



International Video Federation

IVF SUBMISSION ON THE DRAFT WGIG ISSUE PAPER
ON INTELLECTUAL PROPERTY RIGHTS

The International Video Federation (IVF) provides national video associations with international representation of their members' interests as publishers and distributors of audiovisual content on videocassettes and Digital Versatile Discs (DVDs). 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 trust 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.

The draft issue paper does not provide an accurate picture of the current situation and we 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 legal framework developed and agreed in the context of the World Intellectual Property Organization (WIPO), including the two 1996 Internet Treaties. The draft paper makes no attempt to inventory the positive effects of the IPR legal framework on cultural and economic development. We recall that at the Prepcom1 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.

1. The draft 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 strongly disagree 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 has a positive impact on cultural and economic development across the board, including in developing countries and those countries where IP industries do not today represent a significant part of the GDP. IPR protection does not control or limit the production of works, nor is it intended to do so. On the contrary, it constitutes an incentive to the creation of new works.

2.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.

3.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. Never 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-based sectors 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.

4.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 on the Internet and a broader range of offerings of content to consumers on a variety of terms and conditions. These technological measures will help rightsholders 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).

5.The draft suggests that levies or “catch-all tax” could 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.

6. 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, the creative community, consumers and society as a whole.

We remain at your disposal for any further information on our views.

INTERNATIONAL VIDEO FEDERATION
Avenue des Arts 38
1040 Brussels
Belgium
www.ivf-video.org