

## **TREATY ON ACCESS TO KNOWLEDGE**

Draft 9 May 2005

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## **Part 1 - Purposes, Objectives, Relationship to Other Treaties**

### **PREAMBLE**

The parties to this treaty,

Seeking to enhance participation in cultural, civic and educational affairs, and sharing of the benefits of scientific advancement,

Recognizing the importance of knowledge resources in supporting innovation, development and social progress, and of the opportunities arising from technological progress, particularly the Internet,

Mindful of the need to overcome disparities in wealth, development, and access to knowledge resources,

Recognizing the importance of protecting and supporting the interests of creative individuals and communities,

Determined to create the broadest opportunities to participate in the development of knowledge resources,

Concerned about private misappropriation of social and public knowledge resources,

Recognizing further the importance of knowledge resources that are created for the benefit of all, and the need to protect and expand the knowledge commons,

Determined to protect, preserve and enhance the public domain, which is essential for creativity and sustainable innovation,

Seeking to control anticompetitive practices,

Concerned about technological measures that restrict access to knowledge goods will harm authors, libraries, education institutions, archives, and persons with disabilities,

Recognizing the need for greater disclosure of knowledge, and for new incentives to create and share knowledge resources without restrictions on access,

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Encouraged by the success and potential of new methods of creating and sharing knowledge,

Mindful of the need for public and private investments in knowledge resources,

Concerned over insufficient public support for knowledge resources,

Conscious of the importance of the global information networks in expanding access

to knowledge,  
Mindful of the benefits of open access to scientific research and data,  
Recognizing the benefits of greater transparency of knowledge resources and technologies,  
Recognizing the need for global action to protect and enhance access to knowledge resources,  
Seeking to promote the transfer of technology to developing countries,  
Members agree

**Article 1-1 - Objectives**

The Objectives of this treaty are to protect and enhance [expand] access to knowledge, and to facilitate the transfer of technology to developing countries.

**Article 1-2 - Nature and Scope of Obligations**

Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive measures to promote access to knowledge than are required by this Agreement, provided that such measures do not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

**Article 1-3, Relationship to Other Agreements**

(a) Nothing in this Agreement shall limit the rights of the public to access and use information or knowledge that are defined in other treaties or national legislation. This Agreement does not limit the ability of its signatories to further act to support cooperative creation and innovation efforts that contribute to a knowledge commons that is available to all.

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(b) In order to limit tariffs on importation of educational, scientific and cultural materials, members agree to comply with the Florence Agreement (1950) and its Protocol known as the 'Protocol of Nairobi' (1976).

(c) In order to promote access to medicine for all, members agree to implement paragraph 4 of the WTO Doha Declaration on TRIPS and Public Health.

(d) The public policy goals set out in this Agreement should not be overridden by private contract.

## **Part 2 – Governance**

### ***Article 2-1 - Conference of the Parties***

Members will designate representatives to a Conference of the Parties (CoP), which will administer this agreement. The Conference of the Parties shall meet at least once every two years.

### ***Article 2-2 – Executive Board***

The Conference of the Parties shall designate an Executive Board (EB) which shall designate a permanent secretariat and make arrangements for its functioning.

### ***Article 2-3 – Secretariat***

The Secretariat functions shall include:

- (a) Making arrangements for sessions of the Conference of the Parties, the Executive Board, and subsidiary bodies and provide services as required;
- (b) Transmitting reports received by it pursuant to the Treaty;
- (c) Providing support to Members, particularly developing country Members and Members with economies in transition, on request, in the compilation and communication of information required in accordance with the provisions of the Treaty;
- (d) Preparing reports on its activities under the Treaty;
- (e) Ensuring the necessary coordination with competent international and regional intergovernmental organizations and other bodies;
- (f) Entering into such administrative or contractual arrangements as may be required for the effective discharge of its functions; and
- (g) Performing other secretariat functions specified by the Treaty and by any of its protocols and such other functions as may be determined by the CoP or the EB.

