



26 May 2005

Comments of the Government of Israel on WGIG document "Cluster Three Assessment Report", April 8, 2005.

The Government of Israel would like to stress two points with regard to this issue, and accordingly suggest a practical approach to the problems raised.

General comments

Copyright law is not only "creator" vs. "user"

The document describes copyright's basic challenge, as the need to balance the rights of creators and users, in order to further public goals. We believe that the challenge is more complex and involves another important group, that of the industries based on copyright: film, music, publishing, software and others.

In addition, many times creators and the copyright industries are both producers of copyright protected material, and users, in the sense that they use previously produced material as building blocks for new works.

These challenges with regard to copyright law are not specific to the Internet environment, but, as has been extensively written in the academic literature, the Internet makes these interests more difficult to balance. Furthermore, the balance needs to be continually revisited, alongside technological, economic and cultural developments.

IP rights can affect the internet's infrastructure

Another issue mentioned in the paper, is that intellectual property rights can affect not only content, but the internet's infrastructure, both through the proliferation of proprietary software, and through private party's rights in various relevant standards.

Private parties' excessive "market power" is usually dealt with through competition law, which is applied to curb market power. The practical problem may be that competition law, is applied in a regional or territorial context, and therefore may be problematic to enforce globally. With regard to standards, another solution, which is mentioned in the paper, are voluntary rules within standard setting bodies, which prohibits setting standards which are "proprietary". Voluntary rules of standard setting bodies can be appropriate, but may not be strong enough.

Therefore, there may be a need to modify, in the proper cases, substantial intellectual property law in these contexts.