

7 July 2003*

Director General
Dr. Kamil Idris, Director General
World Intellectual Property Organization
Geneva, Switzerland

Dear Dr. Idris:

In recent years there has been an explosion of open and collaborative projects to create public goods. These projects are extremely important, and they raise profound questions regarding appropriate intellectual property policies. They also provide evidence that one can achieve a high level of innovation in some areas of the modern economy without intellectual property protection, and indeed excessive, unbalanced, or poorly designed intellectual property protections may be counter-productive. We ask that the World Intellectual Property Organization convene a meeting in calendar year 2004 to examine these new open collaborative development models, and to discuss their relevance for public policy. (See Appendix following signatures for examples of open collaborative projects to create public goods).

Sincerely,

(in alphabetical order)

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APPENDIX

Open collaborative projects to create public goods

These are some of the projects that could be discussed:

1. The IETF and Open Network Protocols.

The Internet Engineering Task Force has worked for years to develop the public domain protocols that are essential for the operation of the Internet, an open network that has replaced a number of proprietary alternatives. It is important that WIPO acknowledge the success and importance of the Internet, and appreciate and understand the way the IETF functions.

The IETF is currently struggling with problems setting open standards. When the IETF seeks to adopt a standard, there is uncertainty if anyone will later claim the standard infringes a patent. One suggestion to address this problem is to create a system whereby a standards organization could announce an intention to adopt a standard, and after a reasonable period for disclosure, prevent parties from later enforcing non-disclosed infringement claims.

2. Development of Free and Open Software

This movement is highly decentralized, competitive, entrepreneurial, heterogeneous, and devoted to the publishing of software that is freely distributed and open. It includes projects that embrace the GNU General Public License (GPL), which uses copyright licenses to require that modified versions also be free software, and projects such as FreeBSD, which use minimal licensing restrictions and permit anyone to make non-free modified versions, as well as projects such as MySQL, which release the code under the GNU GPL but sell licenses to make non-free modified versions, as well as many other approaches.

The new Apple operating system runs on top of FreeBSD, and big corporate players like Oracle and IBM run databases and server software on the mostly-GPL'd GNU/Linux operating system. Apache is the leading web page server software. WIPO provides frequent forums where firms that embrace closed and proprietary development models express their views, but very little is heard from those who have embraced open and collaborative development models for free software. The

astonishing success of this movement should be recognized by WIPO, and policy development should be open to new ways of thinking.

These various actors have a variety of values and objectives. Richard Stallman of the Free Software Foundation says "the freedom to change and redistribute software is a human right." Others see this as primarily an issue of how to most efficiently develop and distribute software. The proponents of open collaborative free software projects note that there are powerful reasons why software code should be open and freely copied. Not only is it efficient to copy existing code in new programs, but the transparency of the code allows a large community to find flaws and suggest improvements (Linus Torvalds' observation, popularized by Eric Raymond's, that "with enough eyeballs, all bugs are shallow").

The free software movement is very important to the success and the future of the Internet, and it is also quite important in countering Microsoft's massive monopoly power, particularly given the number of commercial competitors to Microsoft that have disappeared. In recent years many governments have begun to embrace open collaborative free software projects. Free software developers are concerned about a number of policies that WIPO is involved in, including whether to allow patents on computational ideas, the future development of digital rights management schemes, and the enforceability of "shrink wrapped" or click-on contracts that contain anticompetitive provisions.

3. The World Wide Web.

If measured by the rate at which it has transformed the world, the World Wide Web is the most important publishing success ever. The web was built on public domain protocols, and on documents that were from the beginning, transparent and open at the level of source code. Long before anyone even knew how copyright would apply to the Internet, millions of documents were being created for free distribution on the Internet. Governments are now routinely publishing documents and data on the web so it can be freely available, as do multilateral institutions like WIPO.

The entire future of the Web will depend upon the extent to which new digital copyright regimes permit such practices as hypertext linking, the use of materials in search engines such as Google, and liberal views toward fair use.

4. The Human Genome Project (HGP).

In an April 14, 2003 state, the heads of state for the France, the US, the UK, Germany, Japan and China issued a statement, which noted that: "Scientists from six countries have completed the essential sequence of three billion base pairs of DNA of the human genome, the molecular instruction book of human life. . . This information

is now freely available to the world without constraints via public databases on the World Wide Web."

