



April 24, 2003

Ms. Sally Shipman
Telecommunications Policy Advisor
Office of International Communications and Information Policy
U.S. Department of State
2201 C Street, N.W.
Washington, DC 20520-5820

Re: World Summit on the Information Society's Draft Action Plan and Declaration

Dear Ms. Shipman:

The International AntiCounterfeiting Coalition, Inc. (IACC) thanks the State Department for having the recent meeting regarding the World Summit on the Information Society (hereinafter the "Summit") and providing the related documents. Based on the request for comments, the IACC takes this opportunity to comment on the draft Action Plan and Declaration regarding the Summit scheduled for December 2003. We have reviewed the documents and provide you with our comments in advance of the Summit with the hope that our organization's concerns will be addressed.

The IACC is a Washington, D.C.-based non-profit organization devoted solely to promoting improved standards for the protection and enforcement of intellectual property rights. Formed in 1979, the IACC is comprised of a cross section of business and industry - from autos, consumer goods, apparel, and pharmaceuticals, to food, software and entertainment - the members' combined annual revenues exceed \$650 billion.

One issue that arises abruptly upon a review of the documents is whether this effort adequately distinguishes information dissemination activities for the purpose of promoting access to information from commercial activities. Reviewing the documents leads us to believe that no effort has been made to identify and acknowledge the different types of activities undertaken through the use of new information and communication technologies (ICT). As a result, the documents neither adequately recognize the types of activities and actors using ICTs nor identify the protections that are necessary for the different actors and interests using ICTs.

Recommendation:

The IACC recommends that the documents clearly set forth the following positive obligations.

1. All Parties (national governments, intergovernmental organizations [IGO], private sector entities regardless of profit or non-profit status) recognize the need to protect intellectual property rights in the information society.
2. Any Government that is a Party to any agreement that includes obligations for the protection and enforcement of intellectual property shall meet such obligations.
3. The Action Plan and Declaration shall not affect any existing multilateral, regional, bilateral intellectual property agreements and their obligations and are not to be used as the basis for any derogation from existing agreements and the obligations therein.

In addition, the documents as structured may not capture what various interests are advocating. The documents in draft form simply lump objectives together without any distinction or identification of various interests that are in conflict. The IACC offers the following observations and suggestions.

1. There should be clear recognition of what national governments and IGOs can do to promote the objectives of providing connectivity, access, information, etc. Thus, the documents could be organized with a section addressing the role of national governments and IGOs in providing access to government documents and other materials NOT covered by claims of copyright, trademark or other intellectual property rights of third parties.
2. The documents could have a section that clearly sets forth how national governments and IGOs will use their respective resources to provide and improve infrastructure for the information society, including steps these entities will take to improve availability of the tools that permit individuals to access public information.
3. The Action Plan and Declaration should acknowledge the different roles of the public and private sectors and distinguish the roles of the two sectors.

The IACC also recommends that the U.S. delegation include intellectual property experts from the U.S. Patent and Trademark Office and Copyright Office as several forms of intellectual property are implicated. Despite the fact that the World Intellectual Property Organization may be involved, we prefer to have the active participation of the relevant U.S. intellectual property agencies in this process.

Comments:

The draft Action Plan and Declaration suffer from a lack of focus and the creation of natural conflicts. The desires for an information society with all the benefits that are expressed in the documents collide with the need to have protections against those who will naturally use new ICTs in an illegal manner. The draft Action Plan's less than strong support for existing intellectual property agreements and the obligations arising thereunder is reflected in Paragraph 34:

Intellectual property rights: It is important to ensure a balance between intellectual property rights (IPR) and the public interest:

--While IPRs play a vital role in fostering innovation in software, e-commerce and associated trade and investment, there is a need to promote initiatives to ensure a fair balance between IPRs and the interests of users of information, while also taking into consideration the global consensus achieved on IPR issues in multilateral organizations.

The IACC believes that the reference to striking a balance for protecting intellectual property is too weak. It fails to explicitly state that there are obligations that must be met and implemented with regard to the protection and enforcement of intellectual property rights. Thus, there must be more than "consideration" of the global consensus for any Party that has signed or acceded to certain agreements intellectual property agreements that have protection and enforcement requirements.

