 'Social Capital: Measurements & Consequences', *Canadian Journal of Policy Research*, 2001, http://www.oecd.org/edu/educationeconomyandsociety/1825848.pdf

35 IFACCA, "Statistical Indicators for Arts Policy", http://www.ifacca.org/media/files/statisticalindicatorsforartspolicy.pdf, 2005

36 Table modified from NHS Institute for Innovation and Improvement,

37 UNCTAD, *Creative Economy Report 2010*, UNCTAD/DITC/TAB/2010/3, United Nations, 2010

38 As a treaty concerning related rights the Rome Convention secures protection in performances of performers, phonograms of producers of phonograms and broadcasts of broadcasting organizations. WIPO is responsible, jointly with the ILO and UNESCO, for the administration of the Rome Convention. These three organisations constitute the Secretariat of the Intergovernmental Committee set up under the Convention and consisting of the representatives of 12 Contracting States.

39 Susan L. Murray *et al.*, 'Development of a Generic Risk Matrix to Manage Project Risk', *Journal of Industrial and Systems Engineering*, 5:1, 35-51, 2011

40 Cooper D.F., Grey S., Raymond G., Walker P. (2005), Project Risk Management Guidelines; John Wiley & Sons; Ltd

[41] According to Van Dijk and Sverrisson clusters enjoy economies of scale similar to that of large corporations with local institutions having an important role in facilitating relationships of cooperation and competition that help to form creative communities and spur exchange of ideas and increase production and output. Cultural clustering policies aim to facilitate these kind of relationships to foster production in the creative and copyright based industries. Meine Pieter Van Dijk & Arni Sverrisson, 'Enterprise Clusters in Developing Countries: Mechanisms of Transition and Stagnation', *Entrepreneurship and Regional Development*, 15 (2003), 183-206

[42] Andy Pratt, 'Cultural commodity chains, cultural clusters or cultural production chains?', Growth and Change, 39:1, 95-103, see also Hans Mommaas, 'Cultural Clusters and the Post Industrial City: Toward the Re-Mapping of Urban Cultural Policy', *Urban Studies*, 41:3, 2004, 507-532

[43] For a discussion on the fragmentation of global production and value chains, underlining how the knowledge basis or creativity embedded in a final product may not be owned by firms in the exporting state see Gerrefi & Memedovic. Their discussion of the success of the East Asian apparel industry shows how engaging the creative part of the apparel process added value to the industry, moving it away from solely low-cost assembly. Gary Gereffi & Olga Memedovic, 'The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries?', *United Nations Industrial Development Organization*, 2003 http://www.inti.gob.ar/cadenasdevalor/documentacion/ApparelUNIDOnew2Feb03.pdf

[44] The Cost of Digital Exclusion, March 9th, 2010 by Brian David, http://blog.broadband.gov/?entryId=236662

[45] Ann Markusen et al,' Defining the Creative Economy : Industry and Occupational Approaches', *Economic Development Quarterly* 2008; 22; 24

[46] Ibid.

[47] Ibid.

[48] World Intellectual Property Organization. *Guide on Surveying the Economic Contribution of the Copyright-Based Industries*, 2003.

[49] See Jason Potts & Stuart Cunningham, ' Four Models of the Creative Industries', *International Journal of Cultural Policy*, 14:3, 2008, 233-247, Richard G. Lipsey & Kenneth Carlaw, 'What does Total Factor Productivity Measure?', Study Paper Version 2, January 18th 2001, See also Diego Comin, 'Total Factor Productivity', New York University and NBER, 2006

[50] See generally World Bank Data Bank, https://datahelpdesk.worldbank.org/knowledgebase/articles/114948-how-do-you-calculate-total-value-added-as-a-percentage

[51] Bruce a. Seaman, 'Economic Impact of the Arts', in Ruth Towse, *A Handbook of Cultural Economics*, Edward Elgar Publishing: Cheltenham, 2011

[52] Dominique Sargo-Duvauroux, Art Prices, in Ruth Towse, *A Handbook of Cultural Economics*, Edward Elgar Publishing: Cheltenham, 2011

