

MAY 9, 2007

**STATEMENT CONCERNING THE WIPO BROADCAST TREATY PROVIDED BY CERTAIN INFORMATION TECHNOLOGY, CONSUMER ELECTRONICS AND TELECOMMUNICATIONS INDUSTRY REPRESENTATIVES, PUBLIC INTEREST ORGANIZATIONS, AND CREATIVE COMMUNITY REPRESENTATIVES**

The undersigned represent a broad and diverse group, united in common concern that the WIPO Treaty on the Protection of Broadcasts and Broadcasting Organizations could harm important economic and public policy interests. Members of this group submitted a statement in connection with a forum held at the USPTO on September 5, 2006, and the issues identified in that earlier statement largely remain relevant. This Statement dated May 9, 2007 offers preliminary comments regarding the Chair's "Non-paper on the WIPO Treaty on the Protection of Broadcasting Organizations" issued by WIPO on May 1, 2007.

**The Non-paper should be opposed in its current form.** We ask the U.S. WIPO delegation to remain committed to a narrow, signal theft-oriented vision for the treaty, and to oppose the Non-paper treaty draft in its current form. While the Non-paper shows some progress in the direction of a more acceptable treaty text, it remains fundamentally flawed, as we explain below.

In order to support the Non-paper, we believe that extensive improvements and changes would be needed. We are aware from the contributions of other government delegations that the approach taken in the Non-paper is likely to be unacceptable to certain countries. At this point, we are not convinced that it is possible to achieve unified and broadly accepted text.

**Rights-based approach is problematic.** We continue to believe that an approach to signal piracy that focuses on *infringement of an intellectual property right* is deeply problematic. A better approach is to focus on *prohibiting particular actions, done for particular purposes, by identifiable actors* (i.e., the "theft" model). The new Non-paper text reduces the number of exclusive IP rights it proposes to create, but it still expressly creates a rights-based regime (with exclusive rights of infinite duration, evidently). *The Non-paper does not embody the "signal theft" model called for by our group and by other U.S. stakeholders.* Further, we believe that the rights-based approach of the treaty draft is not consistent with the WIPO General Assembly's mandate for a "signal-based approach" to the treaty nor with the U.S. delegation's prior efforts to limit the scope of the treaty to signal protection.

The rights-based approach creates the specter of direct and secondary infringement liability risks for telecommunications intermediaries, network service providers, device manufacturers and end users of broadcast and cablecast content. The Non-paper, despite its assurances to the contrary in its explanatory text, simply fails to adequately address these concerns. These liability risks could have a profound, detrimental impact on technological innovation and on public access to information.

Additionally, we believe that the rights-based approach is inconsistent with U.S. law. U.S. intellectual property law, pursuant to the Constitution, is premised on the notion that exclusive IP rights are granted in order to promote and reward creativity and scientific advancement. We do

not believe that the intellectual property regime is the right framework for addressing commercial issues that fall outside the scope of this Constitutional mandate.

**Device regulation unacceptable.** The Non-paper's call for global legal rules that would regulate the 'making available' of 'devices capable of decrypting an encrypted broadcast' would presumably require wholesale regulation of general purpose computers and other devices, and have significant harmful consequences for the technology industry generally. Moreover, many in our group have serious concerns that the technological protection measure and rights management rules set forth in the Non-paper will have the practical impact of stifling technical innovation and limiting otherwise lawful, beneficial uses of broadcast and cablecast content by the public.

**Clarification of how the Non-paper's approach could be embodied in U.S. law.** In the event that the delegation believes the new intellectual property rights granted under the Non-paper are consistent with existing U.S. law, we request that such belief be accompanied by a detailed explanation of which provisions are already covered by U.S. law and what new changes must be enacted to U.S. law. We believe that it would advance the understanding of all stakeholders, and facilitate a more predictable legal environment for affected industry, to see proposed amendments to Title 17 and/or Title 47 (or other relevant sections) of the U.S. Code that would illustrate how the provisions of the Non-paper would be implemented.

We greatly appreciate the consultation efforts of the US Delegation to WIPO and remain committed to working closely throughout this process. The issues identified in this Statement do not represent a comprehensive list of the concerns of all signers. Individual group members will also independently raise other issues of serious concern. We look forward to discussion of the issues identified in this Statement, and to other concerns and perspectives that may be raised during the public consultation.

**SIGNED:**

AMD	IP Justice
American Association of Law Libraries	Intel Corporation
American Library Association	International Music Managers Forum
Association of Research Libraries	Internet Society
AT&T	Knowledge Ecology International
Broadband Service Providers Association	Media Access Project
Center for Democracy & Technology	Medical Library Association
Computer and Communications Industry Association	Panasonic Corporation of North America
Consumer Electronics Association	Public Knowledge
Creative Commons	Special Libraries Association
CTIA - The Wireless Association	Tivo Inc.
Dell Inc.	Verizon Communications
Electronic Frontier Foundation	Union for the Public Domain
Free Press	U.S. Music Managers Forum
Google Inc.	US Public Interest Research Group
Hewlett Packard Company	USTelecom
Home Recording Rights Coalition	Yale Information Society Project