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## **Part 3 – Provisions Regarding Limitations and Exceptions to Copyright and Related Rights**

### ***Article 3-1 - General Limitations and Exceptions to Copyrights***

- (a). Members agree that the exclusive economic rights of copyright holders (including but not limited to reproduction, distribution, display, performance, adaptation and communication to the public), shall not apply to:
- i. The use of relevant excerpts, selections, and quotations for purposes of explanation and illustration in connection with not-for-profit teaching and scholarship;
  - ii. The use of relevant excerpts, selections and quotations for purposes of criticism and comment, including but not limited to parody;
  - iii. The use of works, by educational institutions, as secondary readings by enrolled students;
  - iv. The use of works, by educational institutions, as primary instructional materials, if those materials are not made readily available by right-holders at a reasonable price; provided that in case of such use the right-holder shall be entitled to equitable remuneration;
  - v. The use of works for purposes of library or archival preservation, or to migrate content to a new format;
  - vi. The use of works in connection with legitimate reverse-engineering;
  - vii. The use of works specifically to promote access by persons with impaired sight or hearing, learning disabilities, or other special needs;
  - viii. The use by libraries, archivists or educational institutions to make copies of works that are protected by copyright but which are not currently the subject of commercial exploitation, for purposes of preservation, education or research.
  - ix. The use of works in connection with Internet search engines, so long as the owners of works do not make reasonably effective measures to prevent access by Internet search engines, and the Internet search engine service provides convenient and effective means to remove works from databases upon request of the right-owner.
- (b) It shall be presumed that these uses constitute special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the

legitimate interests of the right-holder.

(c) In determining whether applying any limitation or exception to exclusive rights to a particular use of a work would conflict with its normal exploitation or unreasonably

6 prejudices the legitimate interests of the right holder, the extent to which the use benefits the larger public interest shall be taken into account.

(d) In addition to implementing specific exceptions for the cases listed in subparagraph (a), parties to this treaty also shall implement a general exception to copyright law, applicable in special cases where the social, cultural, educational or other developmental benefit of a use outweigh the costs imposed by it on private parties [and providing for equitable remuneration to the copyright owner in appropriate circumstances.]”

### ***Article 3-2 - Provisions Regarding Distance Education***

(a) Members agree that the convergence of telecommunications, publishing, broadcasting and computing is creating a media environment with enormous implications for flexible learning, and mass higher education and training, including through programs of distance education. The cross-border nature of information flows provides compelling justification for harmonization of minimum limitations and exceptions for distance education. In order to take full advantage of new technologies in the delivery of education and flexible learning, it is necessary to ensure that educators have sufficient rights to use works.

(b) The exclusive economic rights of copyright owners shall not extend to the following uses in connection with distance education projects:

1. Performances of non-dramatic literary works;
2. Performances of any other work, including dramatic works and audiovisual works, but only in “reasonable and limited portions” and
3. Displays of any work in an amount comparable to that which is typically displayed in the course of a live classroom session.

(c) The works described in (b) do not include works that are marketed primarily for performance or display as part of mediated instructional activities transmitted via

digital networks, and performances or displays given by means of copies not lawfully made and acquired, if the educational institution knew or had reason to believe that they were not lawfully made and acquired.

(d) Non-voluntary authorizations for education institutions and programs to use works in distance education should not involve overly restrictive or burdensome procedures.

(e) Educational institutions shall be permitted to record and retain copies of the distance education transmission, even if it included copyrighted content owned by others, for (1) retention of the content for student access for a period of time that is necessary to achieve the learning objectives, and (2) copying and storage that is incidental or necessary to the technical aspects of digital transmission, including transient or temporary storage of material, provided that the copyrighted content on a system or network is not available for a longer period than is reasonably necessary to facilitate the transmissions for which it was

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made, and to the extent technologically feasible, the material is not accessed by anyone other than the anticipated recipients.

### ***Article 3-3 - The Rights of Persons with Disabilities***

(a) Members recognize the importance of accessibility in the process of the equalization of opportunities in all spheres of society, and the right of equitable access to knowledge irrespective of disability. This requires:

1. A right to access knowledge through a diversity of formats to meet the individual's specific needs,
2. A right to transcend national frontiers,
3. A functional definition of accessibility, and
4. A functional definition of disability.