[53] David Throsby, The Production and Consumption of the Arts: A View of Cultural Economics', Journal of Economic Literature, 32:1, 1994, 1-29, see also Louis Lévy-Garboua and Claude Montmarquette, 'Demand', in Ruth Towse, *A Handbook of Cultural Economics*, Edward Elgar Publishing:Cheltenham, 2011

[54] See WIPO *Guide on the Economic Contribution of the Copyright-based Industries*

[55] For a comprehensive understanding of how the Ease of Doing Index is carried out, go to http://www.doingbusiness.org/

[56] The Ease of Doing Business Index or composite indicator whose variables include starting a business, dealing with construction permits, getting electricity,

registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency. Earlier versions of the Index from 2004 contained a variable for labour market flexibility, including hiring and firing of workers. ILO sponsored reviews of this component of the index have outlined the development implications of this approach to employment. It is therefore more useful to use the 2012 and 2013 index which addresses some of these concerns.

[57] For an in depth analysis of conceptual issues regarding the Ease of Doing Business Index see Janine Berg and Sandrine Cazes, 'The Doing Business Indicators: Measurement Issues and Political Implications', *International Labour Organization*, 2007, http://www.oit.org/public/english/employment/download/elm/elm07-6.pdf

[58] Abbott L. Ferris,'The Uses of Social Indicators', *Social Forces* (1988) 66:3, 601-617

[59] For a discussion on risk analysis and distributive justice see Robert Kolb, 'Risk Management and Distributive Justice', Loyola University Chicago, August 18, 2007 http://independentinvestor.info/PDF-Downloads/LAW-ETHICS-14/doc.1901-%20Kolb%202007%20Risk%20Management%20and%20Distributive%20Justice.pdf, See also Moss, David A., *When All Else Fails: Government as the Ultimate Risk Manager*, Cambridge:, Hacker, Jacob S., *The Great Risk Shift: The Assault on American Jobs, Families, Health Care, and Retirement, And How You Can Fight Back*, Oxford: Oxford University Press, 2006, Kolm, Serge-Christophe, 'Chance and Justice: Social Policies and the Harsanyi-Vickrey-Rawls Problem,' *European Economic Review*, 42, 1998, pp. 1393-1416, Sunstein, Cass R. *Free Markets and Social Justice*, Oxford: Oxford University Press, 1997 and Varian, Hal R., 'Redistributive Taxation as Social Insurance,' *Journal of Public Economics*, 14, 1980, pp. 49-68 Harvard University Press, 2002

[60] ILO

[61] The International Labor Organization methodology on the calculation of job security is available at ….

[62] The World Bank Poverty Indicators may be modified and used for the creative industries in this instance. The World Bank Poverty Indicators can be found at http://data.worldbank.org/topic/poverty

[63] International Labour Organization Indicator Definition, http://www.ilo.org/dyn/sesame/SESHELP.NoteJSI

[64] For a discussion and methodology on calculating labour market stability and security see

[65] UNESCO Universal Declaration on Cultural Diversity, 2001

[66] Leo Goldstone, 'Cultural Statistics', in Ruth Towse, *A Handbook of Cultural Economics*, 2nd revised edition, Edward Elgar Publishing: Cheltenham, 2011

[67] Kathryn. H. Anthony, *Designing for Diversity: Gender, Race and Ethnicity in the Architectural Profession*, University of Illinois Press: Chicago, 2001

[68] For example laws on freedom of expression, censorship, public interest, non-discrimination are likely to have an effect on the content, mode of transmission and availability of copyrighted content.

[69] See generally Abbas Tashakkori & Charles Teddlie, ' Major Issues and Controversies in the Use of Mixed Methods in the Social and Behavioural Sciences', in Abbas Tashakkori & Charles Teddlie, *Handbook of Mixed Methods in Social and Behavioural Research*, Sage: Thousand Oaks, California, 2003

[70] This may be a questionnaire with both closed-ended questions that elicit quantifiable responses, as well as open ended questions that provide nuanced information about a response to a closed-ended question.

[71] Christian Handke & Ruth Towse, 'Economics of Copyright Societies', *International Review of Intellectual Property and Competition Law*, 38:8, 2007

[72] Robert D. Atkinson & Andrew S. McKay, 'Digital Prosperity: Understanding the Benefits of the Information Technology Revolution', *The Information Technology & Innovation Foundation*, 2007, http://www.itif.org/files/ digital