

**EFF STATEMENT TO WIPO COMMITTEE ON DEVELOPMENT AND
INTELLECTUAL PROPERTY, SECOND SESSION**

July 7-11, 2008

Mr. Chair, thank you for the opportunity to express the views of the Electronic Frontier Foundation and its members worldwide. EFF commends Member States for the progress that has been made over the last three years. We hope that the same spirit of goodwill will guide this week's discussions on creating a work plan to implement all the 45 Development Agenda recommendations. The Development Agenda has captured the attention of many outside of Geneva because crafting balanced IP rules that serve the needs of all the world's citizens is a matter of global importance.

We wish to comment on four sets of recommendations and the proposed implementation activities contained in the Secretariat's matrix.

First, we support the call for WIPO to initiate discussions on how to facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation, and to facilitate IP-related aspects of ICT for growth and economic, social and cultural development [Recommendations 19 and 27]. It is essential that national and international copyright and patent laws provide an environment that is conducive both to technology innovation and human development. Copyright exceptions and limitations are essential for access to knowledge by students, universities and libraries. They are also needed to create innovative new information and communication technologies that promote open knowledge sharing such as robust content hosting platforms like YouTube, Internet search engines, collaborative tools such as wikis used to create the Wikipedia global encyclopedia, and mobile content delivery technologies. These technologies offer new opportunities for development and distance education. Creating the environment for innovation requires exceptions and limitations to copyright rights, a thorough understanding of the impact of overbroad technological protection measure regimes on technology innovation, and tailored limitations on liability for ICT developers and network intermediaries.

We welcome the proposed report for implementation of Recommendation 27. We suggest that WIPO convenes an Open Forum with representatives from the technology industry, educational, and ICT for Development communities to gather empirical evidence to inform that report on current IP-related obstacles to technology innovation, infrastructure growth, and use of ICTs consistent with the development goals of the UN system.

In the context of recommendation 45, EFF is concerned by two copyright enforcement proposals being promoted in various global policy arenas: technological mandates on Internet Service Providers and intermediaries to filter Internet communications for potential copyright infringing material, and proposals requiring Internet Service Providers to disconnect citizens' Internet access upon a rightholder's repeat allegation of copyright infringement. These proposals threaten both the development of the very technologies that could facilitate education, and development under Recommendation 27, as well as citizens' fundamental civil liberties and privacy rights. Creating a class of citizens who are denied access to the Internet in order to meet the needs of one group of private stakeholders, amounts to exclusion from full participation in civic and cultural life. These proposals are likely to slow technological innovation and lead to social division, and could undermine the credibility of the global intellectual property regime.

Second, on WIPO's norm-setting, we support the recommendations to safeguard Member States' national sovereignty in the area of exceptions and limitations appropriate for countries' level of development and policy priorities, and to take into account potential flexibilities in international IP

agreements [Recommendations 17, 22]. We also support the promotion of norm-setting that is protective of a robust public domain [Recommendations 16 and 20]. A rich and accessible public domain is the essential foundation for education, scientific knowledge and innovation. In addition to producing guides on identifying copyright-protected subject matter, WIPO should advise Member States on how they can protect the public domain and existing copyright exceptions and limitations against encroachment by overbroad legal protection for rightsholders' technological measures, and provide information on the various approaches being taken by Member States to facilitate use of orphaned copyrighted works.

WIPO could also provide Member States with information about the benefits for education and scientific research of Open Innovation and User Driven Innovation models. Both these new theories of innovation are being explored by WIPO stakeholders in the developed world and have the potential to radically reshape collaboration and innovation in the developing world. WIPO could undertake a study of the impact of these new innovation methods to identify the impacts of standardized, low-transaction cost licensing and a survey of the various Open and Public Access policies being considered in the US, Europe, Australia, Brazil and Canada, to assist Member States to identify how the outputs of government funded research could be managed to best promote innovation in science and education.

WIPO could also commission a study on the potential benefits of a standard research exemption to patent rights. As recognized in a recent OECD background paper, clear patent research exemptions can serve many important public policies. Scientists need to have the freedom to perform research without fear of lawsuits and the rights regarding research and patents vary significantly from country to country.

Third, on evaluation, we believe that the success of the Development Agenda depends on objective and credible evaluation of WIPO's development activities. Therefore we welcome the recommendations for strengthening WIPO's capacity to perform objective assessments of the impact of its activities. [Recommendation 33] and are heartened by Member States' affirmations that all 45 recommendations are equally important. In this context, we remain concerned that there has been little discussion of the criteria for evaluating the development orientation of WIPO's *existing* work, particularly in relation to the suite of 19 recommendations.

Finally, we support the adoption of concrete measures to ensure transparency in WIPO's technical assistance and norm-setting activities [Recommendation 5]. We note again our concern that one of the main instruments of WIPO's technical assistance program, the model copyright law, is no longer available for review on WIPO's website. As part of the commitment to transparency in recommendation 5, we expect that the WIPO model copyright law, together with the report that is being prepared, containing WIPO's interpretation of the flexibilities that exist under TRIPs, referenced in paragraph (10) of the Secretariat's matrix for Recommendation 1, will be made available on the general access section of the proposed Technical Assistance website. We hope that cost estimates are not used as a basis for impeding the creation of a transparent database of technical assistance materials. We firmly believe that access to non country-specific technical assistance documents is necessary for public evaluation of WIPO's commitment to neutral technical assistance, and will strengthen WIPO's capacity to meet the needs of citizens in all its Member States.

Thank you for your consideration.

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