

# Draft WGIG Issue Paper on Intellectual Property Rights

## Executive Summary

This paper is the executive summary of a 'draft working paper' reflecting the preliminary findings of the drafting team. It has been subject to review by all WGIG members, but it does not necessarily present a consensus position nor does it contain agreed language accepted by every member. The purpose of the draft is to provide a basis for the ongoing work of the group. It is therefore not to be seen as a chapter of the final WGIG report, but rather as raw material that will be used when drafting the report. Draft working papers have been published on the WGIG website for public comment, so they will evolve, taking into account input from governments and stakeholders.

### Issue

- The term **intellectual property** describes the set of different regulatory concepts that control the production and usage of intellectual objects. The three main concepts are **patents**, **copyright** and **trademarks**, but other special regimes exist for specific types of objects – for example, geographical identifiers, or industrial designs.
- In the context of WGIG a question that must be addressed is to what extent IPR issues are changed in form and substance as a consequence of the Internet and to what extent do the issues remain ones of managing IPR in a digital world.
- The Internet allows the relatively low cost duplication and relatively easier worldwide distribution of intellectual objects; an attribute of the Internet that is in part allowing the rapid and effective diffusion of IP across many countries and users – and, for example, makes much of the Internet function, facilitates the development of content for e-commerce, and opens new opportunities for cultural and economic development. The ease, however, of duplication and distribution also makes IP highly vulnerable on the Internet.
- The key challenge is creating a balance between creating the incentives to innovate and not restricting the use and dissemination of information by individuals and groups across the Internet.
- For some, the current international framework for intellectual rights management is targeted towards an extensive and ongoing protection of monopoly rights granted to producers, and stricter pressure and enforcement on non-complying entities, be they countries or individuals. The main objective of regulation thus appears to grant producers long term and full control over the use and redistribution of intellectual objects. Some argue that there is an imbalance in the regime and there is a need to increase the focus on measures to make access to knowledge and culture easier, especially for developing countries, individual citizens, and non-commercial uses.
- The nature of the Internet makes it extremely hard to enforce existing IPR legislation without the cooperation of the users. Technical attempts to attach copy-protection measures or the use of Digital Rights Management (DRM) techniques to intellectual objects have until now been mostly unsuccessful or contested by consumers, since they prevent all kinds of duplication of the content, including those granted to users by law to

protect public and personal access. The enforcement of this legislation through police actions would possibly require the introduction of such a high degree of personal surveillance that some fundamental basic rights such as privacy and freedom could be endangered. There is no agreement yet on the proper balance between these human rights and the need to protect the interests of intellectual industries.

- The infringement of intellectual property rights is an issue which predates the Internet. Addressing this issue of wide-scale infringement of rights has, in some countries, led to the introduction of levies on 'blank' media and recording devices as a 'catch-all tax'. The proceeds from these levies are redistributed through the collecting societies to rights holders. With the widespread diffusion and use of the Internet there is widespread recognition of the growing significance of the infringement of IPRs but there, as yet, no broad consensus as to the effectiveness of levies or other remedies.

### **SWOT Analysis**

- The main *strengths* of the present regulatory system are the incentive for the creation and development of new industries based on intellectual production. These strengths ensure a reliable environment for investment in such enterprises, and creating wealth and job places in those countries where intellectual industries represent a significant part of the GDP.
- The *weaknesses* of the existing framework reside in the limitations imposed to access and sharing of knowledge. Another weakness of the present regulatory system is its difficult enforceability and although new technical solutions are being announced it is not clear that these will ensure a satisfactory balance between the rights of the suppliers and the users.

### **Actors**

- The private sector is well represented in the policy making process both internationally and nationally. Key industry bodies include the International Federation of Phonographic Industries (IFPI) and the Recording Industry Association of America (RIAA) for music, the Motion Picture Association (MPA) and the Motion Picture Association of America (MPAA) for movies, the Business Software Alliance (BSA) for software.
- Civil society has traditionally been less involved in the making of policy in this field. However, in the last few years a number of civil society organizations have become more vocal; these include the Electronic Frontier Foundation (EFF), the Foundation for a Free Information Infrastructure (FFII), IP Justice, European Digital Rights (EDRI). Also, specific organizations were born to promote alternative models for content licensing, such as the Free Software Foundation (FSF) and Free Software Foundation Europe (FSFE) for free software and Creative Commons for free writings, music and videos.
- There are several international and inter-governmental organization involved in the policy debate. The two primary agencies are the World Intellectual Property Organization (WIPO), and the World Trade Organization (WTO). Smaller intergovernmental organizations, established by treaties, deal with specific types of intellectual inventions, such as the International Union for the Protection of New Varieties of Plants (UPOV), that deals with intellectual rights over the creation of new plant varieties. Other international organizations, such as the World Health Organization (WHO) and United

Nations Educational, Scientific and Cultural Organization (UNESCO) have specific interests in part of the IPR debate.

- Another international organization, the Internet Corporation for Assigned Names and Numbers (ICANN), deals with intellectual property rights over the Internet, especially in defining rules for domain name dispute resolution (originally devised at WIPO, then approved and administered by ICANN) and for the access to Whois databases providing access to the names and addresses of domain name registrants as may be required, inter alia, by third parties for rights enforcement.
- Whenever a new technology for the embodiment and distribution of intellectual objects arises, new private consortiums of industry leaders are formed; these consortiums define the technical standards for the new technology, and the policies for protection of intellectual rights that are often implied by these standards. These new private forums include the DVD Forum, DVD Copy Control Association (DVD-CCA) and the Secure Digital Music Initiative (SDMI) for media, and the Trusted Computing Group (TCG) for hardware and software. These forums usually do not involve governments or civil society.