

York, George

From: York, George
Sent: Thursday, May 02, 2013 4:25 PM
To: Burns, Thaddeus J (GE, Corporate)
Subject: RE: U.S. Leadership in WIPO VIP Treaty Negotiations

Thanks.

From: Burns, Thaddeus J (GE, Corporate) [mailto:(b) (6)@ge.com]
Sent: Thursday, May 02, 2013 3:13 PM
To: York, George
Subject: FW: U.S. Leadership in WIPO VIP Treaty Negotiations

From: Schonander, Carl E [mailto:SchonanderCE@state.gov]
Sent: Thursday, May 02, 2013 3:12 PM
To: Burns, Thaddeus J (GE, Corporate)
Cc: Bhatia, Karan (GE Corporate, GE Officer); Horton, Carl (GE Corporate); 'van den Broek, Naboth'
Subject: RE: U.S. Leadership in WIPO VIP Treaty Negotiations

Dear Thaddeus:

Yes excellent to reconnect. Let's definitely stay in touch!

We'll be commenting on the positions you have outlined below, but we'll be doing that once the appropriate interagency consultations are done – you know how that goes!

In any event, welcome back to the United States. Look forward to working with you more closely in the future.

Cheers.

Carl

This email is UNCLASSIFIED.

From: Burns, Thaddeus J (GE, Corporate) [mailto:(b) (6)@ge.com]
Sent: Thursday, May 02, 2013 2:50 PM
To: Schonander, Carl E
Cc: Bhatia, Karan (GE Corporate, GE Officer); Horton, Carl (GE Corporate); 'van den Broek, Naboth'
Subject: U.S. Leadership in WIPO VIP Treaty Negotiations

Dear Carl,

Was great to reconnect today in the meeting at USTR. Just wanted to reiterate my points to you today that for GE and our ACTI Coalition Companies (Siemens, 3M, ExxonMobil, Dupont, Philips) improving access to copyrighted works by persons who are visually impaired or who have print disabilities is a worthy objective. We support, in general, efforts by

the Administration and by the international community to find effective solutions to the challenges faced by these groups. In particular, we support conclusion of a balanced and workable international agreement in favor of the visually-impaired, provided it respects the fundamental ownership rights of those who create copyright-protected works while also re-affirming the copyright limitations and exceptions (L/E) that have worked for more than a century to balance stakeholders' interests.

US industry is very concerned about the direction the negotiations have taken, and the likelihood of a premature and incomplete outcome in Morocco in June.

The treaty as currently drafted does not reflect the appropriate balance between copyright protections, on the one hand, and L/E to copyright protection, on the other hand. The international copyright infrastructure is fundamentally based on such balance. By casting it aside, the VIP Treaty could set a very harmful precedent, affecting broader debates about global IPR rules at the UNFCCC, WTO, WHO, WIPO, and elsewhere. It is crucial that the VIP Treaty be consistent with existing international IPR agreements, including the Berne Convention, the WIPO Copyright Treaty, and the WTO TRIPS Agreement.

The current VIP Treaty draft text does not adequately balance protections and L/E:

- It isolates L/E from the basic copyright protections to which they pertain even though many of the eventual signatory countries do not provide any copyright protections whatsoever. This would create an unworkable and counterproductive outcome in relation to certain jurisdictions, where E/L to copyright would be instituted in a vacuum;
- It does not incorporate the so-called "three-step" test which is enshrined in all of the key global copyright agreements and which has proven over time to be a flexible, effective instrument for balancing stakeholders' interests. The test provides that countries may permit exceptions to the protection of copyrighted works but only (i) in "special cases"; (ii) which "do not conflict with a normal exploitation of the work"; and (iii) do not "unreasonably prejudice the legitimate interests of the right holder";
- The VIP Treaty, in its current form, is strongly supported and advanced by the same group of NGOs and advanced emerging economy countries that pursue a general IPR-weakening agenda at WIPO and other international forums. As currently drafted, the VIP Treaty would create a harmful precedent that could be relied upon by IPR detractors in other talks, including at UNFCCC, WHO, and WTO.

The current state of VIP Treaty negotiations, together with WIPO's broader work program emphasizing L/E to IP rights, threatens to upset the fundamental principles on which the U.S. and global IP systems are based. USG support and leadership have been critical in addressing threats to advanced manufacturing, innovation, technological advancement, and IPR, and we are grateful for your efforts within WIPO, particularly over the last several weeks. Continued U.S. leadership will be needed to ensure the VIP Treaty addresses the challenges faced by the visually-impaired without playing into the hands of those pushing for global IPR weakening.

It is unlikely that all of the flaws in the current VIP Treaty text can be addressed between now and the June Diplomatic Conference. As such, the only option at this time may be to postpone the Conference and to continue negotiations until an effective and acceptable outcome can be achieved. I understand that there is a meeting taking place next week to be convened by the Mexican Ambassador. Our coalition of trade associations and companies are presently reaching out to other key negotiators in capitals including the EU, Germany, Australia, Japan, Mexico, Brazil, Kenya, Nigeria and others to make this point in the hopes that Ambassadors in Geneva might prevail on Francis Gurry to allow negotiations to continue towards a more workable text to be agreed upon in a diplomatic conference convened at a later date.

