



**STATEMENT OF THE ELECTRONIC FRONTIER FOUNDATION TO THE WIPO
PERMANENT COMMITTEE ON COOPERATION FOR DEVELOPMENT RELATED
TO INTELLECTUAL PROPERTY - April 15, 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 our organization's views and for admitting the 15 NGOs as ad hoc observers to this meeting.

The Electronic Frontier Foundation is a civil society 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.

EFF submitted a briefing paper for national delegates in the first session of the Inter-Sessional Intergovernmental Meeting on the Development Agenda proposal. That paper analyzes how access to knowledge is impaired by legally sanctioned technical locks, such as technological protection measures and makes several recommendations for WIPO's future development work on technical assistance and co-operation. We wish to incorporate that briefing paper by reference.

While EFF does not believe that WIPO's development work is, or should be, limited to the provision of technical assistance, we support the review and strengthening of WIPO's capacity to provide technical assistance that is meaningful, effective, and specific to the particular development needs of the countries it assists. In particular, EFF recommends that 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 their specific development needs.

In this context, we wish to address a statement in paragraph 48 of the WIPO Secretariat's Report, document PCIPD/4/2, concerning digital rights management. As paragraph 47 of that document states, "the international copyright system has achieved a careful balance between the right of creators and authors to control the use of their works, and the public good in accessing such information. Exceptions and limitations to copyright and related rights help to maintain this balance, and are recognized in international conventions and codified in national legislation."

While we strongly endorse this statement, we believe that the assertion in following paragraph 48, that digital rights management technologies could be deployed to enable defined uses of digital content by beneficiaries of copyright exceptions, such as for visually impaired people, is both misleading and erroneous for three reasons. Hence it is not a useful basis for WIPO's technical assistance to developing countries.

First, the digital rights management technology described in paragraph 48 does not exist. Digital rights management technology cannot tell the difference between infringing and non-infringing uses. For instance, a permission-based DRM scheme cannot differentiate a copy made for commercial purposes and a non-infringing parody, and so cannot selectively enable one but not the other. Thus, it is not possible for DRM to play the role of “enabling” copyright exceptions and limitations.

Second, this statement in paragraph 48 is premised on a profound reversal of the norm, where rightsholders enforce a limited set of well-defined rights, and all other public uses of copyrighted works are lawful. Instead, this statement assumes a world where the opposite is true; rightsholders control all uses of works and access is permitted only under conditions authorized by rightsholders. This framework also does not permit access to works that have ceased to be copyrighted and are in the public domain. This would place a very heavy burden on access to knowledge, with a consequent detrimental impact on development. For instance, it would preclude many educational uses that currently do not require prior authorization.

Third, the statement in paragraph 48 does not present national delegates with a complete picture of the costs and benefits of adopting such DRM regimes. Specifically, it fails to identify that access to knowledge will be more heavily restricted when DRM is deployed together with legal prohibitions on the circumvention of such technological protection measures, and on the distribution of tools, technologies and devices that could be used to circumvent in order to exercise existing copyright law exceptions and limitations. Nor does it reflect the likely collateral harm to other sectors of countries’ economies.

Finally, in the context of existing obligations under the WIPO Copyright Treaty and Performances and Phonograms Treaty, we believe that advocacy of DRM in WIPO’s technical assistance and cooperation activities is inappropriate without a full impact assessment of the costs of introducing such new norms.

Thank you for your consideration.