

Joint WIPO Statement from LCA, eIFL and IFLA

This is the joint Statement from LCA, eIFL and IFLA at the WIPO Committee on Development and Intellectual Property, Third Session (2009)

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Thank you, Mr. Chairman, for the opportunity to make this joint statement on behalf of Electronic Information for Libraries, the Library Copyright Alliance, and the International Federation of Library Associations and Institutions. We sincerely congratulate you on your re-election as chair of this committee. We would also like to express our gratitude to the Secretariat for the substantial efforts made since the last meeting in developing a concrete work plan, and for the impressive documents relating to thematic projects. Our organizations represent the world's public, academic and research libraries. Our comments relate to copyright issues.

Referring generally to Agenda Item 6, to documents CDIP/3/5 and CDIP/3/INF/2, we welcome the detailed examples of activities that illustrate an increased transparency in this process, and accelerated progress toward the Development Agenda goals. We welcome the emphasis on use of legal options and flexibilities, including the work of the SCCR on limitations and exceptions for the visually impaired, for libraries and archives, and for education, and the workshop organized by WIPO on digital preservation and copyright held in July 2008, that revealed an urgent global need for copyright exceptions to enable library preservation of cultural heritage and memory, especially in developing nations. We encourage further concrete measures to expand the scope of exceptions in national laws throughout the world.

At the same time we feel it necessary to point out traces in these documents, particularly in document CDIP/3/5, to efforts that reflect not so much a change in direction, as an enhanced emphasis on objectives that WIPO has traditionally promoted. Activities focused primarily on IP protections and IP culture, for example, are not necessarily development-oriented. Such efforts likely benefit rightholders in developed nations, and while they may also benefit a limited segment of the populations in developing nations (private interests), they do not address the broader interests of developing societies. There is little evidence that the placement of the adjective "development" in these descriptions will result in the kind of change needed. We hope that as the work program expands, there will be more evidence of a change in focus in the group of 19 Recommendations, and less reliance on existing, outdated structures and goals.

Referring to Agenda Item 7, we would like to comment on several activities under consideration. Concerning recommendation 20 in CDIP/3/3, we strongly support work that contributes to a better understanding of the public domain. We must be mindful that the purpose of this activity should be for facilitating access for the public and not for monetizing content to create new markets for the private sector, so we agree with the need to preserve

such content from individual appropriation as outlined in the thematic document entitled “Intellectual Property and the Public Domain” in CDIP/3/4.

With respect to recommendation 22 in CDIP 3/3, we ask that an emphasis be placed on subpoints d) on potential flexibilities, exceptions and limitations for Member States; and e) on the possibility of additional special provisions for developing nations and LDCs. This is one of the most productive areas in which the work program could enhance access to knowledge for developing nations. Exceptions are important to libraries and to people everywhere, but they are of critical importance to developing countries whose capacity to access knowledge is defined primarily by exceptions and limitations.

We therefore encourage WIPO to formulate a project document to examine core limitations and exceptions to benefit developing nations and to develop guidelines for IP administrators on their implementation. The academic and library community would be most happy to assist in formulating the study.

We have three more brief comments concerning thematic projects.

We would like to comment on the issue of competitive licensing practices, treated in CDIP/3/3, under recommendation 23, and also in CDIP /3/4 Annex II under thematic project title “Intellectual Property and Competition Policy.” This is a key area for libraries. Today libraries acquire most of their electronic content through licenses, and often experience difficulties when the exclusive rights to content are owned by a single entity that holds a monopoly, that precludes negotiation for favorable prices and contract terms. In countries with advanced anti-competition laws, libraries may have remedies, but in countries that do not, there are no alternatives. We support the study of competition policy in selected countries and regions, with a focus on IP licensing.

With respect to thematic project entitled “Intellectual Property and the Public Domain” in Annex I, we strongly support efforts at identification and preservation of the public domain. The problem of orphan works is one of the most vexing issues for libraries. Most nations do not have an orphan works provision in their copyright laws. Uncertainty over copyright status of works is a hindrance that undermines all uses of works. We welcome efforts to develop tools for verifying the status of copyrighted works, and we look forward to this proposed activity.

Finally, with respect to thematic project entitled “IP, Information and Communication Technologies (ICTs) and the Digital Divide,” we fully support a multi-stakeholder approach to new models of distributing information and creative content, to enable digital inclusion and global and affordable access to information and knowledge. We appreciate acknowledgement of the crucial role that civil society can play in promoting sustainable public sector information and IP policies, and are ready to cooperate with WIPO in making this proposal a reality.

Thank you again, Mr. Chairman, for providing us the opportunity to present our comments at this meeting.

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