We fully support better access to print works for the visually impaired and for persons with print disabilities. But any treaty to accomplish this goal must be done right. An unworkable agreement that creates major gaps in the existing, delicately balanced global IPR framework is not in the interest of the United States. Moreover, because such an outcome would face uncertain ratification and implementation prospects in many WIPO Members, it would not be in the interest of the visually impaired either.

Given the current state of the text, our suggestion is really about timing to allow for a better outcome rather than a change of policy direction.

Kind regards,

Thaddeus

Thaddeus Burns
GE
Senior Counsel, Intellectual Property
& Technology Policy
T (b) (6)
E (b) (6) @ge.com
www.ge.com
8 rue Neuve-du-Molard
CH-1204 Geneva
Switzerland

York, George

From: York, George
Sent: Sunday, May 05, 2013 7:29 PM
To: (b) (6) @ge.com'
Subject: Re: Fwd: 16 May briefing on print disabilities

Thanks.

----- Original Message -----

From: Burns, Thaddeus J (GE, Corporate) [mailto:(b) (6) @ge.com]
Sent: Sunday, May 05, 2013 02:38 PM
To: York, George
Subject: Fwd: 16 May briefing on print disabilities

Sent from my iPhone

Begin forwarded message:

From: "Hughes, Justin" <Justin.Hughes@USPTO.GOV<mailto:Justin.Hughes@USPTO.GOV>>
Date: May 5, 2013, 14:00:31 EDT
To: "Hughes, Justin" <Justin.Hughes@USPTO.GOV<mailto:Justin.Hughes@USPTO.GOV>>
Subject: 16 May briefing on print disabilities

Dear Colleagues,

As we move towards the Marrakesh diplomatic conference, the USG team will continue to have briefings and consultations with stakeholders, both "all hand" stakeholder meetings and meetings for specific constituencies.

Because of the wide range of groups that have expressed interest in the print disabilities agreement, the inter-agency group thinks it is appropriate at this juncture to invite civil society, non-copyright IP groups, and others to join our next briefing meeting/ conference call for all stakeholders. The next meeting/conference call will be 16 May at 2:00pm EST.

If you would like to participate, please RSVP to Chanell Gray (Chanell.Gray@uspto.gov<mailto:Chanell.Gray@uspto.gov>) and Terrika Babb (Terrika.Babb@uspto.gov<mailto:Terrika.Babb@uspto.gov>). They will distribute information on the meeting location (at Main Commerce) and for joining the tele-conference as the date gets closer.

Cordially,

Justin

Justin Hughes
Senior Advisor to the Undersecretary of Commerce U.S. Patent and Trademark Office U.S. Department of Commerce
600 Dulany Street, Madison West
Alexandria Virginia 22313-1450
1.571.272.4344

York, George

From: York, George
Sent: Wednesday, May 08, 2013 8:47 AM
To: (b) (6) @ge.com'
Subject: Re: IPO Letter Leak

Thanks.

From: Burns, Thaddeus J (GE, Corporate) [mailto:(b) (6) @ge.com]
Sent: Wednesday, May 08, 2013 08:44 AM
To: York, George
Subject: IPO Letter Leak

Just a heads up that the IPO letter was leaked to Jamie Love. Late last night he e-mailed our global head of communications and we made available the following statement:

GE fully supports expanding access to print works for the visually impaired. However, with respect to any treaty negotiation, the broader implications an agreement may have on job creation and trade must be considered. This is the reason why we call on the VIP treaty negotiators to create an instrument that helps the visually impaired while maintaining the careful balance that is part of the global intellectual property framework.

Best,

Thaddeus

Thaddeus Burns
GE
Senior Counsel, Intellectual Property & Technology
Policy, EMEA & Latin America
T (b) (6)
E (b) (6) @ge.com
www.ge.com
8 rue Neuve-du-Molard
CH-1204 Geneva
Switzerland

York, George

From: York, George
Sent: Tuesday, April 16, 2013 3:05 PM
To: Burns, Thaddeus J (GE, Corporate)
Subject: RE: IPO Letter re VIP Treaty and Limitiations & Exceptions Agenda

Many thanks, Thaddeus. I had not seen this.

Best,
George

From: Burns, Thaddeus J (GE, Corporate) [mailto:(b) (6)@ge.com]
Sent: Tuesday, April 16, 2013 12:28 PM
To: York, George
Subject: IPO Letter re VIP Treaty and Limitiations & Exceptions Agenda

In case you have not seen this yet...



**Intellectual
Property
Owners
Association**

April 15, 2013

Hon. Teresa Stanek Rea
Acting Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office
600 Dulany Street
P.O. Box 1450
Alexandria, VA 22313

Re: WIPO VIP Treaty and Related Patent Law Concerns

Dear Director Rea:

Intellectual Property Owners Association (IPO) thanks the USPTO for its steadfast commitment to maintaining strong intellectual property (IP) protection for American businesses, which are among the leading innovators, manufacturers, and energy producers in the world. IPO submits these comments in advance of the April 18 meeting of the World Intellectual Property Organization (WIPO) Standing Committee on Copyright and Related Rights, which will discuss the proposed treaty on limitations and exceptions (L/E) to copyright for visually impaired persons with print disabilities (VIP treaty).

IPO is a trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO's membership includes more than 200 companies and more than 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members.

