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ADDENDUM TO THE STUDY ON PATENTS AND THE PUBLIC DOMAIN (II)

prepared by the Secretariat

1. The Project document of the Project on Patents and the Public Domain (document CDIP/7/5 Rev.) specifies that comments from Member States, civil society and NGOs on the Study on Patents and the Public Domain (II), undertaken in the context of this Project and presented to the twelfth session of the CDIP, would be solicited and appended to the Study in original languages.

2. Accordingly, the Annex to this document contains the abovementioned comments and is presented as an Addendum to the Study on Patents and the Public Domain (II).

3. *The Committee is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

ANNEX

Comments from Member States, Civil Society and NGOs
on the Study on Patents and the Public Domain (II)

United States of America

The Study on Patents and the Public Domain (II) clearly demonstrates that for over 100 years, the patent system has been a rich source of publicly available information. It has contributed tremendously to the creation of a rich and accessible public domain. The United States acknowledge the study's conclusion that the overall relationship between patents, innovation and a rich and freely accessible public domain is complex and nuanced. The study is useful in understanding the public domain and how various actors and factors affect the public domain.

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The theoretical premise of the study is that a rich and accessible public domain is a result of invention disclosures in patent documents. In other words, an increase in patenting will automatically result in an expansion of the public domain. The concept of the public domain includes works where IPRs are not applicable or enforced. The study does not take this into account and simply assumes that knowledge embodied in a patent disclosure contributes to the public domain. The concept of the “global patent arbitrage” referred to in Part I of the study is based on the premise that developing countries can effectively capitalize and use an invention which is in the public domain in its jurisdiction, and also develop improvements to the invention which can also be exported abroad. However, very few developing countries have the means or the necessary technological base or capacity to either successfully exploit the invention or to make those improvements. The lack of patents from developing countries in the developed world reaffirms this. Moreover, firms in developed countries strategically apply for patents in selected developing countries where innovative capacity exists. Thus, firms in developing countries with some innovative capability will be prevented from making use of the knowledge. In view of the above, the study should be revised and improved to particularly address the barriers to fostering a rich and accessible public domain that arise from the IP system. The study fails to address this element and draws a positive correlation between IP and the public domain, though the study admits in parts the existence of negative implications of certain enterprise practices. The revised study should address the following issues: (i) how the public domain could be explored in resource poor settings. Patent information in itself is not sufficient in this regard; and (ii) how patent flexibilities can be fully utilized to foster a rich and accessible public domain.

[End of Annex and of document]