(b) Libraries, education institutions, or other institutions or organizations duly designated shall have the authority to convert material from one format to another to make it accessible to persons with disabilities.

(c) The dissemination of works in formats that enable access by disabled persons



shall be permitted to any country that duly authorizes the non-voluntary use of such works.

(d) Inclusive design principles to promote accessibility shall apply to government web pages and other public documents.

(e) National legislation to protect copyrighted or non-copyrighted works using digital rights management or technological protection measures shall provide for appropriate exceptions that are necessary to ensure access by persons with disabilities.

#### ***Article 3-4 - First Sale Doctrine for Library Use***

A work that has been lawfully acquired by a library may be lent to others without further transaction fees to be paid by the library.

#### ***Article 3-5 – Internet Service Providers***

Members agree that the exclusive economic rights of copyright owners (including but not limited to reproduction, distribution, display, performance, adaptation and communication to the public), shall not apply to:

(a) An internet service provider's (ISP) transmitting, routing or providing connections for material through a system or network controlled or operated by or for the service  
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provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if:

(i) The transmission of the material was initiated by or at the direction of a person other than the service provider;

(ii) The transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

(iii) The service provider does not select the recipients of the material except as an automatic response to the request of another person;

(iv) No copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is

maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

(v) The material is transmitted through the system or network without irreversible modification of its content.

(b) An ISP's intermediate and temporary storage of material for the purposes of caching material, as long as they do not modify the material or provide it in a manner inconsistent with access conditions set by the copyright holder;

(c) An ISP's storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider;

(d) The referring or linking to an online location containing infringing material or infringing activity; in cases in which the service provider has the right and ability to control such activity, this exemption applies only if the ISP does not receive a financial benefit directly attributable to the infringing activity.

(e) The caching of electronic documents for the purposes of enhancing functionality of internet search engines, as long as the original webpage address is clearly indicated on the cached page, and it is clear that the cached page may not be the most up-to-date version;

(f) The transmitting of a universal resource locator or other electronic pointer, that has the effect of instructing a user's browser to load electronic documents from a third-party server;

### ***Article 3-6 – Digital Rights Management and Measures Regarding Circumvention of Technological Protection Measures***

(a) Members agree that measures concerning Digital Rights Management (DRM) systems and prohibitions against the circumvention of technological protection measures (TPMs), referred to as DRM/TPM measures, present the following risks:

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i. The DRM/TPM measures may undermine traditional limitations and exceptions to exclusive rights,

- ii. DRM/TPM measures may present barriers to mechanisms that enable or enhance access for the visually impaired or other people with disabilities,
- iii. The DRM/TPM measures may effectively extend the term of protection beyond that provided in copyright law, including perpetual protection,
- iv. Unfair contract terms and the inadequate disclosure of the limitations of uses of works may harm consumers,
- v. Anticompetitive practices, including market segmentation and technological tying to other potentially competitive products may result in high prices and reduced innovation,
- vi. DRM/TPM measures may make it difficult or impossible to archive or preserve works.

(b) Therefore, legal prohibitions against anti-circumvention of DRM/TPM measures shall be limited, and not be enforced in the following cases:

- i. When DRM/TPM licensing terms preclude implementation in Free and Open Source Software (FOSS),
- ii. When DRM/TPM systems are marketed without adequate disclosure of their restriction modes and the terms under which they can be invoked, or when terms can be modified without a user's explicit consent,
- iii. When DRM/TPM systems do not provide mechanisms to permit works to be accessible by persons with visually impairments or other disabilities,
- iv. When DRM systems rely upon social entities, such as households and families, in their technology more narrowly or restrictively than have been defined in local law,
- v. Unless the use of DRM/TPM measures does not substantially interfere with uses that are authorized by the right-holders or permitted by law, circumvention is permitted for the following works:
  - 1. Works consisting predominantly of public-domain material;
  - 2. Works of medical and scientific literature;
  - 3. Works substantially financed by national governments or international organizations;

4. Works consisting predominantly of factual information available from a single source, if equivalent information cannot readily be gathered or compiled by others;
5. Works currently protected under extended terms of copyright that exceed those required by the Berne Convention or TRIPS.