IPO supports international action that addresses the needs of the visually impaired in meaningful ways, but we are concerned about the VIP treaty as currently drafted, focused exclusively on L/Es and not on the rights holders whose copyrights are at stake. We are also concerned about the potentially negative, precedential effect that a one-sided, exceptions-focused VIP treaty may have on parallel developments at WIPO and in other international negotiations. We outline our key concerns below and urge you to take these into account as you prepare for the April 18 VIP treaty negotiating session.

Copyright-Related Concerns about the VIP Treaty

Our main concern about the VIP treaty, as currently drafted, is that it addresses L/Es to copyrights in isolation, without parallel provisions addressing IP holders' rights. The proposed VIP treaty would create specific L/Es to copyright protection, with the aim of broadening access to print works for the visually impaired. However, it would not reflect the importance of protecting the copyright of those who created the work. Under U.S. law, L/Es are available to support access to copyrighted works by the visually

President
Richard F. Phillips
Exxon Mobil Corp.

Vice President
Philip S. Johnson
Johnson & Johnson

Treasurer
Carl B. Horton
General Electric Co.

Directors
Tina M. Chappell
Intel Corp.
Mark Costello
Xerox Corp.
William J. Coughlin
Ford Global Technologies LLC
Robert DeBerardine
Sanofi-Aventis
Gerald L. DePaolo
The Travelers Companies, Inc.
Anthony DiBartolomeo
SAP AG
Bart Eppenhauer
Microsoft Corp.
Louis Foreman
Eventys
Scott M. Frank
AT&T
Darryl P. Frickey
Dow Chemical Co.
Bernard J. Graves, Jr.
Eastman Chemical Co.
Krish Gupta
EMC Corporation
Henry Hadad
Bristol-Myers Squibb Co.
Jack E. Haken
Koninklijke Philips Electronics N.V.
Alan W. Hammond
Life Technologies Corp.
Dennis R. Hoerner, Jr.
Monsanto Co.
Michael Jara
Medtronic, Inc.
Lisa Jorgenson
STMicroelectronics, Inc.
Charles M. Kinzig
GlaxoSmithKline
David J. Koris
Shell International B.V.
Allen Lo
Google Inc.
Scott McDonald
Mars Incorporated
Steven W. Miller
Procter & Gamble Co.
Douglas K. Norman
Eli Lilly and Co.
Elizabeth A. O'Brien
Covidien
Sean O'Brien
United Technologies, Corp.
Dana Rao
Adobe Systems Inc.
Kevin H. Rhodes
3M innovative Properties Co.
Mark L. Rodgers
Air Products & Chemicals, Inc.
Curtis Rose
Hewlett-Packard Co.
Matthew Barbarara
Oracle USA, Inc.
Manny Schechter
IBM, Corp.
Steven Shapiro
Pitney Bowes Inc.
Dennis C. Skarvan
Caterpillar Inc.
Russ Slifer
Micon Technology, Inc.
Terri H. Smith
Motorola Solutions, Inc.
Daniel J. Staudt
Siemens Corp.
Brian K. Stierwalt
ConocoPhillips
Thierry Sueur
Air Liquide
James J. Trussell
BP America, Inc.
Katherine Umpleby
Qualcomm, Inc.
Roy Waldron
Pfizer, Inc.
Michael Walker
DuPont
BJ Watrous
Apple Inc.
Stuart Watt
Amgen, Inc.
Paul D. Yasger
Abbott Laboratories
Mike Young
Roche Inc.

General Counsel
Michael D. Nolan
Milbank Tweed

Executive Director
Herbert C. Wamsley

INTELLECTUAL PROPERTY OWNERS ASSOCIATION

impaired, but they co-exist and are reflected jointly with the fundamental protections afforded to copyright owners to which such L/Es apply. By treating L/Es in isolation, the draft VIP treaty would fail to strike an appropriate balance and constitutes an overly broad way of achieving its stated goals. A balanced approach to copyright protection cannot exist when rights and exceptions are treated separately.

To achieve this objective, we have three recommendations:

- (1) Incorporate the Berne Convention's "three step test" into the VIP treaty. This can be done directly or explicitly "by reference." If the three step test is not incorporated, however, limitations and exceptions may apply, while basic copyright protections do not.
- (2) Delete the VIP treaty's expansion of fair use. As you know, many WIPO member countries do not have proper legal and institutional mechanisms in place that would allow them to implement fair use effectively and fairly.
- (3) Ensure that there is an exception to L/Es for situations where a copyrighted work is commercially available and accessible.

Implementing these three recommendations would help ensure that the VIP treaty serves the actual, specific interests of the visually impaired while avoiding the unintended consequence of undermining or weakening existing copyright protection. Properly anchoring the VIP treaty within the broader, global framework of copyright and other IP protections will be a critical and minimum requirement in this respect.

Broader IP Policy Concerns Raised by the VIP Treaty Negotiations

By isolating L/Es from the IP holders' rights, the VIP treaty negotiations could also set a dangerous precedent for other areas of IP law, particularly patent law. The U.S. advanced manufacturing industry continues to face the threat of erosion of patent rights in a range of international fora and negotiations. Other countries could refer to the WIPO VIP treaty as precedent for establishing broad exceptions and limitations to patent rights without adequate protections for innovators.

