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## IFPI comments on the draft WGIG issue paper on intellectual property rights

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### INTRODUCTION

The IFPI represents independent and major producers of sound recordings. We have closely followed the discussions held in the framework of the first phase of the WSIS and are extremely concerned by the draft "issue paper" on intellectual property rights (IPR), which was recently posted on the WGIG website. We welcome the consultation process launched by the WGIG and strongly hope that it will allow for our submission to be taken into consideration. At this stage, our comments only relate to the issue paper mentioned above, and only raise our most important substantive concerns.

We associate ourselves with the comments of other intellectual property rights owner groups in expressing the following major concerns about this issue paper:

### MAJOR ISSUES

**As a general point, we do not believe that the issue paper provides an accurate picture of the current situation and strongly regret its apparent anti-copyright bias** (including a disproportionate focus on criticisms of the IPR system and an inaccurate implication that diverse voices and the public interest have not been taken into account in the development of that system). We also regret that the issue paper does not refer to the international IPR framework developed and agreed in the context of the World Intellectual Property Organization (WIPO), including the two 1996 Internet Treaties and makes no attempt to inventory its positive effects on cultural and economic development. We recall that at prepcom 1 for phase 2 held in Tunisia, Governments agreed that "the agreements reached in the Geneva phase should not be reopened." Therefore, the issue of IPR should be deemed resolved and the existing expert body within the UN, WIPO, is the appropriate body to engage in further debates.

- **The issue paper fails to correctly describe the purpose and philosophy of IPR.** It states that "the term intellectual property describes the set of different regulatory concepts that control the production and usage of intellectual objects". We do not agree with this depiction. Content and creativity are key components of the development of an information society and the overriding purpose of IPR is to protect creators and thereby stimulate creativity and the development and dissemination of such creativity as fixed in content. IPR protection is intended to have a positive impact on cultural and economic development across the board, including in developing countries and those where IP industries do not today represent a significant part of the GDP. It is not intended to control or limit the production of works. On the contrary, it constitutes an incentive to the production of new works.
- **The issue paper fails to adequately distinguish among different types of IPR.** The scope and impact of IPR, including as it relates to access, to management and to Internet enforcement, vary greatly depending on the type of IPR involved e.g., patents as opposed to copyright. The paper does not recognize or acknowledge these differences.

- **The issue paper argues that the existing framework could limit access to, and sharing of, knowledge. This statement does not reflect reality.** At no point in history have there been as many possibilities to access and share knowledge and has so much information been available to the public. Besides, in order to resolve a common misunderstanding, it is certainly worth recalling here that the protection offered by copyright does not cover ideas, facts or knowledge, only their specific expression. Moreover, the copyright system itself provides incentives to disseminate knowledge, and the interest of the copyright industries lies in making works widely available to the largest audience possible. If obstacles to knowledge remain in the developing world, these are mostly of an economic, financial and technical nature. Clearly, they do not relate to current IPR rules.
- **The issue paper claims that “DRMs have until now been mostly unsuccessful or contested by consumers”. We are very concerned by this statement and consider that it reflects an unsettling degree of ignorance about the essential need for technological measures to allow for the development of new formats and new methods of delivery.** Indeed, the development and use of technological measures is essential for the development of legal services and a broader range of offerings of content to consumers on a variety of terms and conditions. These technological measures will help rightsholders to manage their works in a flexible and secure manner, and will provide users with more choice. DRMs are fully subject to applicable data protection norms and legal safeguards. DRMs do not pose a threat to basic rights. To date, consumers have reacted very positively to formats and devices that offer attractive new options for enjoying content that are made possible by DRM technology. (e.g., DVDs, iPod).
- **The draft suggests that levies or “catch-all tax’ could be intended to compensate piracy. This approach is not acceptable as it would amount to legitimizing otherwise infringing activities.** In other words, copyright owners would see their works expropriated and lose the benefit of their exclusive rights. Exclusive rights are the essence of copyright and have been guaranteed to creators throughout the history of copyright under national legislation as well as international treaties. Moreover, any “catch-all tax” will inevitably entail increased costs and administrative burdens to the detriment of creators and the public.
- **The draft is misleading in its description of a number of “private consortiums” which define technical standards and ignores the important work going on in international standards bodies such as MPEG and DVB.**
- **It is finally very regrettable that the draft which is intended to present the current situation for IPRs in the digital environment does not refer properly to digital piracy and its negative impact on the content sector, consumers and society as a whole.** We remain at your disposal for any further information on our views.



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