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(e) In providing legal protection and remedies against the circumvention of technological measures, contracting parties shall not prohibit circumvention undertaken in connection with uses of works that are authorized by right-holders or permitted by law.

(f) In providing legal protection and remedies against the circumvention of technological measures, contracting parties shall not prohibit the making available of any technology or service that is intended primarily to facilitate uses of works that are authorized by the right-holders or permitted by law.

#### ***Article 3-7 – Non-Original or Creative Works***

Facts and works lacking in creativity should not be subject to copyright or copyright-like protections.

#### ***Article 3-8 – Orphan Works***

(a) Members agree to implement measures that ensure access to works that are unidentifiable, un-locatable or unresponsive, referred to as orphan works.

(b) Use by reproduction in copies or phone records or by any other means of use within the rights of the copyright owner, is not an infringement of copyright when the user has conducted a reasonable investigation and can conclude that the work is an orphan work.

#### ***Article 3-9 - [Retroactive] Extensions of Term of Protection for Copyright and Related Rights***

Members agree not to extend the term of protection beyond the minimum required term [retroactively] for works protected under Article 9 through 13 of the TRIPS Agreement.

#### ***Article 3-10 - Requirements When Terms of Protection for Works Protected by Copyright and Related Rights Have Been Previously***

### ***Extended to Exceed TRIPS Requirements***

For countries that have previously extended terms of protection for works protected by Article 9-13 of the TRIPS agreement, beyond the terms required the TRIPS agreement, such protection shall be converted to a *sui generis* system of protection that includes the following features:

(a) The *sui generis* regime shall include limitations and exceptions to rights that are at least as supportive of access to knowledge as exist for copyrighted works;

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(a) The *sui generis* regime shall require that the extended term of protection be based upon the registration of the work and the inclusion of a notice of extended term of protection, identifying the right-owner and the date the work will enter the public domain; and

(b) The *sui generis* regime may be subject to additional public interest measures that promote access to knowledge, including additional limitations and exceptions to rights, obligations to support public knowledge goods, or the deposit of the work in an archive in a format that will ensure public access after the expiration of the extended term.

### ***Article 3-11 - Works for Which an Author Has Alienated Economic Rights***

For works when the term of protection is based upon anything other than the life of a natural person, or in any case for any work for which the author has alienated all economic rights,

(a) Extensions of the term of protection will not be retroactive,

(b) Terms of protection shall not exceed the requirements of the TRIPS agreement.

### ***Article 3-12 - Compulsory Licensing of Copyrighted Works in Developing Countries***

(a) Members agree that:

i. In the past quarter of a century, technical progress has changed the ways and means of transmitting information and knowledge;

ii. Developments that have taken place in the field of international trade during this

period reflect greater freedom of exchanges;

iii. The needs and concerns of the developing countries should be taken into consideration with a view to giving them easier and less costly access to education, science, technology and culture;

iv. The Appendix to the Berne Convention has been of limited benefit to developing countries, due to complex procedures, high transaction costs, limitations on exports and the limited scope of works and uses; and

v. The Appendix to the Berne Convention is not a viable mechanism to promote access to works that are distributed on the Internet.

(b) A new protocol for access to copyrighted works in developing countries will be developed for compulsory licenses for copyrighted works that will feature:

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i. Simpler procedures,

ii. Lower transaction costs,

iii. Faster decision-making,

iv. Appropriate scope of works and uses, including for translations in major languages,

v. Permission to export to other developing countries that have issued compulsory licenses for the same works,

vi. Feasible implementation for works distributed in electronic formats, including over the Internet, or in distance education.

(c) The protocol described in (b) will be set out in the Regulations to this agreement.

## **Part 4 – Patents**

### ***Article 4-1 - Patents***

(c) Patent rights shall not be granted with respect to:

i. Discoveries, scientific theories or mathematical methods;

ii. Aesthetic creations, including but not limited to literary or dramaturgical works;

iii. Schemes, rules and methods for performing mental acts, playing games or doing business;

iv. Programs for computers;

- v. Presentations of information;
- vi. Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body, except for products, in particular substances or compositions, for use in any of these methods;
- vii. Methods of teaching and education; or
- viii. Higher life forms.

