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INTELLECTUAL PROPERTY AND ELECTRONIC COMMERCE

The Internet and new information technologies present a number of complex issues regarding intellectual property (IP) rights. Authors and creators have an interest in protecting unauthorized commercial exploitation of their own works, but also in obtaining access to the works of others. Firms that sell computing equipment and software may seek protection for those works, but also may need the right to reverse engineer or develop products that are interoperable with works owned by others. Citizens benefit from the economic incentives of copyright laws, but also from fair ("innocent") use exemptions in several national copyright systems. The free flow of information is essential for a variety of purposes, including the exercise of free speech and the ability of innovate and create. Education use presents special issues, including those involved in distance learning.

For these reasons, governments in the US and the EU should embrace an IP framework that includes the following elements:

1. **Distance education.** Mechanisms to protect copyrighted works on the Internet should not unduly restrict the ability of educators to share information with students in ways that are equivalent to current practices involving more conventional teaching methods.
2. **Privacy.** There are important conflicts between privacy and certain technologies that protect copyrighted materials. Privacy is a social good. Society should avoid mechanisms to protect copyright that are unreasonable intrusions on personal privacy, particularly when less intrusive mechanisms are technologically feasible.
3. **Copyright exceptions.** Governments should provide copyright exceptions that address such issues as fair or innocent use, private copying, library uses, research and private study, and exceptions that are essential for reverse engineering and other techniques needed for the development of interoperable products. Consumer rights in the digital world should not be less than traditional rights in older publishing and other information technologies. Consumer rights for fair uses of copyrighted materials should not be alienated by coercive or unfair contracts. Legislation to implement World Intellectual Property Organization (WIPO) treaties should address these concerns.
4. **World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property (TRIPs Agreement) Article 13.** Governments should ask the WTO to expand Article 13 of the TRIPs Agreement regarding exceptions to copyrights. The language is currently too narrow, and does not even include the language in Article 30 concerning patents, that permits

governments to consider the legitimate interests of third parties.

5. **Public domain and non-commercial software.** The public domain and non-commercial software plays an important role in public and commercial life. The Internet is built upon public and open protocols and uses a wide range of free software programs. Free software operating systems such as Linux and xBSD are important alternatives to more monopolistic server technologies. Databases of government information provide an important new foundation for civic democracy in the information society.
6. **Database rights.** National legislation to protect investments in databases should avoid overly broad protections, creating rights in facts, or rights that lead to anti-competitive or monopolistic acts.
7. **Business practice patents.** The US and EU governments should ask competition authorities to solicit public comments and hold public hearings on the policy issues associated with issuing patents on business practices, including those associated with e-commerce, to determine if these patents are needed, or if they are unnecessary, anti-competitive and socially wasteful.
8. **Parallel Imports.** Electronic commerce raises profound and fundamental challenges to national policies that seek to restrict parallel imports of goods. Government should provide for international exhaustion of rights for copyrights, patents and trademarks, as is permitted under Article 6 of the TRIPs Agreement, so that consumers can benefit from the free flow of goods. Governments can require that goods be labeled or identified as parallel imports, if such requirements benefit consumers and do not present unreasonable restrictions on trade in parallel goods.

Appendix:

TRIPs Agreement Articles 6, 13 and 30

Article 6

Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

Article 13

Limitations and Exceptions; *(copyright)*

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Article 30

Exceptions to Rights Conferred; (*patents*)

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.