

**STATEMENT OF THE ELECTRONIC FRONTIER FOUNDATION ON THE
PROPOSAL FOR WIPO TO ESTABLISH A DEVELOPMENT AGENDA
Inter-Sessional Intergovernmental Meeting, April 11-13, 2005**

Mr. Chairman and Mr. Vice-Chairman, we would like to congratulate you on your election. We also thank the WIPO secretariat, the Chair and the Member Countries for the opportunity to present my organization's views and for admitting the 17 NGOs as ad hoc observers to this important meeting.

The Electronic Frontier Foundation is an international civil society non-profit organization, with offices in the United States of America and the United Kingdom, dedicated to protecting civil liberties, freedom of expression and the public interest in the digital environment. EFF is funded primarily by its 10,000 individual members, and publishes a weekly newsletter with over 50,000 subscribers worldwide.

We wish to address how access to knowledge will be impaired by technical locks like Digital Rights Management and Technological Protection Measures. We support the thoughtful proposal of the Friends of Development. As paragraph 13 of that proposal notes: "it has become clear that in the increasingly global knowledge economy, access to knowledge and technology is indispensable for social and economic development and for the well-being of people in all countries." Technological protection measures backed by overbroad laws can impair access to knowledge and technology that is essential for development, and impede technology transfer in developing countries.

In the several years that technological protection measure regimes have been legally enforced in developed countries, they have not been effective at protecting rightsholders' intellectual property. Thus, by themselves, they offer no basis for sustainable economic development for local creators and the cultural industry in developing countries. At the same time, they have caused substantial collateral harm to consumers, scientific research, freedom of expression, competition policy and technology innovation.

Overbroad technological protection measure laws pose even greater dangers for developing countries that do not have established legal institutions and regulatory processes to reign-in their over-reaching effects. In developing countries they are likely to:

- (1) override national copyright exceptions and limitations;
- (2) impair access to knowledge, increase the cost of accessing information, and diminish the public domain, thereby expanding the knowledge gap between developed and developing countries;
- (3) chill scientific research;
- (4) restrict legitimate competition;
- (5) stifle technology innovation; and
- (6) preclude free and open source software development.

For countries that are net importers of copyrighted information goods, technological protection measure laws will result in a transfer of wealth from domestic economies to foreign rightsholders, without any guarantee of reciprocal investment in the local cultural economy.

Member countries are being asked to implement technological protection measures laws in several contexts: first, as signatories to the WIPO Copyright Treaty and Performances and Phonograms Treaty; second, to protect broadcasters', cablecasters' and webcasters' transmissions in the proposed Broadcasting Treaty in the Standing Committee on Copyright and Related Rights, and third, as part of bilateral and regional trade negotiations. Before Member Countries are pressed to adopt these *new* obligations EFF believes that countries should understand the costs to their national interests and economies of implementing these regimes.

Accordingly EFF supports the Friends of Development proposals for an independent, evidence-based Development Impact Assessment for new WIPO norm-setting activities, and the guidelines for provision of impartial and balanced technical assistance.

EFF has prepared a briefing paper for delegates that we have provided to the WIPO secretariat, which includes our analysis of these matters, and detailed recommendations for WIPO's ongoing work. I wish to highlight two of these here:

- (1) WIPO should undertake a study of the costs of implementing legally sanctioned technological protection measures for developing countries. This report should be made available with the July Development Agenda report to General Assembly members.
- (2) In providing technical assistance to developing countries on implementation of their technological protection measure obligations, WIPO should take account of existing public interest flexibilities in international instruments, and preserve policy space for both countries' existing national copyright law exceptions and limitations, and creation of new exceptions appropriate to the specific development needs of the countries to which it provides assistance.

We also strongly support initiatives to restore the balance to intellectual property systems that is overturned by technological protection measure laws, such as the proposal for mandatory minimum exceptions and limitations for the disabled, educational uses and libraries, that was put forward by the distinguished member from Chile at the November 2004 Standing Committee on Copyright and Related Rights, and a treaty addressing access to knowledge.

We believe that these proposals will strengthen the work of WIPO and enhance its institutional capacity to meet the specific needs of its developing country members.

Thank you for your consideration.