



**EFF STATEMENT TO WIPO COMMITTEE ON DEVELOPMENT AND
INTELLECTUAL PROPERTY, FIRST SESSION
March 3-7, 2008**

Mr. Chair, congratulations on your election.

I speak on behalf of the Electronic Frontier Foundation and its 12,000 individual members.

EFF commends Member States for their hard work over the last three years and the spirit of cooperation that has led us this far. This week's discussion of how to implement the 45 recommendations is being closely followed by a diverse community outside Geneva because crafting balanced IP rules that serve the needs of all the world's citizens is a matter of global importance.

EFF has participated in all of the Development Agenda meetings. Today we wish to comment on four sets of recommendations that impact WIPO's activities. In the interests of time, we will address all sets of proposals together.

First, we support the recommendations for WIPO to promote norm-setting that is protective of a robust public domain, and which deepens the analysis of the implications and benefits of a rich and accessible public domain [Recommendation B16]. A rich and robust public domain is both a source of creativity for future literary and artistic endeavour, and the essential foundation for education, scientific knowledge and innovation. We also support recommendations for norm-setting to safeguard Member States' national sovereignty in the area of exceptions and limitations appropriate for countries' level of development and public policy priorities, and take into account potential flexibilities in international IP agreements [Recommendations B20, B17, B22].

WIPO can play a key role here by:

- producing guides for 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;
- providing information about mechanisms to make public domain works readily identifiable, and
- by conducting a survey of the different types of approaches taken by Member States to facilitate access to, and effective use of orphaned copyrighted works.

In addition, WIPO could provide Member States with information about the benefits for innovation, education and scientific research of promoting Open and Public Access policies, such as that adopted in January 2008 by the U.S. National Institutes of Health which requires publicly funded scientific research to be deposited in the online PubMed Central public repository, to promote access to, and encourage building upon existing research. WIPO could undertake a study of the various Public Access policies being considered in the US, Europe, Australia and Canada, to assist Member States to identify how they can best use public investment in scientific research to promote innovation.

Second, 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 B19 and B27]. Access to knowledge requires access to new innovative ICTs that promote open knowledge sharing such as robust content hosting platforms, Internet search engines, collaborative tools such as wikis used to create the online global encyclopedia Wikipedia and mobile content delivery devices. It is essential that national and international copyright laws provide an environment that is conducive to technology innovation and human development. This requires mandatory exceptions and limitations to copyright rights, analysis of the impact of overbroad TPM regimes on technology innovation, and tailored limitations on liability for ICT developers and network intermediaries. This is crucial both for students, universities and libraries, which must rely on the Internet and ICTs to make effective use of national copyright law exceptions and for the creation of innovative technologies that offer new opportunities for distance education, capacity building and development.

We recommend that WIPO convenes an Open Forum with representatives from the technology industry, educational, and ICT for Development communities to analyze current IP-related obstacles to technology innovation, infrastructure growth and use of ICTs consistent with the development goals of the UN system and bridging the development divide [Recommendations B22 and C24].

Third, we welcome the recommendations for use of evidence-based studies for norm-setting and policy development [Recommendation D35] and strengthening WIPO's capacity to perform objective assessments of the impact of its activities. [Recommendations D38, D33]. Given the controversy surrounding legally-enforced TPMs for broadcasters in the recent discussions in the SCCR, we believe that all parties would benefit from an independent assessment of the economic and social costs of implementing such new obligations.

Finally we support the adoption of concrete measures to ensure transparency in WIPO's technical assistance and norm-setting activities [Recommendation A5]. We are aware that WIPO's technical assistance program utilizes a model copyright law that currently has a number of deficiencies, particularly in relation to technological protection measures. The WIPO model copyright law is no longer available for review on WIPO's website. As part of the commitment to transparency embodied in recommendation A5, we expect that the WIPO model copyright law, and working documents containing interpretations of the flexibilities that exist under TRIPs, will be made available on the general access section of the Technical Assistance website described in the Secretariat's matrix. We firmly believe that allowing public evaluation of non country-specific technical assistance documents will strengthen WIPO's capacity to meet the needs of all its Member States, and lead to creation of balanced intellectual property laws that facilitate development for all the world's citizens.

Thank you for your consideration.

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