(b) The privileges granted by a patent shall not be interpreted to include the ability to:

- i. Prohibit the working of the patent for the purposes of experiment or research, including commercial research, on or with the covered invention, except to the extent that such rights are used to ensure nonexclusive access to derivative innovations, data, and technologies;
- ii. Prohibit the working of improvement innovations in the same field as the patented technology;
- iii. Any invention developed through the use of biological material if the inventor failed to obtain prior informed consent of the country of origin, or fails to fairly and equitably share the benefits derived from the use of that biological material;

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iv. Prevent the distribution of medicines or other medical technologies that are manufactured and distributed for compassionate use, and meet the following conditions:

- a. The use is temporary, and addresses an urgent health care need,
- b. There is no alternative method of obtaining the product at an affordable price, and
- c. The product is distributed at no profit [free];

(c) The grant of a patent shall be conditional upon:

- i. Disclosure of the best mode of practicing the invention,
- ii. Disclosure of the source or origin of any biological material utilized in the invention,
- iii. Disclosure of any government financial support for the invention,
- iv. A commitment to ensure enabling transfer of know-how after the expiration of

patent,

v. When relevant and upon the request of a third party, a commitment to make available a deposit of any associated biological materials in an appropriate designated repository, for exploitation for research purposes, and for general use after the expiration of the patent,

(d) Usage that does not constitute infringement

i. The use of a patented technique for a significant purpose of ensuring conversion of the conventions used in two different data processing systems so as to allow communication and exchange of data content between them;

ii. The distribution and publication of information, in whatever form;

**Note for d (i) and (ii).**

These provisions are based upon amendments offered by Michel Rocard in the European Parliament's second reading of the software patent directive. The justification was as follows: (i) Interoperability of data processing systems (e.g. computers) lies at the foundation of the information economy and allows for fair competition by all players large and small. A software developer could find out how to make his data processing system interoperable with that of a competitor, but afterwards would not necessarily be able use the knowledge if prohibited by the patent-owner. The language seeks to ensure that patents also cannot be used to prevent interoperability. (ii) Freedom of publication can be limited by copyright but not by patents. This provision limits the ways in which a patent owner can enforce his patents.

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## **PART 5 - EXPANDING AND ENHANCING THE KNOWLEDGE COMMONS**

### ***Article 5-1 - Knowledge Commons Committee***

A knowledge commons committee (KCC) is established to promote cooperation and investment in databases, open access journals and other open knowledge projects that expand the knowledge commons.

### ***Article 5-2 – Access to Publicly Funded Research***



(a) Members agree that works resulting from government-funded research shall be publicly available at no charge within a reasonable time frame, subject to reasonable exceptions, for example, for classified military research, for patentable discoveries, and for works that generate revenue for the author, such as books.

(b) The KCC shall publish and periodically update best practices for providing public access to government-funded research.

The best practices will include such topics as support for open access journals, open access archives/repositories, interoperability, etc.

### ***Article 5-3 – No Copyright of Government Works***

Works created by government employees and by contractors conducting essential public functions shall enter the public domain.

### ***Article 5-4 - Archives of Public Broadcasting***

Members that provide free access to archives of public broadcasting works to their own residents agree to extend such access on a reciprocal basis to residents of other members who offer similar access.

### ***Article 5-5 - Access to Government Information***

(a) Members shall facilitate public access to information held by public bodies and private bodies that are conducting public business. This shall include laws and regulations to provide for legal procedures for access to information based on the principles of openness and transparency.

(b) The right to information shall be guaranteed by law in accordance with the following principles:

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(i) Everyone has the right to access information held by public bodies;

(ii) Any exemptions to this right shall be set down in law, limited in scope, and proportional to the interest to be protected, and subject to a review of the public interest.

(iii) Any refusal to disclose information shall be subject to review by an independent body such as an ombudsman and/or a court;

(iv) Public bodies shall be required, even in the absence of a request, to actively

publish important information of significant public interest;

(v) Secrecy laws and other legislation shall be amended as necessary to comply with freedom of information principles.

