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ENGLISH ONLY

**UNITED NATIONS CENTRE FOR TRADE FACILITATION AND ELECTRONIC
BUSINESS (UN/CEFACT)**

**RECOMMENDATION FOR FUTURE ELECTRONIC BUSINESS
STANDARDS DEVELOPMENT**

Submitted by the Head of Delegation of the United States *

* This document is submitted by the Head of Delegation of the United States for **distribution** to and **discussion** by the UN/CEFACT Plenary during the May 2004 Plenary meeting under agenda item 7.

Introduction

1. We are aware of the history and circumstances surrounding the currently known alternatives for an Intellectual Property Rights (IPR) policy available for use within UN/CEFACT. Summarized, these alternatives are: 1) provide an irrevocable royalty-free perpetual copyright license in all contributions, and a royalty-free license for the contributor's essential patent claims to all implementers of the standard, supported by a full and unlimited indemnity in favor of the UN against all claims, or 2) relinquish all IPR in contributions to the UN for work so contributed. The indemnity aspect of the first alternative places any contributor at potential financial risk and would be unacceptable to our Group members. The second alternative is equally unacceptable in that it deprives contributors of their ownership in contributed IP and therefore places significant economic burdens and future use limitations on any IP contributor.
2. Our assessment of this situation is that either of the above alternatives would dramatically curtail the continued and future involvement of many businesses, individuals, governments and other entities in the UN/CEFACT standards development process. Further, we foresee that those who have contributions to make, and who see the value in a “contributor friendly” development environment, could gravitate away from UN/CEFACT to other more acceptable venues. As a consequence, we anticipate the potential for significant loss of valued contributions and a negative impact on future UN/CEFACT operations, unless this IPR issue is resolved appropriately as recommended below.

Discussion

3. We unequivocally acknowledge the value attributable to standards development under the UN umbrella. Commensurate with that, however, is the responsibility to also provide an environment that respects the implications to those who are involved in the process, both users and providers. We suggest that provision for a robust and supportive IPR policy is imperative if we are to realize an effective environment for future standards development within UN/CEFACT.
4. Although we understand that business and economic issues attributable to technology have played a significant role in bringing the IPR issue to the forefront, technology itself is not the primary consideration. Certainly, technology-related IP is frequently a differentiator within the commercial marketplace and can be the basis for a reluctance to limit its use by the developer of the IP. However, our experience suggests that invariably the need for standards that support multiple technologies for global exchange is recognized and other performance or product characteristics evolve to become the marketplace discriminators. Thus, over time, technology may become less of a factor, at least until the next round of technology begins.
5. We are compelled to emphasize the foregoing because the need for an effective IPR policy applies equally to areas other than technology, including the development of business processes, data structures, best practices, business models, etc. An IPR policy can have an equally significant business or economic impact for the contributor of those categories of IP. Therefore, how effectively we address an IPR policy will most certainly impact every aspect of our standards development work, not simply the technology areas.
6. We have observed the efforts to develop an enlightened IPR policy within the UN for approximately two years. While we were encouraged by the UN/CEFACT Steering Group's approval of a provisional IPR policy in October 2002, we view the recent removal of this policy from the UN/CEFACT web site and the current uncertain status of the UN/CEFACT IPR policy as unfortunate. We also are not clear with respect to where we actually stand on the matter. There appear to be at least two fundamental issues that require immediate clarification:
 - ♦ Is the Office of Legal Affairs (OLA) position regarding the above two IPR policy alternatives a recommendation or a decision?

- ◆ If our policy options are as stated above, can we successfully continue in the current environment, or should we carefully consider transitioning the eBusiness standards development work elsewhere?
7. In May we will be making decisions about the future management structure for UN/CEFACT. We will also see a significant change in a number of leadership positions. When considered in conjunction with regard to whether or not the OLA position is a recommendation or a decision, as well as the fact that we are essentially a voluntary participation organization, we should carefully evaluate:
 - ◆ who would champion any further discussions within the UN;
 - ◆ whether there is sufficient energy and enthusiasm to effectively pursue the matter; and
 - ◆ what the potential likelihood is for obtaining a satisfactory solution.

Additionally, given the time it has taken to arrive at this point, we should carefully evaluate whether sufficient time remains to pursue the matter further before those who actually provide the IP view our current state of affairs as unsatisfactory and decline further participation.

8. Our concern is that those individuals and organizations, representing both themselves as well as global industries, that have willingly provided IP to UN/CEFACT eBusiness standards development will see no incentive for their continued participation. We are also concerned that precious little time remains before we could begin to experience an exodus (in fact, some organizations already have halted their participation in UN/CEFACT) due to the current situation with the IPR policy.

Recommendations

9. We deem it imperative for UN/CEFACT's long-term health and viability that we provide a balanced environment which meets the needs and interests of all contributors by crafting a successful IPR policy that will encourage greater participation in and valuable IP-based contributions to UN/CEFACT.
10. We by no means suggest that we race to an impulsive decision on this matter. To the contrary, we suggest that the management responsibility before us requires that we carefully, but rapidly, address the issue.
11. Certainly one alternative is to continue the dialog with the OLA. Specifically, we recommend continuing to work with the OLA to resolve the problem as expeditiously as possible, but not to extend those deliberations beyond the current calendar year.
12. During this dialog with the OLA, we recommend that the provisional IPR policy be restored to the UN/CEFACT web site in its previous form and be designated as the official interim IPR policy of UN/CEFACT. This will fill the current void in a manner that will encourage continued participation in, and contributions to, UN/CEFACT while a final solution is being worked out.
13. We further recommend that the provisional IPR policy be considered, either in its current form or including changes based on any acceptable comments received during a designated final comment period, as the official approved IPR policy for UN/CEFACT and the UN.
14. Finally, in order to be prepared in case a satisfactory long-term solution for this problem cannot be reached, we recommend consideration of how to transition our eBusiness standards development work to an acceptable alternative venue. That means we should initiate discussions for contingency planning to mitigate this situation, to include identifying alternative organizations, developing evaluation criteria, seeking input and recommendations from our empowered Groups (something we cannot over emphasize) and developing a comprehensive transition plan. In that regard we suggest the

Plenary refer to TRADE/CEFACT/2003/Misc.11¹ which was introduced in the 2003 Plenary and contains an analysis of alternative standards development options.

15. We believe it both prudent and imperative that in May we reach agreement on our course of action and the time schedule to be followed so that our members/participants can factor that into their respective decisions about future participation. Without some reasonable assurances in this regard, we are concerned that our inevitable losses will be difficult, if not impossible, to recover.

¹ TRADE/CEFACT/2003/Misc.11, *Evaluation of Alternative Development Environments and Organizations for UN/CEFACT Electronic Business Standards Work Programmes, Report of Analysis and Recommendations, April 20, 2003*, was introduced during the 2003 Plenary session. The document conveyed the results of a CSG analysis of alternatives for transitioning eBusiness standards development to other organizations.