This threat is not merely theoretical; it is real. This February, the WIPO Standing Committee on the Law of Patents agreed to initiate a work program focused specifically on the exploration of an L/E approach to patent rights. In fact, later this year, the Committee will hold a special conference to discuss "countries' use of health-related patent flexibilities." This is a concerning first step, and the discussion of expansion of limitations could easily bleed into other areas of patent protection, for example, clean technologies, energy, medical technologies, and advanced manufacturing in general. Such competitive strategies are specifically being pursued by several leading emerging economies.

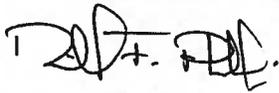
INTELLECTUAL PROPERTY OWNERS ASSOCIATION

Patents and other industrial property rights continue to be under fire at the United Nations Framework Convention on Climate Change (UNFCCC), World Health Organization (WHO), and at the World Trade Organization (WTO) as well. Despite substantial differences between copyrights and patent protection and the regulatory frameworks and balance of rights and obligations on which they are based, the WIPO VIP treaty developments could pose a real and much broader IP-policy risk.

U.S. Government Response and Next Steps

The U.S. Government's strong support and leadership have been critical in addressing constant threats against advanced manufacturing innovation, technology, and IP rights. Developments such as the WIPO VIP treaty and the work program now pursued regarding patent L/Es threaten to upset the fundamental balance on which our US and global IP system is based. Some of our member companies have already been discussing the broader policy and negotiating issues with your office and the U.S. Trade Representative's office for some time. In particular, we wish to recognize and thank Shira Perlmutter and her team for their excellent engagement. We are happy to discuss these issues further as you prepare for the WIPO VIP treaty negotiating session.

Sincerely,



Richard Phillips
President

cc: Hon. Victoria Espinel,
IP Enforcement Coordinator

Hon. Michael Froman,
Assistant to the President of the United States and Deputy National Security
Advisor for International Economic Affairs

Hon. Robert Hormats,
Under Secretary of State for Economic Growth, Energy, and the Environment

Hon. Cameron Kerry,
General Counsel, U.S. Department of Commerce

Hon. Demetrios Marantis,
Acting U.S. Trade Representative

York, George

From: Burns, Thaddeus J (GE, Corporate) <(b) (6)@ge.com>
Sent: Wednesday, May 01, 2013 4:56 PM
To: York, George
Subject: Background and Talkers for DC Meetings this Week
Attachments: WIPO VIP TreatyBackground.docx; WIPO VIP TreatyTalkers.docx

Hi George. Just arrived in DC and wanted to share these with you. We are with you tomorrow and of course at PTO on Friday and then a number of trade associations and companies are reaching out on the Hill as well as in capitals. I know that at the PTO meeting there will be folks from companies, US Chamber, NFTC, NAM, IPO and Chris Marcich will dial in from Brussels.

Look forward to catching up over lunch tomorrow.

Thaddeus

Thaddeus Burns
GE
Senior Counsel, Intellectual Property & Technology
Policy, EMEA & Latin America
T (b) (6)
E (b) (6)@ge.com
www.ge.com
8 rue Neuve-du-Molard
CH-1204 Geneva
Switzerland

Background on VIP Treaty Negotiations

April 30, 2013

According to the World Health Organization, there are more than 314 million visually impaired people worldwide. Of these, 45 million are blind, 90 percent of whom live in developing countries.¹ In wealthier countries, only a small fraction of published books are made in accessible formats for the visually impaired. Even fewer works are available in low income countries, resulting in a “book famine,” depriving the visually impaired access to education, culture, and entertainment.

Most accessible books are made by specialist, non-profit agencies. In many cases these organizations use copyright exceptions available in national law. However, relatively few countries have such exceptions, and the scope of existing exceptions varies considerably.² Even when exceptions exist, since copyright is a creature of national law, the provided exceptions cannot be used to benefit those in other countries. As a result, efforts to make books accessible are often duplicated, expending the limited resources of these agencies.

To address these issues, Members of the World Intellectual Property Organization (WIPO) have entered into negotiations on a new treaty to improve access by the visually-impaired and persons with print disabilities to copyrighted works (“VIP Treaty”). The primary objectives of the VIP treaty are to 1) facilitate the creation of accessible format works by harmonizing exceptions and limitations across national jurisdictions and 2) enable cross border sharing of such works.

Status of the Negotiations

A WIPO Diplomatic Conference is scheduled for 17-28 June 2013 in Morocco, with the aim of finalizing the WIPO VIP Treaty. During the most recent round of negotiations, taking place at WIPO’s Standing Committee on Copyrights (SCCR) between April 18-20, a highly bracketed text was tabled. Numerous complications have emerged since then and it appears that none of the stakeholders are satisfied with the text in its current form. At the same time, there is a real risk that the treaty will be concluded in June, because of political pressure on WIPO to “deliver”.

Given the current status of negotiations, the planned Diplomatic Conference is premature and in danger of delivering no treaty at all or a watered down instrument that does not serve its intended purpose. Such a result would not reflect well on the global IP system. Instead, it would be advisable to postpone the Diplomatic Conference until a text has been developed that all stakeholders can support and that adequately addresses the core IPR-related concerns discussed in further detail below. In our view this is necessary but will be politically difficult, given that WIPO’s Director General, Francis Gurry, a number of NGOs including the World Blind Union and KEI, and the Africa group in particular, are pushing for the treaty to be signed immediately.

