

# **WORLD TRADE ORGANIZATION**

RESTRICTED

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**Council for Trade-Related Aspects  
of Intellectual Property Rights**

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## **WORK PROGRAMME ON ELECTRONIC COMMERCE**

### Communication from the European Communities and their Member States

The following communication, dated 14 November 2000, has been received from the Permanent Delegation of the European Communities with the request that it be circulated to Members.

#### **A. INTRODUCTION**

1. Basic work was undertaken over the past two years on the relationship between intellectual property rights and electronic commerce. In the WTO, following the Declaration on Global Electronic Commerce adopted by Ministers at the second session of the Ministerial Conference on 20 May 1998, the General Council established a comprehensive work programme for the relevant WTO bodies, including the Council for TRIPS.

2. The European Communities and their member States contributed to the subsequent discussions in the Council for TRIPS by submitting a communication, dated 20 April 1999 (IP/C/W/140), containing a number of observations for the future work of the Council for TRIPS in this area. The Council for TRIPS, in its Progress Report to the General Council of 30 July 1999 (IP/C/18) summarized the discussions which took place in the Council for TRIPS.

3. A number of other documents dealing with the relationship between electronic commerce and intellectual property rights were prepared. In order to assist WTO Members in their deliberations, the WTO Secretariat prepared a general note, dated 14 July 1998 (WT/GC/W/90), discussing the relationship between WTO Agreements and global electronic commerce. A more specific Background Note on intellectual property rights, dated 10 February 1999 (IP/C/W/128), was prepared by the WTO Secretariat for the Council for TRIPS.

4. In addition, a Memorandum on "Intellectual Property and Electronic Commerce", dated 31 July 1998 (WIPO doc. No. A/33/4), was prepared by the Director General of the World Intellectual Property Organization (WIPO). Subsequent to its International Conference on Electronic Commerce and Intellectual Property of September 1999, and as part of the ongoing mandate to examine the evolving relationship between electronic commerce and intellectual property, WIPO published, in May 2000, a Primer on Electronic Commerce and Intellectual Property Issues (WIPO doc. No. WIPO/OLOA/EC/PRIMER) as a starting point in a series of discussions that WIPO intends to foster leading to better understanding of the issues at stake and consideration of new responses.

B. GENERAL OBSERVATIONS

5. The European Communities and their member States maintain the views already expressed in their Communication of 20 April 1999. To recall, the following observations were made in this Communication:

- "The TRIPS Agreement, together with other international conventions, already provides for a sound basis for the protection of intellectual property rights in the off-line world and the on-line environment, which could be built upon, if necessary.
- In certain areas, shortcomings exist in the present system for the protection of intellectual property rights.
- In other areas, it has to be recognized that the TRIPS Agreement does provide only for minimum standards and does not aim at harmonizing all aspects of intellectual property rights. Consequently, differences in the national protection systems appear to be inevitable.
- Some of the shortcomings might relate to issues which could go beyond those purely related to the protection of intellectual property rights and, therefore, might have to be addressed in a more horizontal manner.
- Work is already well under way in other international fora, notably WIPO. These developments will be closely followed.
- At an appropriate time in the future, and taking into account work done in other fora, it might be desirable to adapt or clarify the provisions of the TRIPS Agreement to reflect new technological developments in order to help foster a legal environment where electronic commerce can develop to the benefit of all participants."

6. Future work of the Council for TRIPS on electronic commerce should build upon these observations and the Council for TRIPS' Progress Report to the General Council of 30 July 1999.

7. Subject-matters relating to the protection of intellectual property should be addressed in the Council for TRIPS.

C. FURTHER STUDY AREAS

8. It is the understanding of the European Communities and their member States that further study in the Council for TRIPS should first concentrate on the core issues related to electronic commerce and intellectual property rights. There are, however, a number of broader issues which may need to be studied to the extent that it seems likely they may have an impact on intellectual property rights. These issues include electronic contracts, jurisdiction, applicable law and enforcement.

9. On the core intellectual property issues, one can identify a number of major areas where further study is required (see also WIPO Primer on Electronic Commerce and Intellectual Property Issues of May 2000): copyright and related rights, patents, trademarks, and the link between Internet Domain Names and trademarks and geographical indications. In addition, the Internet offers opportunities for improved efficiency and accessibility for the filing applications for patents, trademarks and industrial designs. Finally, the Internet may provide additional challenges to the enforcement of intellectual property rights. On a more general level, the Council for TRIPS was also asked to examine further the way electronic commerce facilitates access to technology.

10. As already recognized in the earlier communication by the European Communities and their member States, as well as in the Progress Report of the Council for TRIPS to the General Council, much work was and is already being undertaken in the WIPO. It has to be recalled that the Progress Report of the Council for TRIPS states that "further study is required by the international community to better understand the issues involved" and "that a great deal of work in this connection is under way in the WIPO". It also needs to be recalled that duplication of work should be avoided.

D. DISCUSSIONS IN THE COUNCIL FOR TRIPS

11. Discussions in the Council for TRIPS should concentrate on identifying possible shortcomings in the TRIPS Agreement resulting from new technological developments and the emergence of electronic commerce. This work could, *inter alia*, take into account the analysis undertaken so far by the WIPO.

12. Following the identification of possible shortcomings, the Council for TRIPS should determine whether or not answers to identified shortcomings need to be addressed in the framework of the TRIPS Agreement bearing in mind that a number of these shortcomings are already addressed in and through the WIPO.

13. The TRIPS Agreement is, to a large extent, built upon conventions established under the WIPO at the time of the Uruguay Round. New international conventions have, since then, been adopted by the WIPO, such as the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The WIPO is continuing substantive work on a number of issues related to electronic commerce and the Council for TRIPS will have to decide, on a case-by-case basis, how much this work should be taken into consideration and how and when the results of this work should be reflected in the TRIPS Agreement.

14. Finally, the Council for TRIPS should examine how identified shortcomings should be addressed in the TRIPS Agreement, e.g. through an interpretation of existing provisions or through their revision and amendment.

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