



MPA Comments on the draft working paper
“Cluster Three Assessment Report” (8 April 2005)

The MPA represents international producers and distributors of audiovisual works. We attended the last “Working Group on Internet Governance” (WGIG) consultation meeting last February and sent comments on the draft “issue paper” on intellectual property rights (IPRs). We remain extremely concerned by the approach to IPRs seemingly adopted by the WGIG as this latest draft “working paper” reflects only very partially, if at all, any improvement compared to the “issue paper” posted in February. We regret that most of the comments we provided in February were not taken into consideration, although these comments were shared by a large pool of organizations. In our view, the draft working paper still includes disproportionately negative comments of the current IPR system reflecting an anti-copyright bias, and fails to reflect the current situation accurately. In particular:

- We note that the draft working paper still states that “*The term Intellectual Property Rights (IPR) describes the set of different regulatory concepts that control the production and usage of intellectual objects*”. We do not agree with this definition. As explained in our previous submission, the purpose, philosophy and challenge of copyright is to promote creativity and to enable it to become an activity with economic and cultural benefits for everybody involved in the creative process. Copyright is therefore not intended to control or limit the production or distribution of works. On the contrary, it is the basis for the creation, production and distribution of works. Copyright is intended to have a positive impact on cultural and economic development and to encourage the creation and dissemination of new works.
- The draft fails to sufficiently recognize or address the contribution and undisputed mandate of WIPO in the context of IPRs. We would like to stress again that WIPO, the specialized agency within the UN, is the appropriate body to engage in further debates on IPRs. We strongly disagree with the criticisms pertaining to the outreach, the decision-making process or even the mandate of this organization. WIPO is responsible on IPRs because it has the necessary expertise to deal with the issue. It also has the necessary outreach capacity. It involves many non-governmental actors. It has been working in particular to assist developing countries on development issues related to IPRs. Furthermore, although the draft working paper constantly refers to IPRs in the digital environment, it fails to underline the essential character and positive effects of the 1996 WIPO Treaties which crucially contribute to the creation of an appropriate international framework for the protection and distribution of works in the digital environment.

- The draft states that DRMs “have not been entirely successful”. This statement fails to recognize that many of these technologies are already in use, and widely accepted, by citizens, for example in the form of access controls on satellite TV services or for the protection and distribution of digital content (DVDs, portable music players). DRMs open the gate to new modes of delivery of copyright works to consumers and will play a central role in the success of new business models in the digital environment. It should be recalled that the WIPO Treaties and many national legislations (see notably Articles 6-7 of the European Copyright Directive) provide legal protection for DRMs and seek to promote their uptake. The purpose of these provisions is to protect and promote the use of these technologies which are essential for the lawful distribution of content, in particular over the Internet.

- The draft reiterates that levies could be intended to compensate piracy. As mentioned in our previous submission, the MPA vigorously questions that assertion because such an approach would amount to legitimizing infringing activities. Copyright holders would see their works expropriated and lose the benefit of their exclusive rights (these exclusive rights are the essence of copyright). It should be added that such a system would also inevitably entail increased costs and administrative burdens to the detriment of creators and the public.

It is very regrettable that this second draft document which constantly refers to IPRs in the digital environment includes only very few references to digital piracy and makes no attempt to assess or even acknowledge its negative impact on the content sector, on the development of new works and therefore on consumers, governments and society as a whole. We remain at your disposal if you need any further information on our views.