¹ World Health Organization, “Prevention of Avoidable Blindness and Visual Impairment: Report by the Secretariat,” Sixty-Second World Health Assembly, Provisional Agenda Item 12.3 (A62/7), April 2, 2009, http://apps.who.int/gb/ebwha/pdf_files/A62/A62_7-en.pdf

² WIPO. Study on Copyright Limitations and Exceptions for the Visually Impaired. SCCR/15/7. February 2007. Available at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696

Broader Context

The VIP Treaty negotiations are taking place against the backdrop of broader international efforts, by certain advanced emerging economies and NGOs, to weaken Intellectual Property Rights protection in general, *i.e.*, including copyrights, but also patents, and trade secrets. Such efforts so far have focused in particular on the UN Framework Convention on Climate Change (UNFCCC), where India, China and certain other countries as well as key NGOs have demanded “flexibilities” for clean technology-related IPR; the World Health Organization (WHO); and the World Trade Organization (WTO). The same group of countries, moreover, is also pursuing a range of domestic policies to the same effect. Thus, for example, India specifically calls for compulsory licensing of clean technology patents in its National Manufacturing Policy.

Key Problems with the VIP Treaty (as currently drafted)

International copyright law is fundamentally based on a balance between the rights of copyright owners, and certain Limitations & Exceptions that can be imposed in a very limited set of circumstances. This balance is reflected, *inter alia*, in the so-called “three-step” test. According to this test, any L/E shall be (i) limited to “special cases”; (ii) is only allowed “provided that reproduction does not conflict with a normal exploitation of the [copyrighted] work”; and (iii) when it “does not unreasonably prejudice the legitimate interests of the right holder”. Any L/E framework, moreover, only makes sense where copyrights are properly enshrined in international and domestic legal instruments as well. It does not make sense to have an exception without the corresponding basic rule.

The VIP Treaty as currently drafted does not reflect the appropriate balance between copyright protections, on the one hand, and L/E to copyright protection, on the other hand:

- As currently drafted, the VIP Treaty isolates L/E from the basic copyright protections to which they pertain even though many of the eventual signatory countries do not provide any copyright protections whatsoever. In these countries, in other words, Limitations and Exceptions would exist without the related copyrights protections – to which such L/E pertain. It does not make sense to agree to L/E when basic rights are not yet in place.
- The draft VIP Treaty reflects a compromise version of the “three-step” test which is inadequate and likely to cause confusion. At a minimum, therefore, the existing “three-step” test must be spelled out clearly and apply to the entire agreement and to all signatories. The European Union made a proposal to this effect in 2012 that should be revisited and agreed.
- The VIP Treaty, in its current form, is strongly supported and advanced by the same group of NGOs and advanced emerging economy countries that pursue a general IPR-weakening agenda at WIPO and in other international fora. As currently drafted, the VIP Treaty would create a harmful precedent that could be relied upon by IPR detractors in other talks, including at UNFCCC, WHO, and WTO. Given the highly politicized nature of this broader IPR debate, and the aggressive IPR-weakening agendas of the countries involved, this is a real and immediate risk.

Talking Points on VIP Treaty Negotiations

May 7, 2013

- The World Intellectual Property Organization (WIPO) is seeking to adopt an international treaty to improve access to copyrighted works by the visually-impaired and persons with print disabilities (“VIP Treaty”).
- These are worthy objectives – there are more than 314 million visually impaired people globally, and, in more developed countries, the availability of published works in accessible formats is severely limited. Access in less developed countries is even more limited.
- We are very concerned, however, about the direction the negotiations have taken, the potential broader ramifications, and the likelihood of a unbalanced, premature, and incomplete outcome. Such an outcome would set a very negative precedent for other areas of IP law and in other industrial sectors. It would hurt American companies, exports and jobs.
 - A WIPO Diplomatic Conference has been scheduled for 17-28 June 2013 in Morocco. At this point, WIPO Members plan to finalize the VIP Treaty at this June 17-28 meeting.
 - But the VIP treaty, in its current form, contains several significant flaws. Most importantly, the international copyright infrastructure is fundamentally based on a balance between copyright protections, on the one hand, and so-called Limitations and Exceptions (L/E) to copyright protection, on the other. The VIP Treaty as currently drafted does not reflect this balance.
 - It isolates L/E from the basic copyright protections to which they pertain even though many of the eventual signatory countries do not provide any copyright protections whatsoever. This would create an unworkable and very harmful outcome in relation to certain jurisdictions, where E/L to copyright would be instituted in a vacuum. You cannot have exceptions without a basic rule.
 - It does not incorporate the so-called “three-step” test which is enshrined in all of the key global copyright agreements and which has proven over time to be a flexible, effective instrument for balancing stakeholders’ interests.¹ The test provides that countries may permit exceptions to the protection of copyrighted works, but only (i) in “special cases”; (ii) which “do not conflict with a normal exploitation of the work”; and (iii) do not “unreasonably prejudice the legitimate interests of the right holder”. It is

¹ I.e., the Berne Convention, TRIPS Agreement, and WIPO Copyright Treaty.

a key part of global copyright protection and the fundamental balance between rights and exceptions that global copyright rules try to achieve.