If Presidents Jacques Chirac and George Bush, Prime Ministers Tony Blair and Junichiro Koizumi, Chancellor Gerhard Schroeder and Premier WEN Jiabao can collaborate on a statement to herald efforts to create a public domain database, free from intellectual property claims, it is time for the World Intellectual Property Organization to better appreciate why these governments did not want the Human Genome patented.

5. The SNP Consortium

A different example of a project to create a public domain database involves single nucleotide polymorphisms (SNPs), which are thought to have great significance in biomedical research. In 1999, the SNP Consortium was organized as a non-profit foundation to provide public data on SNPs. The SNP Consortium is composed of the Wellcome Trust and 11 pharmaceutical and technological companies including Amersham Biosciences, AstraZeneca, Aventis, Bayer, Bristol-Myers Squibb Company, Hoffmann-LaRoche, GSK, IBM, Motorola, Novartis, Pfizer and Searle. The work was performed by the Stanford Human Genome Center, Washington University School of Medicine (St. Louis), the Sanger Centre and the Whitehead Institute for Biomedical Research. The mission of the SNP consortium was to develop up to 300,000 SNPs distributed evenly throughout the human genome and to make the information related to these SNPs available to the public without intellectual property restrictions. By 2001 it had exceeded expectations, and more than 1.5 million SNPs were discovered and made available to researchers worldwide. The SNPs consortium, the HGP and other similar projects represent different notions regarding the intellectual property rules for databases, and more information about these projects would be useful in evaluating assumptions and informing debates in the WIPO Standing Committee on Copyright as it considers current proposals to convene a diplomatic conference to adopt a treaty on new *sui generis* intellectual property rules for databases.

6. Open Academic and Scientific Journals

The development of the Internet and the World Wide Web has fueled interest in new models for publishing academic and scientific journals. The prices for traditional journals have been sharply rising for years, worsening the gap between those who can afford access to information and those who cannot. In the past several years there has been a proliferation of projects to create open academic and scientific journals. The Public Library of Science was founded by Nobel Prize winner Dr. Harold Varmus and fellow researchers Patrick Brown and Michael Eisen. The Free Online Scholarship (FOS) movement, the creation of the widely read (for profit) BioMed Central to provide "immediate free access to peer-reviewed biomedical research," the Budapest Open Access Initiative (which has been endorsed by 210 organizations), and other

similar projects seek to promote new business models for publishing that allow academic and scientific information to be more widely available to the research community. Other efforts to provide reduced price or free access to researchers in developing countries include the Health InterNetwork, which was introduced by the United Nations' Secretary General Kofi Annan at the UN Millennium Summit in the year 2000, a number of projects sponsored by the International Network for the Availability of Scientific Publications, eIFL.Net (Electronic Information for Libraries), a foundation that "strives to lead, negotiate, support and advocate for the wide availability of electronic resources by library users in transition and developing countries," and a new effort by the Creative Commons to create a license for free access to copyrighted materials in developing countries. Recently US Congressman Martin Sabo introduced legislation to require all US funded research to enter the public domain, and others are calling for international cooperation to similarly enhance the scientific commons.

7. The Global Positioning System.

This is not an example of collaborative development model, but it does illustrate the benefits of providing a free information good, in terms of stimulating the development of an entire generation of new applications. If lighthouses are considered a textbook example of a public good, the modern equivalent might be the Global Positioning System (GPS), which provides the entire world highly accurate positioning and timing data via satellites. GPS signals are used for air, road, rail, and marine navigation, precision agriculture and mining, oil exploration, environmental research and management, telecommunications, electronic data transfer, construction, recreation and emergency response. There are an estimated 4 million GPS users worldwide. The services are offered without charge. Following the Korean Airline disaster, President Reagan offered GPS free to promote increased safety for civil aviation, and more recently President Clinton eliminated the intentional degrading of the system for civilian use. NASA reports that "many years ago we evaluated charging for the civil signal. The more we looked at it, the more convinced we became that by providing the signal free of direct user fees we would encourage technological development and industrial growth. The benefits from that, the new jobs created, and the increased safety and efficiency for services more than outweighed the money we would get from charging – especially when you consider the additional bureaucracy that would be needed to manage cost recovery. We think that judgement has proven valid, as the world-wide market for GPS applications and services now exceeds \$8 billion annually."

*Includes 5 additional signatures.