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**ELECTRONIC COMMERCE AND INTELLECTUAL PROPERTY IN DEVELOPING
COUNTRIES: PROGRESS REPORT**

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Electronic Commerce and Intellectual Property in Developing Countries

1. Electronic commerce or 'ecommerce'—the commercial exchange of goods or services between parties utilizing the global system of computer and telecommunication networks—continues its rapid growth, both in scale and relevance, throughout the world, in developed and developing countries. Many of the early predictions for the rapid growth in value of ecommerce have proven accurate, although there remain concerns that such rapid technological growth could widen the 'digital divide' between those countries that are technologically advanced and those that are less so. At the same time, however, the Internet has proven a tool for developing countries to increase their access to information and technological tools such as software, and to access global markets for their goods and services. The fastest growth in Internet connectivity and use, for example, is occurring in the Asian region.

2. As ecommerce has developed its potential, the issue of the digital divide has become more subtle, to encompass the divide between developed and developing countries, urban and rural populations, men and women, youth and aged. The challenge to ensure that this divide is narrowed, often using the technologies themselves, rather than widened, has been taken up by national governments, intergovernmental organizations, including WIPO, and the international community as a whole.

3. At the first WIPO International Conference on Electronic Commerce and Intellectual Property, the Director General, Kamil Idris, announced WIPO's Digital Agenda, a ten-point plan that outlines the Organization's program for addressing issues of ecommerce, as they relate to intellectual property, over the next few years. The Digital Agenda focuses upon the needs of developing countries in the field of ecommerce, and the various ways in which the Organization could best address and meet those needs. Following are some of the highlights of the progress made by WIPO in meeting its Digital Agenda.

4. The first item of the Digital Agenda, and key amongst its initiatives, is *to broaden the participation of developing countries through the use of WIPONET and other means for:*

- *access to intellectual property information;*
- *participation in global policy formulation; and*
- *opportunities to use their intellectual property assets in ecommerce.*

5. The WIPONET is the global information network project that was approved by WIPO's Member States in 1998, to link intellectual property offices and the International Bureau through the establishment of a computer-based network that will permit exchange of intellectual property data and communications. The WIPONET will also provide standard Internet connectivity to intellectual property offices, and a suite of basic Internet tools and services, that will be available to anyone with access to the Internet. The WIPONET will be deployed during 2001 to interconnect about 330 intellectual property offices in 171 Member States, and will be largely based on existing worldwide communication infrastructures.

6. The WIPONET is intended to assist countries in their administration of intellectual property protection systems. At a practical level, the WIPONET project will give developing countries an opportunity to implement network-based systems, by providing the basic

infrastructure and Internet access in the short term, without the otherwise necessary investment in hardware intensive, high-cost automation systems, and to have immediate access to well-maintained data collections through an established network.

7. In addition to the WIPONET project, WIPO has sought to broaden developing countries' participation in global policy formation on intellectual property issues by conducting a number of regional meetings on ecommerce issues, involving international and local expert speakers. In 2000, these meetings were organized in countries including Brazil, China, Jamaica, Jordan, Poland and Thailand. In furtherance of these educational goals, the WIPO Academy, which offers an effective distance learning program for education and skills training in intellectual property issues, is developing an ecommerce module for implementation by the end of 2001.

8. In its second item, the Digital Agenda identified the *entry into force of the WCT and the WPPT before December 2001*, as one of the prime objectives for the Organization, in order to address the impact of the digital technologies on the recognition and enforcement of certain intellectual property rights. The WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), the two so-called 'Internet treaties', were negotiated in 1996 to address the definition and scope of rights in the digital environment, and some of the challenges of online enforcement and licensing. The WCT deals with protection for authors of literary and artistic works, including books, computer software, films, music and works of art. The WPPT protects the 'related rights' of performers and producers of phonograms. They reflect a broad international consensus on how copyright and related rights should be dealt with in the digital environment, and they require 30 ratifications or accessions to each before they will come into force. Currently, the WCT has 21 ratifications or accessions, and the WPPT has 18, and WIPO is optimistic of meeting its goal to bring the treaties into force by the end of 2001.