- Finally, and perhaps most importantly, the VIP Treaty, in its current form, is strongly supported and advanced by the same group of NGOs and advanced emerging economy countries that pursue a general IPR-weakening agenda at WIPO and other international forums – and for good reason. As currently drafted, the VIP Treaty would create a harmful precedent that could be relied upon by IPR detractors in other talks, including at UNFCCC, WHO, and WTO. As such, any harm done in the VIP Treaty context would have much broader ramifications, for a range of technology and IPR sectors.
- IPR protection, as you know, is critical to a broad range of industries, innovators, investors and others. Creativity and innovation are at the heart of economic growth and development. Effective IPR protection helps empower investors and creative minds to turn ideas into high quality, marketable products and services and, by doing so, creates jobs, exports, commercial success, and long-term, sustainable economic growth.
- The current state of VIP Treaty negotiations, together with WIPO’s broader work program emphasizing L/E to IP rights, threatens to upset the fundamental principles and delicate balance between rights and exceptions, on which global IP systems are based. Y focusing on exceptions and limitations and failing to fully incorporate and reflect the “three-step test”, the VIP Treaty undermines the fundamental balance that exists in IPR copyright law, and threatens the basic interests of U.S. exporters, jobs and commercial success.
- It is unlikely that all of the flaws in the current VIP Treaty text can be addressed between now and the June Diplomatic Conference that WIPO has scheduled. Time is simply too short and the issues far too complex and politically loaded.
- As such, we believe that the only option at this time is for the Conference to focus on a Plan B and to continue negotiations, until an effective and acceptable outcome can be achieved. We urge you to support and advocate this course of action.
- We fully support better access to print works for the visually impaired and for persons with print disabilities. But any treaty to accomplish this goal must be done right. An unworkable treaty that creates major gaps in the existing, delicately balanced global IPR framework is not in anyone’s interest. Indeed, because such an outcome would face uncertain ratification and implementation prospects in many WIPO Members, it would not be in the interest of the visually impaired and persons with print disabilities either.

York, George

From: York, George
Sent: Thursday, May 02, 2013 8:46 AM
To: (b) (6) @ge.com'
Subject: Re: U.S. Leadership in WIPO VIP Treaty Negotiations

Got it. Much obliged. See you see.

From: Burns, Thaddeus J (GE, Corporate) [mailto:(b) (6) @ge.com]
Sent: Thursday, May 02, 2013 08:22 AM
To: York, George
Subject: FW: U.S. Leadership in WIPO VIP Treaty Negotiations

FYI – in case Karin has not shared yet...

From: Burns, Thaddeus J (GE, Corporate)
Sent: Thursday, May 02, 2013 6:28 AM
To: 'King, Betty'
Cc: Perlmutter, Shira; Reves, J. Todd; 'Ferriter, Karin L.'; Bhatia, Karan (GE Corporate, GE Officer); Horton, Carl (GE Corporate)
Subject: U.S. Leadership in WIPO VIP Treaty Negotiations

Dear Ambassador King,

As you know, a WIPO Diplomatic Conference has been scheduled for 17-28 June 2013 in Morocco. At this meeting, WIPO Members plan to finalize a treaty intended to improve access by the visually-impaired and persons with print disabilities to copyrighted works (“VIP Treaty”).

Improving access to copyrighted works by persons who are visually impaired or who have print disabilities is a worthy objective. We support, in general, efforts by the Administration and by the international community to find effective solutions to the challenges faced by these groups. In particular, we support conclusion of a balanced and workable international agreement in favor of the visually-impaired, provided it respects the fundamental ownership rights of those who create copyright-protected works while also re-affirming the copyright limitations and exceptions (L/E) that have worked for more than a century to balance stakeholders’ interests.

At this point in time I wanted to alert you before we meet this week with USG agencies in Washington: US industry is very concerned about the direction the negotiations have taken, and the likelihood of a premature and incomplete outcome in Morocco in June.

The treaty as currently drafted does not reflect the appropriate balance between copyright protections, on the one hand, and L/E to copyright protection, on the other hand. The international copyright infrastructure is fundamentally based on such balance. By casting it aside, the VIP Treaty could set a very harmful precedent, affecting broader debates about global IPR rules at the UNFCCC, WTO, WHO, WIPO, and elsewhere. It is crucial that the VIP Treaty be consistent with existing international IPR agreements, including the Berne Convention, the WIPO Copyright Treaty, and the WTO TRIPS Agreement.

The current VIP Treaty draft text does not adequately balance protections and L/E:

- It isolates L/E from the basic copyright protections to which they pertain even though many of the eventual signatory countries do not provide any copyright protections whatsoever. This would create an unworkable and

counterproductive outcome in relation to certain jurisdictions, where E/L to copyright would be instituted in a vacuum;

- It does not incorporate the so-called “three-step” test which is enshrined in all of the key global copyright agreements and which has proven over time to be a flexible, effective instrument for balancing stakeholders’ interests.^[1] The test provides that countries may permit exceptions to the protection of copyrighted works but only (i) in “special cases”; (ii) which “do not conflict with a normal exploitation of the work”; and (iii) do not “unreasonably prejudice the legitimate interests of the right holder”;
- The VIP Treaty, in its current form, is strongly supported and advanced by the same group of NGOs and advanced emerging economy countries that pursue a general IPR-weakening agenda at WIPO and other international forums. As currently drafted, the VIP Treaty would create a harmful precedent that could be relied upon by IPR detractors in other talks, including at UNFCCC, WHO, and WTO.

