

IP Justice Statement
WIPO IIM on the Development Agenda
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I would like to thank the Chair for this opportunity to comment at these important meetings. I am the Executive Director of IP Justice, an international civil liberties organization that promotes balanced intellectual property law. IP Justice has coordinated a group statement that has been endorsed by over 100 public-interest NGOs from all four corners of the world to express our complete and united support for the Friends of Development proposal. The vast majority of these groups could not be here today to express their views, so we carry their message with this statement.

- **First**, we fully support amending the WIPO Convention to include explicit language incorporating a Development Dimension. As a UN Specialized Agency, WIPO has an obligation to promote the application of intellectual property rights in a manner that promotes economic, social and cultural development in both developed and developing countries.
- **Second**, we fully support consideration of a Treaty on Access to Knowledge and Technology. A specification of user freedoms is crucial for establishing the appropriate balance between authors' rights and the public interest that is critical for enabling development in disadvantaged countries and consumer rights everywhere. Particularly because rightsholders often curtail user rights by applying Technological Protection Measures (TPMs) to copyrighted works, a clear demarcation of user rights is necessary to maintain the traditional balance of rights.

- **In addition**, we endorse the following reforms to WIPO norms and practices:
 - A. Weigh the costs and benefits of copyright, patent and trademark rights. WIPO should adopt norm-setting principles and guidelines that balance public access and competition against monopoly rights, with a unique evaluation for each country.
 - B. Copyright, patent and trademark rights are not ends in themselves. WIPO should carry out independent, evidence-based "development impact assessments" in developing countries to ensure that application of these rights advances public goals by promoting innovation, creativity and technical development.
 - C. A "one size fits all" (XL) approach to copyright, patent and trademark rights does not foster development in all countries. Expansive application of these rights favors wealthy developed countries and maintains the current imbalance in access to knowledge and information. WIPO should recognize the right of all countries to design development strategies according to their own national values.
 - D. Copyright, patent and trademark laws must protect flexibilities and limitations. International agreements and developed countries' own laws provide for flexibilities and limitations such as competition policy, compulsory licenses for medicine, and fair use. These exceptions demonstrate that limiting monopoly rights often achieves important public benefits. WIPO technical assistance should promote the full range of flexibilities provided by TRIPS.
 - E. WIPO should be more transparent and Member-driven with ongoing public interest NGO participation. WIPO should embrace wider participation of public interest NGOs and hold public hearings before beginning norm-setting activities. This would help support developing countries that make up the majority of WIPO

constituents. Representatives from public-interest groups should be included in WIPO technical assistance and implementation programs, which have historically been dominated by rightsholder interests at WIPO.

Furthermore, particular policy choices that WIPO could consider that would help to achieve the public-interest goals of the Development Agenda include:

1. Reverse the current trend of outlawing the circumvention of technological measures that restrict copyrighted works, chill freedom of expression, eliminate user rights, and prevent works from passing into the public domain.
2. Reduce the term of copyright protection, or at the very least reverse the trend of continuously extending the term of copyright such that works can actually reach the public domain where all may benefit from them.
3. Reverse the trend of criminalizing intellectual property infringements, particularly in cases that do not involve any commercial or financial motivation or benefit.
4. Consider clear limits on the scope of patents, particularly with respect to medicines, life-forms, seeds, and computer software. Countries should build upon the recent international trend of resisting software patents, which chills innovation and freedom of expression.
5. Limit secondary liability of infringement so that providers of tools and services that are capable of substantial non-infringing uses are not held liable for the infringements of their users.