



May 1, 2003

Alan P. Larson
Undersecretary of State for Economic, Business and Agricultural Affairs
U.S. Department of State
2201 C Street, NW
Room 7256
Washington, DC 20520

Marc I. Grossman
Undersecretary of State for Political Affairs
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Re: World Summit on the Information Society

Dear Undersecretaries Larson and Grossman:

We write you to express our grave concern over the absence of any meaningful reference to, or discussion of, the role that strong copyright protection plays in development of an effective and fully functioning “Information Society” in the draft “Declaration of Principles” and “Action Plan” being considered for adoption in the lead up to the World Summit on the Information Society in Geneva on December 10-12, 2003. Indeed, not only do these drafts fail to recognize the value of copyright protection, they expressly minimize its value. We note, for example, that the “Observer contribution” to the draft “Action Plan” proposes (in Article 34) a series of norms in the area of copyright protection that directly conflict with U.S. law, foreign policy objectives and prevailing international law.

In the view of the copyright industries represented in the International Intellectual Property Alliance (IIPA), any “Declaration” or “Action Plan” relating to the Information Society must recognize the market-oriented incentives provided by effective copyright laws and enforcement to the creation and dissemination of the valuable content that will flow over the Internet and other advanced telecommunications networks. Indeed, it is inconceivable that an “Information Society” in which e-commerce plays a critical part could even exist or function without the content created by creative individuals and by businesses, large and small, profit or non-profit, in both developed and developing countries. We also highlight our objections to a global convention on cultural diversity designed to undermine trade commitments. While we are

fully committed to the preservation and extension of cultural diversity, and indeed are actively involved in producing cultural artifacts reflecting such diversity, we reject the concept that a cultural treaty would remove trade disciplines from all aspects of the cultural industries—a proposal that is completely antithetical to U.S. economic and foreign policy goals.

The IIPA is a coalition of six trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by piracy and other market access barriers. These member associations represent over 1,100 U.S. companies producing and distributing materials protected by copyright laws throughout the world—all types of computer software including business applications software and entertainment software (such as videogame discs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, DVDs and home video and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

On April 17, IIPA and its members were invited to attend a briefing session hosted by Ambassador David Gross, Deputy Assistant Secretary for International Communications and Information Policy, and his colleagues for the U.S. International Telecommunications Advisory Committee (ITAC) to explain to the private sector and other interested parties what has transpired to date in preparing for these important meetings in Geneva in December 2003 and in Tunis in November 2005. Central to that agenda was explaining the March 2003 draft “Declaration of Principles” for the Summit and the draft “Action Plan.” It was explained that these documents, entirely in square brackets and not agreed to yet by any government, represent the disparate views of all countries assigned to prepare them. It is the substance of these documents that prompts this letter to you.

While we will separately file comments as requested at this meeting, IIPA and its members have reviewed the “Declaration” and “Action Plan” (including “observer contributions”). As presently drafted, these documents are very seriously deficient. The 12 page draft of the Declaration of Principles only once even mentions the words “intellectual property” and then even qualifies that reference (see paragraph 50). The “Action Plan” contains particularly damaging specific proposals in connection with copyright law standards to be applied. The serious problems in these documents are many:

- There are myriad references throughout the documents to “access to information” suggesting that such information should not be made available under normal commercial conditions (where, for example, protected by an intellectual property right). There is no basis in U.S. law, or under international norms, for this position.
- They refer, indeed emphasize, the importance of a broad and readily accessible “public domain,” e.g., works whose copyright protection has expired or for which protection has been renounced or abandoned, suggesting that creators who rely upon copyright protection for their literary, scientific or artistic creations are unwanted participants in the “Information Society” contemplated by these documents.
- They fail to distinguish between the concepts of “open standards” and “open source” and, in so doing, improperly promote software development under an open source model over and above any other model. As you know, an open standard is a technical specification,

whereas “open source” refers to a specific method of software development which, like any other software development model, may or may not implement open standards. Standards do not require either proprietary or open source software for their adoption or utility, and in some cases may combine technology or intellectual property developed under both software development models. When these standards are open and available to all through reasonable and non-discriminatory licensing, they help all developers create products that interoperate with each other.

- While the word “information” is used continuously throughout the documents, the reader is left with the conclusion that this refers to information which is unprotected, or otherwise available at no or little cost. However, most of the “information” which will so transform the new information society and the way commerce is conducted (e-commerce) will in fact be literary, scientific or artistic expression protected by copyright, including databases of protected and/or unprotected expression. In many, if not most, cases this “information” will have been created, or placed into a protected database, by individuals, SMEs or larger publishers or producers—in both developing as well as developed countries—who rely on copyright protection to provide the investment incentives to create the protected works in the first place. Such persons or entities charge license fees or a sales price, as happens in markets for tangible products. From the texts of these drafts, this is simply not apparent, either expressly or even impliedly, and should be.
- While the U.S. has apparently inserted into the documents commendable references to the need for “cyber-security,” this term is usually understood to refer to prohibitions against hacking or other unauthorized intrusions into computer or other telecommunications systems. References to cyber-security should be accompanied by references to the dangers to the information society resulting from unchecked commercial piracy or other infringements that occur regularly on the Internet. Indeed, this important aspect of “cybercrime” was recognized in the recently negotiated Cybercrime Convention, Article 10 of which deals with copyright offenses on the Internet.
- The problem of protecting valuable music, sound recordings, movies, entertainment and business software, literary material and protected databases on the Internet also gave rise in 1996 to the upgrading of intellectual property norms in the two WIPO “Internet” treaties. These treaties, which are essential to ensuring that legitimate content is put on the Internet are never mentioned. They establish the legal infrastructure for the protection of these valuable works (these treaties now have 41 adherents, most of them developing countries) in order to ensure that owners of these works can make them available safely on such networks. Indeed, it is this valuable content which increasingly will drive investment in new telecommunications networks and new technologies for transmitting material over them.


IIPA is preparing redlined versions of the draft “Declaration” and the “Action Plan” proposing changes that we believe more properly reflect a balanced vision of the information society, and which better reflect U.S. policy preferences for market-oriented development of ICTs and for the full protection of intellectual property that travels over advanced networks. We in the copyright industries share the vision that the “information society” can revolutionize our world, that e-commerce can contribute significantly to raising standards of living on a global basis and must proceed with the goal firmly in mind to benefit all countries, regardless of its level of development. But this vision simply cannot be brought to reality without recognizing

the importance that valuable content, most protected by intellectual property rights, will play in that development – culturally, scientifically and economically.

We urge you not to agree to a “Declaration” or “Action Plan” which does not address the adequate protection of this “information”—through protection and enforcement of intellectual property rights—in the new “Information Society.” We are not proposing that the “Declaration” or the “Action Plan” develop new norms in the area of intellectual property—indeed we feel strongly that any attempt to refer either to strengthening or weakening existing international norms in the field of copyright and related rights should be assiduously avoided. Rather, these documents should merely highlight the importance of the protection of intellectual property as part of the necessary infrastructure for constructing the information society and for encouraging cultural diversity and economic development. They should, in turn, call upon governments to ensure that their laws and practices are TRIPS-consistent, and encourage all parties to ratify the 1996 WIPO “Internet” treaties and the 2001 Council of Europe Cybercrime Convention. The U.S. should do nothing more than to refer to existing international law in the field of intellectual property.

Thank you for considering the views of the copyright industries in the IIPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric H. Smith', with a stylized flourish extending to the right.

Eric H. Smith
President