9. The third item of the Digital Agenda seeks to *promote adjustment of the international legislative framework to facilitate ecommerce through:*

- *the extension of the principles of the WPPT to audiovisual performances;*
- *the adaptation of broadcasters' rights to the digital era; and*
- *progress towards a possible international instrument on the protection of databases.*

10. The protection of audiovisual performers was the most pressing issue to be addressed, following the conclusion of the Internet treaties in 1996, in order to strengthen the position of performers in the audiovisual industry by providing a clearer legal basis for the international use of audiovisual works, such as television, film and video, both in traditional media and in digital networks. From December 7 to 20, 2000, WIPO convened a Diplomatic Conference on the Protection of Audiovisual Performances, at which negotiators from over 120 countries provisionally agreed on a set of rules, including national treatment, moral rights, and economic rights in audiovisual works, covering the right of reproduction, right of distribution, right of rental, and the right of broadcasting and communication to the public. It was the first time that audiovisual performers have been accorded moral rights in relation to any distribution or modification of their performances that might be prejudicial to their reputations.

11. Significant progress was made in strengthening the rights of performers in their audiovisual performances. However the Diplomatic Conference could not reach agreement on a question relating to the right of transfer, namely the question of how the performers' rights should be acquired by the producers, by presumption of law or agreement. The Diplomatic Conference concluded by noting provisional agreement reached on 19 of the 20 articles considered, and recommended to the Assemblies of WIPO Member States, which will meet in September 2001, to reconvene the Diplomatic Conference in order to reach agreement on the outstanding issues.

12. The issue of protection of databases and of broadcasters' rights at an international level continues to be addressed within the context of the WIPO Standing Committee on Copyright and Related Rights, which had its last session in Geneva in April 2000.

13. Fourthly, the Digital Agenda aims to *implement the recommendations of the Report of the first WIPO Internet Domain Name Process and pursue the achievement of compatibility between identifiers in the real and virtual worlds through the establishment of rules for mutual respect and the elimination of contradictions between the domain name system and intellectual property rights.*

14. The Report of the first WIPO Internet Domain Name Process, entitled "Management of Internet Names and Addresses: Intellectual Property Issues", was published in April 1999 and made recommendations aimed at avoiding and resolving conflicts between trademarks and domain names in the Internet domain name system ('DNS'). A key recommendation, for a uniform administrative dispute resolution system to resolve trademark and domain name conflicts, was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) in the form of a Uniform Administrative Dispute Resolution Policy and Rules, known as the UDRP. The UDRP applies to all domain name registrants in the open generic top-level domains (gTLDs), currently .com, .org and .net, and applies to all cases of proven abusive domain name registration, or 'cybersquatting'. As a result of the UDRP, trademark owners can bring disputes for resolution by independent expert decision makers in under 45 days.

15. In December 1999, the WIPO Arbitration and Mediation Center was accredited by ICANN as the first dispute-resolution service provider to administer the resolution of disputes under the UDRP. As of January 2001, the WIPO Center has received more than 2000 domain name disputes, of which over 1070 have been resolved using the rapid and cost-effective largely online system for dispute resolution.

16. In addition to its gTLD dispute-resolution services, WIPO has provided assistance to the administrators of some of the more than 240 country code top-level domains (ccTLDs), both in terms of advice on domain name administration policies and in the provision of dispute-resolution services. As of January 2001, the WIPO Arbitration and Mediation Center was retained by 17 ccTLD administrators as dispute-resolution service provider, namely the administrators of: .AC (Ascension Island), .AG (Antigua & Barbuda), .AS (American Samoa), .BS (Bahamas), .CY (Cyprus), .FJ (Fiji), .GT (Guatemala), .MX (Mexico), .NA (Namibia), .NU (Niue), .PH (Philippines), .PN (Pitcairn Island), .RO (Romania), .SH (St. Helena), .TT (Trinidad and Tobago), .TV (Tuvalu), .VE (Venezuela) and .WS (Western Samoa). To date, the WIPO Center had received 16 ccTLD domain name cases, six of which have been resolved.