### **Article 5-6 - Knowledge Commons Databases**

(a) The KCC shall adopt procedures whereby persons, organizations or communities that seek to establish certain qualifying open databases apply for a time-limited period during which no patent applications can be submitted that rely upon the data from the database. To qualify, the databases must address an important public interest, and be freely available to all.

(b) Members agree that during the time period determined in (a), no patents will be granted for patent applications that contain claims to particular uses of the data obtained from such a qualifying database, unless such claims do not restrict, or are licensed on such terms that they do not restrict, the ability of others to use the data at no cost.

Excerpts from the NIH/HapMap license

2. You may access and conduct queries of the Genotype Database and copy, extract, distribute or otherwise use copies of the whole or any part of the Genotype Database's data as you receive it, in any medium and for all (including for commercial) purposes, provided always that:

a. By your actions (whether now or in the future), you shall not restrict the access to, or the use which may be made by others of, the Genotype Database or the data that it contains;

b. In particular, but without limitation,

i. You shall not file any patent applications that contain claims to any composition of matter of any single nucleotide polymorphism ("SNP") genotype or haplotype data obtained from the Genotype Database or any SNP, haplotype or haplotype block based on data obtained from the Genotype Database; and

ii. You shall not file any patent applications that contain claims to particular uses of any SNP, genotype or haplotype data obtained from the Genotype Database or any SNP, haplotype or haplotype block based on data obtained from the Genotype

Database, unless such claims do not restrict, or are licensed on such terms that that they do not restrict, the ability of others to use at no cost the Genotype Database or  
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the data that it contains for other purposes; and

## **Part 6 – Promotion of Open Standards**

### ***Article 6-1 - Committee on Open Standards***

A committee on open standards (COS) shall be established.

### ***Article 6-2 - Disclosure Obligations for Patents Relating to Standards Development Organizations.***

(a) The COS shall establish a process and criteria for a Standards Development Organization (SDO) to request a managed disclosure of relevant patent claims for standards relevant to a knowledge good or service. To make such a request, the SDO must be global, with a membership that is open to any party, and the qualifying open standard must:

VERSION 1

- i. Be adopted and maintained by a not-for-profit organization, and with ongoing development based upon an open decision-making procedure available to all interested parties (consensus or majority decision);
- ii. Be published, with the specification of the standard available either for free or at a nominal charge, with permission to all to copy, distribute and use it for no fee or at a nominal fee; and
- iii. The intellectual property aspects of the standard, including the relevant patents or data, shall be made irrevocably available on a royalty-free basis; and
- iv. There are no constraints on the re-use of the standard.

VERSION 2

- i. Be published without restriction (e.g., potential implementers are not restricted from accessing the standard) in electronic or tangible form, and in sufficient detail to enable a complete understanding of the standard's scope and purpose;
- ii. Be publicly available without cost or for a reasonable non-discriminatory fee for adoption and implementation by any interested party;

iii. Any patent or data rights necessary to implement the standards are made available by those developing the specification to all implementers on reasonable and non-discriminatory (RAND) terms (either with or without payment of a reasonable royalty or fee); and

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iv. The process to develop, maintain, approve, or ratify the standard is by consensus in a market-driven, standards-setting organization that is open to all interested and qualified participants.

(b) The request for a managed disclosure process shall include the following:

i. A description of the SDO

ii. An initial specification of the standard, including the expected applications for the standard,

iii. The benefits to the public of the development of the standard,

(a) Disclosures of patents relevant to the proposed standard that are not responsive to the requirements to be specific with regard to the relevance of the patent to the proposed standard shall be rejected.

(b) Members agree that a patent-holder that fails to make constructive disclosures of relevant patent claims will be prevented from enforcing the patent against the implementation of the open standard.

### ***Article 6-3 - Essential Interfaces for Knowledge Goods***

(a) The COS will periodically request public comment on the interfaces that are essential for software, computers and other knowledge goods.

(c) The COS will publish and periodically update a list of essential interfaces for knowledge goods.