The IACC also believes that intellectual property rights have been placed in a negative context in Paragraph 34 with the “While IPRs play a vital role in fostering . . .” text. The apologetic manner in which this text begins signals the lack of importance this document gives to the most valuable assets many private sector entities own or will own. The value of intellectual property assets is easily demonstrated. The illegal transmission of copyrighted works using new ICTs is now pursued 24/7 by the owners of these assets and law enforcement. The fact that new ICTs are used by criminals to illegally profit from trade in protected works is evidence of the value placed on such works as a profitable activity.

Moreover, trademark owners are constantly finding websites offering counterfeit products. In addition, the value of intellectual property is also demonstrated by the number of people who have or attempted to have domain names that infringe well-known companies or their famous trademarks. New ICTs are also used to offer counterfeit pharmaceutical products. Thus, the lack of attention paid to protecting the innovators and creators and the absence of an endorsement for strong measures to protect such assets are likely to promote more bad actors. The tone of the documents in relation to intellectual property is such that the draft texts send a message that is anti-intellectual property.

Turning to the draft Declaration, it is filled with many highly prized ideals. Unfortunately, it is likely to be a document that will be pointed to as justifying actions that violate the rights of innovators and creators. Specifically, Section B of the Draft, *We declare our Common Vision of the Information Society*, is noteworthy because of the support for “all persons” to be “empowered freely to create, receive, share and utilize information and knowledge, in any media and regardless of frontiers”.¹ If interpreted in the broadest way possible, some would conclude that nothing that uses new ICTs is subject to protection.

It is difficult to believe that the omission of intellectual property protection was unintended when reading paragraph 10 given the reference to economic progress and protecting the environment. One of the subparagraphs reads:

The essential requirements for the development of an equitable Information Society include:

The adherence to international undertakings with respect to peace and security, sustainable development, equality, solidarity, tolerance, human dignity, economic progress, and the protection of the environment and building of new values, trust and norms with respect to the use of ICTs.

In recent years, new ICTs have been a great benefit to the legal actors in both the public and private sectors. Unfortunately, new ICTs are also available to those who have no respect for the law. As a result, new international norms have been negotiated and agreed to in order to protect legal actors from the illegal actors using ICTs. This document, as well as the Action Plan, has no provision to address this reality concerning the use of ICTs.

The lone reference to intellectual property in the Draft Declaration tempers its importance and says nothing about strong or effective protection of intellectual property. “Creativity and the creation, processing, dissemination and conservation of local content can best be stimulated through an adequate balance between intellectual property rights and the needs of the users of information.” Given this one reference to intellectual in the Draft Declaration, the IACC views the process as having relegated intellectual property rights to the list of non-issues.

¹ World Summit on the Information Society, Draft Declaration, p. 2, par. 7 (March 7, 2003).

As an organization that itself has created and owns intellectual property rights and represents creators, product developers, innovators and contributors to society, the contributions made by our members must have strong protections as an incentive to continue to conduct research, create works, and develop better products. These documents, as written, seem to put intellectual property protection at odds with the public interest. Protecting intellectual property supports all the various interests that make up the “public”.

Conclusion:

It must be understood that the private sector’s innovative and creative activities that result in the availability of product or content in the information society is not there for the “taking”. New product and content do not occur or is not fueled by the issuance of documents from IGOs that promote access, sharing, etc. and ignore respect for the rights of the innovators and creators. The current draft documents do not adequately recognize the role of the private sector and what needs to be done to ensure the active innovative and creative involvement of the private sector.

In order to avoid the complex debate that is likely to ensue, the IACC respectfully suggests that the national governments and IGOs involved in this process limit their work to what they themselves will do and provide. The current documents, while referencing the Information Society, try to encompass more than is realistically feasible to obtain agreement by making reference to all of the ills that confront the nations of the world.

We hope that future versions of these documents will include text that recognizes the need for stronger protection to combat intellectual property theft.

The IACC welcomes future opportunities to engage in a dialogue with the relevant U.S. Government agencies involved in the process of preparation for this Summit and in finalizing the Declaration.

Sincerely,



Timothy P. Trainer
President