

MODEL GUIDELINES TO PROTECT AGAINST UNAUTHORIZED COPIES

APEC economies are at the forefront of the global electronic commerce revolution. An estimated 100 million Asia-Pacific households will have broadband access by 2007, and the region is expected to see double digit growth in the transmission of videos, music and games over the Internet in the next five years. However, the same advances that are opening new electronic commerce opportunities – including dramatic growth in bandwidth and the spread of digital reproduction and compression technologies – are also enabling the widespread unauthorized copying and distribution of copyrighted works, performances, phonograms, broadcasts and cablecasts, robbing creative musicians, filmmakers, authors, software developers, and others of the benefits of their creative expressions.

Recognizing existing domestic legal requirements of member economies, and in line with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, the Berne Convention, the WIPO Copyright Treaty, the following model guidelines are provided to help economies develop appropriate domestic measures to reduce on-line piracy, protect against unauthorized copying in digital form, and promote a safe and secure environment for the continued growth of electronic commerce. Further, the model guidelines are indicative references that may be useful to members in improving IPR protection and enforcement regimes; however, they do not mandate changes to existing law.

At a minimum, these model guidelines are with respect to works, performances and phonograms. Individual members could choose to use them with respect to additional kinds of creative expressions, such as broadcasts and cablecasts.

MODEL GUIDELINES

1. ESTABLISH PROTECTIONS FOR THE DIGITAL AGE

<p>Model Guideline</p> <p>Empower right holders to secure their creative expressions in the digital environment by granting right holders exclusive rights to authorize or prohibit, subject to appropriate exceptions:</p> <ul style="list-style-type: none"> a) The direct or indirect reproduction of their works, performances, and phonograms in any manner or form; b) The commercial rental of the original and copies of their computer programs, works and performances embodied in phonograms to the public, as determined in the domestic law of each member economy; and c) The making available to the public through sale or transfer of ownership of the original and copies of their works, performances, and phonograms.

Effective application of this model guideline may include granting right holders exclusive rights to authorize or prohibit the following, subject to appropriate exceptions:

- *Direct or indirect reproduction of their works, performances and phonograms in any manner or form;*

- *The making available to the public of the original and copies of their works, performances and phonograms through sale or transfer of ownership;*
- *Commercial rental to the public of the original and copies of their computer programs (including video games), and works and performances fixed in phonograms as determined by the domestic law of each member economy; and*
- *The making available to the public of their works over the Internet, including by means of on-demand, interactive communication.*

2. PROVIDE EFFECTIVE ENFORCEMENT

Model Guideline

Provide in law and in fact civil, criminal, and, where applicable, administrative enforcement procedures and penalties in connection with online piracy that are available, effective against unauthorized copying in digital form, and sufficient to deter infringement in the digital environment.

Effective application of this model guideline may include:

- *Providing for adequate civil and criminal remedies, and imposing criminal penalties sufficient to address existing and deter future unauthorized copying in digital form, including for willful acts of piracy on a commercial scale, including infringements committed for commercial advantage or private financial gain;*
- *Establishing effective administrative or judicial procedures that:*
 - *Enable right holders to obtain information identifying an alleged infringer, and*
 - *Provide for injunctive authority, and authority to impound, modify or destroy devices or products involved in infringement of copyrights or neighboring rights; and*
- *Enhancing the effectiveness and deterrence of enforcement procedures by ensuring, among other things, that:*
 - *Civil remedies are in practice awarded in amounts sufficient to compensate fully the right holder for the harm caused,*
 - *Criminal penalties are in practice imposed at a level sufficient to deter future infringements,*
 - *Competent authorities investigate and prosecute acts of infringement of copyrights and neighboring rights, including infringement on the Internet, in appropriate cases and in accordance with domestic law, and*
 - *If existing remedies fail to deter piracy in practice, competent authorities take appropriate action to enhance those remedies in appropriate cases.*

3. SUPPORT CONSUMER EDUCATION

Model Guideline

Support consumer education campaigns to discourage infringement of copyrights and neighboring rights and to promote understanding of and respect for protected works, performances, and phonograms.

Effective application of this model guideline may include:

- *Supporting campaigns and programs designed to promote respect for copyrights and neighboring rights and to educate consumers and the general public on the benefits of copyright and neighboring right protection and the risks of on-line piracy, including liability and penalties;*
- *Publishing enforcement procedures, any significant administrative and judicial decisions regarding those procedures, penalties, and information on significant enforcement actions on the Internet;*
- *Fostering partnerships with consumers, Internet service providers, network managers, right holders and industry organizations to develop and implement business guidelines and codes of conduct on the use of copyrighted works, performances and phonograms.*