(d) Members agree to consider procurement policies that provide preferences or requirements that computer software, hardware, or accessories that use and enable open standards compliant interfaces.

(e) Members agree that patents that are licensed on a non-discriminatory and royalty-free basis for use in implementing an interface for an essential knowledge good shall not be subject to further fees.

### ***Article 6-4 – Compulsory Licensing of Essential Interfaces for Knowledge Goods***

Members agree to develop procedures for compulsory licensing of essential interfaces for knowledge goods.

## **PART 7 - Control of Anticompetitive Practices**

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### ***Article 7-1 - Relationship Between Intellectual Property Rights and Competition Laws***

Members agree that some licensing practices and conditions pertaining to intellectual property rights restrain competition, have adverse effects on trade and impede the transfer and dissemination of technology. Members agree to specify in their legislation licensing practices or conditions that in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market.

### ***Article 7-2 - Committee on Control of Anticompetitive Practices***

A Committee on the Control of Anticompetitive Practices (CCAP) is established. The CCAP shall meet at least once every two years to address the following issues:

- (a) Collect information from member states on the control of anticompetitive practices in the areas of knowledge goods.
- (b) Publish best practices guides for the implementation of Article 40 of the TRIPS.
- (c) Review trends and implications of concentration of ownership of knowledge good industries,
- (d) Other topics relevant to the control of anticompetitive practices and the promotion of access to knowledge.

### ***Article 7-3 - Essential Software***

- (a) The CCAP shall publish and periodically update a list of software programs and interfaces that are essential for access to knowledge.
- (b) The CCAP shall collect information and publish best practice guidelines for Members seeking to promote competition and access to essential software, on such

topics as:

- i. Government procurement policies relating to the licensing of software, and requirements for
  - a. Open interfaces,
  - b. Obligations for software source code to be released to the public within a fixed period of time,
  - c. Use of standards-compliant file formats for data storage,
  - d. Obligations to license interface information on a non-discriminatory basis;
- ii. Measures to remedy excessive pricing of products with significant market power.
- 19
- iii. Application of essential facilities and tying doctrines, with particular emphasis on obligations to un-bundle software components that are potentially competitive from components which have substantial market power.

## **PART 8 – Authors and Performers**

### ***Article 8-1 - Copyright and Related Rights Collection Societies***

- (a) Members agree to adopt adequate measures to ensure transparency of copyright and related rights-collection society policies, practices, and finances.
- (b) Copyright and related rights-collection societies in developing countries that are not considered high or high middle income by the World Bank may disregard national treatment, and distribute income in disproportionate amounts to domestic authors, performers and creative communities.

### ***Article 8-2 - Unfair Contracts***

- (a) Members agree to protect authors and performers from unfair contracts with publishers.
- (b) .....

## **PART 9 – Transfer of Technology to Developing Countries**

### **Article 9-1 Committee on Transfer of Technology**

A Committee on Technology Transfer (CTT) is created. The CTT shall survey

members on the mechanism that are most useful in the transfer of knowledge and technology to developing countries.

..... UNFINISHED PLACEHOLDER

## **PART 10 – MISC ISSUES**

### ***Article 10-1 Free Movement of Researchers***

VERSION 1

Members agree to facilitate and encourage the participation of students and researchers in university programs of another Member as well as the ability of 20

scientists, engineers and researchers, in general, to participate in conferences or gain experience at firms in another Member. This facilitation and encouragement should be extended to visa and other administrative requirements.

VERSION 2

Members agree to eliminate visa restrictions that limit the ability of students to study at universities in another nation, or restrict the ability of scientists or engineers to participate in conferences or gain experience at firms in another nation.

### ***Article 10-2 Most Favored Access to Publicly Supported Research***

Members agree that with regard to access to publicly funded research, participation in research consortiums, benefits of tax credits, or other areas of support for research or the licensing of intellectual property derived from public funding, any advantage, favor, or privilege granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.

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## **Part 11 – Obligation to Finance Free and Open Knowledge Goods**

- a. Amount of obligation to vary by GDP and level of development
- b. Tradable credits for priority projects

## **PART 12 - Enforcement of Rights and Obligations**