17. In its Report on the first WIPO Process, WIPO noted the need for further study on the need for protection of certain other identifiers in the domain name system, that were protected to some degree in the physical world, but not in the DNS. Subsequently, WIPO received a request from a number of its Member States to initiate a Second WIPO Internet Domain Name Process to study the abusive registration of these identifiers, namely:

- personal names;
- International Nonproprietary Names (INNs) for Pharmaceutical Substances;
- names of international intergovernmental organizations;
- geographic indications, geographic terms, or indications of source; and
- trade names.

18. On July 10, 2000, the Organization commenced the Second WIPO Process, via online and regional consultations, to study the extent of the problems that have been experienced in these areas and to produce recommendations on the best means to avoid and resolve any conflicts. The first series of regional consultations on the first Request for Comments in this Process were conducted from August to October 2000, in Brazil, Jordan, Poland and Thailand. The second series of regional consultations are planned for February to May 2001 in Argentina, Australia, Belgium, Ghana, Spain and the United States of America. The final report of the Second WIPO Process will be published and submitted to WIPO's Member States and the Internet community in July 2001.

19. The Member States' request also called upon WIPO to develop best practices to assist administrators of ccTLDs to prevent and resolve domain name disputes. As noted above, WIPO's work with ccTLDs is well underway, and has been particularly notable in cooperation with the ccTLDs of smaller and developing countries.

20. The fifth item of the Digital Agenda endeavors to *develop appropriate principles with the aim of establishing, at the appropriate time at the international level, rules for determining the circumstances of intellectual property liability of Online Service Providers which are compatible and workable within a framework of general liability rules for OSPs.* In order to address the complex issues raised in this area, WIPO organized a workshop on Online Service Provider Liability in Geneva on December 9 and 10, 1999, and the Organization continues to study developments.

21. The sixth item of the Digital Agenda seeks to *promote adjustment of the institutional framework for facilitating the exploitation of intellectual property in the public interest in a global economy and on a global medium through administrative coordination and, where desired by users, the implementation of practical systems in respect of:*

- *the interoperability and interconnection of electronic copyright management systems and the metadata of such systems;*
- *the online licensing of the digital expression of cultural heritage; and*
- *the online administration of intellectual property disputes.*

22. In the area of electronic copyright management systems, WIPO continues to study the numerous private sector initiatives and to keep abreast of industry developments and their implications for the international intellectual property system.

23. The online licensing of digital expression of cultural heritage has seen most developments in the form of online exploitation of the digitized collections of great art museums. It is clear that the Internet offers great potential for all countries to reach a global audience and market for the exploitation of their cultural heritage, although there are significant challenges of cost and security involved in the endeavor. WIPO continues to study these private sector initiatives, and provides advice upon request to a number of museums in developing countries on the intellectual property issues raised by such activities.

24. The online administration of disputes involving intellectual property rights offers a solution to the challenges raised by the need to resolve disputes that arise from transactions in the borderless world of ecommerce. These disputes will often involve parties at significant distance and in different legal jurisdictions, who may prefer to settle their disputes in the same manner as they conduct their commerce. Online dispute resolution, enabling parties to initiate or defend claims via the Internet, increases the speed and efficiency of dispute resolution and allows parties to exchange documentation instantaneously at virtually no cost. Submissions can be processed, stored and archived by automated document management systems, and reviewed by authorized parties at any time through a Web-based interface. The online dispute-resolution system includes such features as automatic notifications, an online payment system and databases to support the logging and archiving of submissions. Such online systems would also have the potential to include audio and visual facilities, allowing parties the possibility of conducting meetings or hearings with neutral arbitrators online, thus reducing travel expenses and conference costs.

