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Centre for Trade Facilitation and Electronic Business (UN/CEFACT)

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Item 6 of the provisional agenda

Progress on Intellectual Property Rights (IPR) Policy

Note by the UN/CEFACT IPR Special Contact Group (SCG) of the Bureau^{*}

This document is for **information**.

The Special Contact Group for Intellectual Property Rights Policy (IPR SCG) developed a new draft IPR policy that does not raise the problems flagged earlier by the United Nations Office of Legal Affairs (OLA). A representative of the IPR SCG met with an OLA representative at the UN headquarters in April 2005 and described in general terms the new draft and the new approach. The IPR SCG will make some revisions to the 25 February 2005 Comment Draft IPR policy and then send the revised IPR Policy to OLA for approval.

(*) The Bureau of UN/CEFACT has submitted the present document after the official documentation deadline due to the need for extensive consultations.)

I. Background

1. At the May 2004 Plenary meeting, the Legal Rapporteur reported on the options for a UN/CEFACT Intellectual Property Rights (IPR) policy:

- Do nothing
- Adopt the draft policy approved by the CSG
- Adopt the version suggested by OLA
- Escalate the problem
- Continue discussions with OLA

2. The Plenary decided to establish an IPR Special Contact Group (SCG) to develop a new IPR policy. The Secretariat issued a call for nominations of legal experts to participate in the IPR SCG. The list of participants is available from the Secretariat. The first meeting of the IPR SCG was held in conjunction with the Forum meeting in September 2004.

3. The IPR SCG reviewed relevant IPR policies and defined the fundamental principles for the UN/CEFACT IPR policy (IPR SCG N04001). With these results, the IPR SCG developed a draft IPR policy and conducted review and comment cycles within the IPR SCG to improve the draft IPR policy.

4. Using the Comment Draft dated 25 February 2005 the IPR SCG developed an Executive Summary and an Overview slide presentation that was included in the Bureau's report at the UN/CEFACT Forum meeting in March 2005 in Kuala Lumpur.

II. Summary of the Draft IPR Policy

Waiver Obligation

5. The draft UN/CEFACT IPR Policy ("Policy") is designed to promote the goal of enabling the implementation of UN/CEFACT Specifications without the burden of fees or restrictions. The Policy promotes this goal by requiring all participants in a UN/CEFACT Forum Group to waive their rights to enforce any of their intellectual property ("IPR") that would be necessary to implement a final technical specification developed in that Forum Group ("Essential IPR"). The Participant's waiver is limited in the sense that it applies only to parties implementing a final technical specification, and only to the extent of such implementation. All other rights are retained. The waiver is automatic, and is required as a condition of participating in the UN/CEFACT open development process.

Disclosure Obligation

6. A Participant in a UN/CEFACT Forum Group can avoid the limited automatic waiver only by disclosing the content of its relevant IPR, and electing not to waive its rights to enforce such IPR, on or before one of the express "Disclosure Triggering Events" set forth in the Policy. These events are keyed to the milestones in the Specification development process, such as the publication of the first working draft, the end of the public review period, etc. A Participant must designate an "Authorized Individual" to represent and bind the Participant with respect to the obligations of the Policy, including the disclosure obligation. Upon each Disclosure Triggering Event, should the Authorized Individual fail to disclose a Participant's Essential IPR of which the Authorized Individual has knowledge, that Essential IPR is automatically waived. Moreover, upon the final Disclosure Triggering Event (5 days after final technical specification release), all undisclosed Essential IPR is waived, regardless of the Authorized Individual's knowledge. In summary, should a Participant seek to preserve its rights to enforce its IPR against implementers of a UN/CEFACT technical Specification, the burden falls squarely on that Participant to disclose its IPR.

Exception Handling

7. Once a Participant discloses Essential IPR, the Policy provides for the formation of an Intellectual Property Advisory Group (“IPAG”). The IPAG is an *ad hoc* group consisting of at least representatives from the Forum Management Group and from the Plenary Bureau. The IPAG will consider the issue regarding the IP conflict and select one of the specific conclusions outlined in the Policy.

III. Status as of 15 April 2005

8. A representative of the IPR SCG met with an OLA attorney in New York on 8 April 2005 and described in general terms the new draft and the new approach. No concerns were identified at that meeting. The IPR SCG will make some revisions to the Comment Draft IPR policy dated 25 February 2005 and then send the revised IPR Policy to OLA for final review and comments.
