

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

Mr. Chairman and WIPO Member States, 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 offices in the United States of America, the United Kingdom and Canada, dedicated to protecting civil liberties, freedom of expression and the public interest in the digital environment.

EFF welcomes the broad-ranging discussion of the role of WIPO that has taken place over the past three days. EFF supports the thoughtful proposal of the Group of Friends of Development and, in particular, the proposals for an independent, evidence-based Development Impact Assessment for new WIPO norm-setting activities, and the adoption of guidelines for provision of impartial and balanced technical assistance.

EFF would like to address how overbroad legal protection for Digital Rights Management and Technological Protection Measures restricts access to knowledge. EFF has previously provided our analysis of these issues to the WIPO Secretariat in a detailed paper at the April meeting, and would be pleased to provide copies of that paper to interested Member States.

Today, we wish to highlight how overbroad legal protection for technological measures illustrates the need for independent, evidence-based impact assessments for all new WIPO norm-setting activity. We also wish to emphasize the importance of adopting guidelines for provision of technical assistance to WIPO Member States.

Technological protection measure regimes have now been legally enforced in developed countries for several years. To date, they have not been effective at keeping copyrighted works from being circulated online without permission. However, they have caused substantial collateral harm to the public interest, to scientific research, to freedom of expression, to competition and to technological innovation.

Overbroad technological protection measure laws pose even greater dangers for developing countries that do not have established legal institutions, regulatory processes, or competition policy rules 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; and
- (3) stifle technological innovation and restrict legitimate competition.

Member countries are being asked to implement *new* 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 possibly even 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 asked to adopt these *new* obligations, EFF believes that all parties need greater understanding of the economic and public interest costs of doing so. This would best be done through an impact assessment undertaken by an independent body such as the proposed WERO outlined in the Friends of Development Proposal IIM/1/4.

To be effective, the assessment should be both forward- and backward-looking. It should describe the impact on various sectors of the economy in countries that have adopted such legal regimes, and highlight the differential impact of counter-balancing measures (such as those contemplated by Article 6(4) of the E.U. Directive on Copyright Harmonization). The impact assessment should also consider the likely future impact for technology transfer and Member Countries' national laws of new areas of WIPO norm-setting, such as adoption of technological measures on broadcasters' and webcasters' transmissions in the proposed Broadcasting Treaty.

Second, EFF supports the Friends of Development proposal for the adoption of guidelines for the provision of impartial, balanced and individualized technical assistance to Member States. EFF respectfully recommends that in providing technical assistance to developing countries WIPO should take account of existing public interest flexibilities in international instruments, and preserve policy space for countries' existing national copyright law exceptions and limitations, and creation of *new* exceptions appropriate to specific national development needs. This should go beyond provision of model laws based on other countries' technological protection measures policies. Since overbroad legal protection for technological measures may well override existing national copyright law exceptions and limitations, WIPO should take special care to advise countries on means to preserve their existing exceptions and limitations when providing technical assistance on implementation obligations. EFF also supports the proposal for independent evaluation of the usefulness of WIPO technical assistance at meeting Member States' particular social and economic needs and public policy objectives.

Finally, EFF welcomes the support shown by Member States for an ongoing discussion of the development dimension of WIPO's work. We support continuing discussion of the cross-cutting Friends of Development proposals in further sessions of the appropriately-convened inter-sessional meetings of the General Assembly.

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

Thank you for your consideration.

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