25. The WIPO Arbitration and Mediation Center has successfully put its dispute-resolution systems to use, at the outset, in the administration of domain name disputes, as described above, and fully expects to further develop systems for wider application.

26. The seventh item of the Digital Agenda intends to *introduce and develop online procedures for the filing and administration of international applications for the PCT, the Madrid System and the Hague Agreement at the earliest possible date.*

27. The Patent Cooperation Treaty (PCT) system has presented one of the greatest successes in the patent world in the last decade, allowing persons to obtain patents internationally. The PCT has simplified the process of applying for, searching and transmitting patent applications on an international level, while reducing the cost of obtaining international patent protection, and facilitates public access to a wealth of technical information relating to inventions. There are now 109 Member States of the PCT, and the system continues to undergo dramatic growth – 90,948 PCT applications were filed in 2000, at a rate 23% higher than the same period of the previous year.

28. The international patent community, including WIPO, is working to take advantage of modern information technology, including the PCT-EASY software widely used for preparation of applications. The IMPACT project, currently being undertaken by WIPO, will set up new systems that will enable PCT applications to be filed and processed electronically.

29. In the field of trademarks, the Madrid Agreement Concerning the International Registration of Marks and its Protocol Relating Thereto have also experienced recent development, leading to reforms in the international registration of marks. Starting with nine

contracting States in 1996, there are now 49 States party to the Madrid Protocol. As more States become party, WIPO is increasing its use of digital technologies to streamline administration of the Protocol procedures.

30. The eighth item of the Digital Agenda refers to the need to *study and, where appropriate, respond in a timely and effective manner to the need for practical measures designed to improve the management of cultural and other digital assets at the international level by, for example, investigating the desirability and efficacy of:*

- *model procedures and forms for global licensing of digital assets;*
- *the notarization of electronic documents; and*
- *the introduction of a procedure for the certification of websites for compliance with appropriate intellectual property standards and procedures.*

31. As described above, WIPO continues to keep abreast of private sector initiatives in these areas, in order to determine the need, if any, for its involvement in the future.

32. The penultimate commitment of the Digital Agenda is to *study any other emerging intellectual property issues related to electronic commerce and, where appropriate, develop norms in relation to such issues.* In this way, the Organization continues its policy of addressing real problems as and when they arise, without prejudging issues or technologies or seeking 'catch-all' solutions that fail to meet the needs of its Member States and their communities. In this field, WIPO coordinates with key members of the public and private sectors, to stay abreast of the latest developments and to foresee the needs of its stakeholders in studying and developing norms and practical guidelines to address these needs. Some examples of these programs are WIPO's study of electronic copyright management systems, application service provider projects and the Second WIPO Internet Domain Name Process, mentioned above.

33. The tenth and final point of the Digital Agenda promises that *WIPO will coordinate with other international organizations in the formulation of appropriate international positions on horizontal issues affecting intellectual property, in particular:*

- *the validity of electronic contracts; and*
- *jurisdiction.*

34. WIPO continues to cooperate with the community of international intergovernmental organizations, to harmonize the work being undertaken on ecommerce and to ensure that this work leaves no problems unaddressed.

35. In the area of jurisdiction, which has particular import for dispute resolution and enforcement of intellectual property rights in a digital environment, WIPO will convene a Forum on Private International Law and Intellectual Property, in Geneva on January 30 and 31, 2001. The Forum will address emerging issues in the field of ecommerce and the role of alternative dispute resolution, while highlighting the various international initiatives in the areas of copyright and related rights, and industrial property (patents and trademarks).

36. Looking to the future, WIPO will convene its Second International Conference on Electronic Commerce and Intellectual Property, which will be held in Geneva on September 19 to 21, 2001. The Conference will address the latest global developments in the digital era, including the challenges and opportunities for all Member States, and develop the Organization's ecommerce agenda for the future.

37. The Permanent Committee is invited to note the information contained in this document and make any comment it may wish on the content thereof.

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