

Civil Society proposals on non-paper committed by Patents, Copyright and Trademarks (PCT) Civil Society Working Group

October 30th, 2003

Introduction

We, the Patents, Copyright and Trademarks (PCT) civil society working group welcome the latest initiative of Mr. Samassekou to move forward with the documents.

However, a lot remains to be done, because in their current state, the documents would further inequalities, deny access and offer no vision regarding the ongoing depletion of the public domain. Fundamental issues raised in the PCT plenary statement on September 23rd¹ remain unresolved.

Some of the most pressing issues that will have to be addressed are:

- The question of how to encourage the building of the rich public domain referenced in §23 is not addressed. Furthermore it is in contradiction to §38, where the current status of global inequality, appropriation of indigenous knowledge and digital divide is referred to as balanced, flexible and protective. Particularly the notion of necessity put forward in §38 stands in gross contradiction to millennia of human development experience.
- The new version of §24 deviates far from the consensus about different "software models" found at PrepComIII. Most notably, it fails to recognize the role of Free Software as a fundamental building block of all areas of the information society.²
- Although §40 recognizes the significance of open standards as "essential building blocks of the Information Society," it ignores the past 10 years of standardization experience. No standard will ever be open or interoperable unless it is freely implementable and publicly documented.

In our view the new challenge for the Information Society is to maintain and extend the global knowledge commons and the public domain so that all can benefit. Limitations on free access to and fair use of knowledge imposed by legal and technical means must remain the exception, to be used sparingly and wisely. In this context, Free Software and open standards in the technical infrastructure, are essential components. The current tendency to maintain and extend the IPR regime and to limit free access to information through technical means runs contrary to these goals and is a major threat to the future of an inclusive, just and free society.

We attach suggestions how to remedy these problems and are willing to work in the drafting of any new paper or non-paper you may be planning.

¹<http://fsfeurope.org/projects/wsis/ps-20030923.en.html>

²<http://fsfeurope.org/projects/wsis/fs.html>

Text Proposals

§ 21

Non-Paper:

“The ability for all to access and contribute information, ideas and knowledge is essential in an inclusive Information Society.”

Comments:

We strongly support this paragraph.

§ 24

Non-Paper:

“(22) Access to information and knowledge can be promoted by increasing awareness among all stakeholders of the possibilities offered by different software applications, including proprietary, open-source and free software, in order to increase competition, freedom of choice and affordability, and to enable all stakeholders to evaluate which solution meets their requirements.”

Comments:

This paragraph borders on suggesting to establish technocracy by only allowing politicians to make decisions about specific programs (applications), not the overall political structure/model. Also it suggests that proprietary software is increasing competition (whereas it has done the opposite in the past).

Suggestion:

DELETE and REPLACE: “Access to information and knowledge can be promoted by increasing awareness among all stakeholders about the different software paradigms, notably Free Software and proprietary models, in order to increase competition, freedom of choice and affordability, and to enable all stakeholders to evaluate which approach meets their requirements.”

Minimum remedies:

- When used in conjunction with software, “application” commonly refers to a specific piece of software/program. We strongly suggest using “software paradigm” in comparisons of Free and proprietary software or use the consensus reached at PrepComIII, which was “software models.”
- Speaking of Free Software and Open Source is redundant and potentially dangerous. Although it has seen inflationary usage, referring to proprietary as well as Free Software, the only meaningful definition of the term “Open Source” was in an attempt to create a marketing program for Free Software – see <http://fsfeurope.org/projects/wsis/fs.html>. We suggest replacing all notions of “Free Software and Open Source” with Free Software (capitalized) only.

§ 25

Non-Paper:

“(23) Scientists, universities, academic, research and other institutions have a central role in the development of the Information Society. Many of the building blocks of the Information Society are the result of scientific and technical advances made possible by the sharing of research results. We encourage promoting universal access with equal opportunities for all to scientific knowledge and the creation and dissemination of scientific and technical information.”

Comments:

The question of how to encourage the building of the rich public domain should be strongly addressed.

Suggestion:

ADD: “Any research, especially those funded by public bodies, should enrich the public domain. This must be ensured by the promotion of efficient models for self-publication, open content contributions and other alternative models for the production, publication and sharing of scientific knowledge and the use of non-proprietary formats.”

§ 38

Non-Paper:

“(39) Intellectual property protection is essential to encourage the innovation and creativity in the Information Society. However, striking a fair balance between protection of intellectual property, on the one hand, and its use, and knowledge sharing, on the other, is essential to the Information Society. This balance is reflected by protection and flexibilities included in existing Intellectual Property agreements, and should be maintained. Facilitating meaningful participation by all in intellectual property issues through awareness, capacity building and development of legal framework is a fundamental part of an inclusive Information Society.”

Comments:

This paragraph represents solely the interests of the rights-holding industry, not that of authors, recipients, indigenous people or society as a whole.

Suggestion:

DELETE and REPLACE: “Striking a balance between limited information monopolies, on the one hand, and the use and sharing of knowledge, on the other, is essential to the Information Society.” or DELETE without replacement

§ 40

Non-Paper:

“Standardization is one of the essential building blocks of the Information Society. There should be particular emphasis on the development of international standards. The development and use of open, interoperable, non-discriminatory and demand-driven standards that take into account needs of users and consumers, [and are based on the principle of technological neutrality,] is a basic element in the development of ICTs and more affordable access to them, particularly in developing countries.”

Comments:

This will allow for proprietary, closed pseudo-standards that have largely helped today's concentration of wealth and the digital divide come to pass.

Suggestion:

ADD: “freely implementable, publicly documented”