The current state of VIP Treaty negotiations, together with WIPO’s broader work program emphasizing L/E to IP rights, threatens to upset the fundamental principles on which the U.S. and global IP systems are based. Your strong support and leadership have been critical in addressing threats to advanced manufacturing, innovation, technological advancement, and IPR, and we are grateful for your efforts within WIPO, particularly over the last several weeks. Continued U.S. leadership will be needed to ensure the VIP Treaty addresses the challenges faced by the visually-impaired without playing into the hands of those pushing for global IPR weakening.

It is unlikely that all of the flaws in the current VIP Treaty text can be addressed between now and the June Diplomatic Conference. As such, the only option at this time may be to postpone the Conference and to continue negotiations until an effective and acceptable outcome can be achieved. I understand that there is a meeting taking place next week to be convened by the Mexican Ambassador. Our coalition of trade associations and companies are presently reaching out to other key negotiators including the EU, Germany, Australia, Japan, Mexico, Brazil and others to make this point in the hopes that Ambassadors in Geneva might prevail on Francis Gurry to allow negotiations to continue towards a more workable text to be agreed upon in a diplomatic conference convened at a later date.

We fully support better access to print works for the visually impaired and for persons with print disabilities. But any treaty to accomplish this goal must be done right. An unworkable treaty that creates major gaps in the existing, delicately balanced global IPR framework is not in the interest of the United States. Moreover, because such an outcome would face uncertain ratification and implementation prospects in many WIPO Members, it would not be in the interest of the visually impaired either.

I want to take this opportunity to personally thank you for your passionate leadership on behalf of the US creative and innovative communities and indeed all US WIPO stakeholders.

Warm regards,

Thaddeus

Thaddeus Burns
GE
Senior Counsel, Intellectual Property
& Technology Policy
T (b) (6)
E (b) (6) @ge.com
www.ge.com
8 rue Neuve-du-Molard
CH-1204 Geneva
Switzerland

^[1] *i.e.*, the Berne Convention, TRIPS Agreement, and WIPO Copyright Treaty.

York, George

From: York, George
Sent: Thursday, May 09, 2013 9:11 AM
To: (b) (6) @ge.com'
Subject: Re: 2013 04 19 GIPC Letter in re WIPO VIP Treaty

Thanks.

----- Original Message -----

From: Burns, Thaddeus J (GE, Corporate) [mailto:(b) (6) @ge.com]
Sent: Thursday, May 09, 2013 07:00 AM
To: York, George
Subject: 2013 04 19 GIPC Letter in re WIPO VIP Treaty

FYI



GIPC

Global Intellectual Property Center
U.S. CHAMBER OF COMMERCE

David T. Hirschmann
President and CEO
Global Intellectual Property Center
U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
202-463-5609
www.theglobalipcenter.com

April 19, 2013

The Honorable Teresa Stanek Rea
Acting Under Secretary of Commerce for Intellectual Property
Acting Director of the U.S. Patent and Trademark Office
U.S. Patent and Trademark Office
600 Dulany Street
P.O. Box 1450
Alexandria, VA 22313

Dear Ms. Rea:

On behalf of the Global Intellectual Property Center (GIPC) at the U.S. Chamber of Commerce I am writing to you to express concerns about the ongoing meetings of the World Intellectual Property Organization (WIPO) regarding visually impaired persons (VIP).

As representatives of a broad sector of businesses, we wholeheartedly support the goal of enhancing the availability of works in formats accessible to the visually impaired. It has come to our attention, however, that certain proposals are being pushed in the VIP negotiations that are both wholly unnecessary to the goals of those negotiations and seem instead to be driven by an unrelated agenda of undermining copyright.

The U.S. Chamber of Commerce is the world's largest business organization representing the interests of more than 3 million businesses of all sizes, sectors, and regions. Our members range from mom-and-pop shops and local chambers to leading industry associations and large corporations.

The GIPC and the Chamber advocate for the promotion of robust and effective intellectual property (IP) rights and norms, the necessary resources for critical government agencies, and enforcement of the law.

The Honorable Teresa Stanek Rea
April 19, 2013
Page 2

As the Founders understood so well, copyright provides an incentive for the creation and distribution of creative works. This incentive has helped drive the success of copyright-based industries in the United States and helped produce materials that everyone can enjoy, regardless of their visual abilities.

When we consider measures that provide new exceptions or limitations to the critical property rights recognized by copyright, we must be mindful not to undermine that fundamental incentive. An example of this is the three-step test for limitations and exceptions to copyright. The test is a foundational aspect of international copyright law, and is critical to enabling creative works for consumers available through a wide variety of distribution channels.

