

**STATEMENT OF THE ELECTRONIC FRONTIER FOUNDATION ON THE
PROPOSAL FOR WIPO TO ESTABLISH A DEVELOPMENT AGENDA
Third Inter-Sessional Intergovernmental Meeting, July 20-22, 2005**

Mr. Chairman, thank you for the opportunity to present my organization's views to this important meeting.

The Electronic Frontier Foundation is an international civil society non-profit organization, with members worldwide, dedicated to protecting civil liberties, freedom of expression and the public interest in the digital environment.

EFF believes that the issues being discussed at these meetings are crucial to the future of IP as a tool for fostering economic and social development in developing nations.

The 1974 Agreement with the United Nations requires WIPO to facilitate the transfer of technology to developing countries to accelerate social, economic and cultural development. This broader perspective should inform WIPO's norm-setting activity and delivery of technical assistance to developing countries.

EFF supports the thoughtful proposal of the Group of Friends of Development. In particular, we support the proposals for:

- independent, evidence-based Development Impact Assessments for existing and new WIPO norm-setting activities;
- the creation of an independent evaluation and research office that would undertake such assessments and evaluate the effectiveness of WIPO's work and report directly to the General Assembly; and
- the adoption of guidelines for provision of impartial, balanced and individualized technical assistance.

WIPO's technical assistance to developing countries should not simply foster the creation of intellectual property laws as an end in themselves. Instead, this assistance should:

- (a) Reflect the traditional balance between the public interest and rightsholders' interests in IPR systems; and
- (b) Recognize the sovereign right of Member States to implement IP regimes that accord with their national domestic priorities and level of economic development; and
- (c) take account of existing public interest flexibilities in international instruments, and preserve policy space for countries' existing national copyright law exceptions and limitations. Technical assistance should include the creation of new exceptions appropriate to the specific development needs of each Member State.

In practice, overbroad legal protection for TPMs overrides exceptions and limitations in national law. It is especially important that WIPO's technical assistance helps Member States to preserve their existing exceptions and limitations in the context of TPM protection.

Countries can benefit economically by implementing WIPO treaties that provide economic incentives for creativity and investment. Just as important, though, is the careful calibration of IP laws so that they benefit all members of society. EFF strongly supports the proposal for a treaty to protect Access to Knowledge. Access to Knowledge is essential for development, as is the proposal for exceptions for education, libraries and archives and the disabled, put forward by the honorable delegate from Chile at the last meeting of the Standing Committee on Copyright and Related Rights.

EFF also supports the proposals for increased NGO participation and transparency about WIPO's role in creation of new norms. Consultation and discussion with a wide range of stakeholders, including NGOs with particular expertise on relevant issues, is the most effective and appropriate way to create new intellectual property norms that serve the interests of all members of society and all Member States.

We join in the concerns raised by various Member States about the recent trend to hold limited participation regional meetings on the creation of new treaties, such as those recently held on the proposed Broadcasting Treaty in place of the regular summer meeting of the Standing Committee on Copyright and Related Rights at WIPO's Geneva premises that is open to all accredited NGOs.

Finally, as Member States consider this meeting's report to the WIPO General Assembly, EFF respectfully recommends the creation of appropriate mechanisms to permit ongoing substantive discussions of the proposals identified by the Chair at the last meeting. Given the cross-cutting nature of the proposals, at a minimum this requires that discussions take place within a plenary level committee that is securely funded for the duration of the work program, and is unambiguously empowered to consider and implement the full range of proposals under discussion. In light of the significant concerns expressed about the mandate and future of the Permanent Committee for Co-operation for Development Related to Intellectual Property, EFF believes that it is not appropriate to transfer these important discussions to that forum.

We believe that these proposals will strengthen WIPO's institutional capacity to meet the needs of its developing country members.

Thank you for your consideration.

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