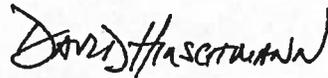
Respecting the three-step test should not be controversial. In fact, the three-step test was reaffirmed by the global community less than ten months ago by its inclusion in WIPO's Beijing Treaty on Audiovisual Performances. We understand that current efforts to ensure the three step test applies to all exceptions adopted pursuant to the VIP instrument are facing resistance. The failure to embody this principle would contradict a century long global consensus as well as, contradict United States policy in its trade agreements. It would not only threaten to permit limitations to copyright that unreasonably prejudice the copyright owner, but would also set a profoundly negative precedent for future agreements.

Another important issue at hand is the effort to appropriate the VIP negotiations as a vehicle for advancing a broad and vague concept of "fair use". This effort has little to do with the goals of the proposed instrument, but has strong potential to undermine the rights of authors significantly. The U.S. should aggressively reject this effort to sidetrack the VIP negotiations to serve a separate and highly controversial agenda.

We understand that the Intellectual Property Owners Association has expressed similar concerns, and we join with them in urging you to uphold the U.S. Patent and Trademark Office's long-standing commitment to vibrant and effective intellectual property.

The Honorable Teresa Stanek Rea
April 19, 2013
Page 3

Sincerely,



David Hirschmann
President and Chief Executive Officer

cc: The Honorable Victoria Espinel, IP Enforcement Coordinator
The Honorable Michael Froman, Assistant to the President of the United States and Deputy National Security Advisor for International Economic Affairs
The Honorable Robert Hormats, Under Secretary of State for Economic Growth, Energy, and the Environment
The Honorable Cameron Kerry, General Counsel, U.S. Department of Commerce
The Honorable Demetrios Marantis, Acting U.S. Trade Representative
The Honorable Maria Pallante, Register of Copyrights

York, George

From: Burns, Thaddeus J (GE, Corporate) <(b) (6)@ge.com>
Sent: Monday, June 03, 2013 11:35 AM
To: York, George
Subject: GE VIP Negotiations Holding Statement

GE fully supports expanding access to print works for the visually impaired. However, with respect to any treaty negotiation, the broader implications an agreement may have on job creation and trade must be considered. This is the reason why we call on the VIP treaty negotiators to create an instrument that helps the visually impaired while maintaining the careful balance that is part of the global intellectual property framework.

Thaddeus

York, George

From: Burns, Thaddeus J (GE, Corporate) <(b) (6)@ge.com>
Sent: Tuesday, May 07, 2013 9:16 AM
To: York, George
Subject: FW: Thank you and Follow-Up
Attachments: WIPO VIP Treaty Basic Background (May 7 2013).docx; WIPO VIP Treaty Basic Talking Points (May 7 2013).docx; IPO Letter re WIPO VIP Treaty.pdf

FYI.

From: Burns, Thaddeus J (GE, Corporate)
Sent: Tuesday, May 07, 2013 5:15 AM
To: 'Peter_J_Kaldes@nss.eop.gov'
Cc: Behrens, William (GE, Corporate); Mages, Allison (GE, Corporate); (b) (6)@siemens.com
Subject: Thank you and Follow-Up

Dear Peter,

Thank you for taking the time to discuss the VIP Treaty with us. The treaty's objective - making more print works accessible for the visually impaired - is certainly worthy. However, we are growing increasingly concerned with the direction these negotiations have been taking, and in particular, the potential negative effects on the intellectual property rights that drive U.S. exports and create American jobs. The existing international intellectual property framework represents a careful balance between rights and limitations. But if the VIP Treaty continues on its current trajectory, that delicate equilibrium will be undone. We appreciate your help in preserving the value of our intellectual property that enables U.S. companies to compete in the global marketplace.

To briefly summarize our main concerns:

- With the Diplomatic Conference to finalize the VIP Treaty only a month away, the text fails to put the proposed exceptions and limitations to copyright in the proper context, as part of a system that ensures rights holders have the ability to reap the commercial benefits their work. Not only does this set a dangerous precedent which could ultimately affect the rights of U.S. technology companies, but with the text in its current state of disarray, there is a strong likelihood that negotiations will fail. And even if they are successful, the text's flaws will make it extremely difficult for the U.S. to ratify. We recommend delaying the Diplomatic Conference until a document that can be more widely supported is developed.
- Given the broader implications of the VIP Treaty to the intellectual property rights of U.S. companies, USTR needs to have a more significant role in the negotiations. *At a minimum*, USTR should be present and active at the upcoming Diplomatic Conference to provide perspective on how proposed language may affect global trade. USTR should also be deeply involved in developing negotiating guidance and establishing redlines.

Attached is additional background information as well as the letter from IPO to USPTO Acting Director Rea. As we mentioned, the IPO letter prompted the USPTO to include Shira Perlmutter in the last round of negotiations, which is a positive development. However, given the current momentum and potentially damaging effects of the treaty on U.S. competitiveness, more and urgent intervention is needed.

I have cc'd Patricia Sherman of Siemens the co-chair of the Alliance for Clean Technology Innovation (ACTI) with whom I co-lead ACTI (GE, Siemens, ExxonMobil, 3M, Dupont & Philips). We look forward to supporting you on this and please don't hesitate to contact us if we can provide further information.

Kind regards,

Thaddeus

Thaddeus Burns

GE

Senior Counsel, Intellectual Property & Technology

Policy, EMEA & Latin America

T (b) (6)

E (b) (6)@ge.com

www.ge.com

8 rue Neuve-du-Molard

CH-1204 Geneva

Switzerland