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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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AGENDA ITEM 4: PROTECTION OF THE RIGHTS OF BROADCASTING
ORGANIZATION

PROPOSAL BY ARGENTINA*

* Received on July 28, 1999.

WIPO PROTOCOL ON THE PROTECTION OF THE BROADCASTS OF
BROADCASTING ORGANIZATIONS

CHAPTER I — GENERAL PROVISIONS

ARTICLE 1

RELATION TO OTHER CONVENTIONS

1. Nothing in this Protocol shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome on October 26, 1961 (hereinafter referred to as “the Rome Convention”).
2. Protection granted under this Protocol shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Protocol may be interpreted as prejudicing such protection.
3. This Protocol shall not affect the copyright of broadcasting organizations and/or other owners of rights in relation to the works that are broadcast.
4. This Protocol shall not have any connection with, or prejudice any rights or obligations under, any other treaties.

ARTICLE 2

DEFINITIONS

For the purposes of this Protocol:

- (a) “emission” or “transmission” means the dissemination of sounds or images, or of images with sound, by means of electromagnetic waves, cable, optic fiber or other comparable media;
- (b) “broadcasting” means the wireless transmission for public reception of sounds or of images with sound, or representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means of decrypting are made available to the public by the broadcasting organization or with its consent;
- (c) “cable distribution” means the distribution by wire of sounds or images, or of images with sound, or representations thereof, for public reception;

(d) “broadcasting organization” means the body authorized by any Contracting Party that is capable of emitting sound or visual signals, or both, in such a way that they may be perceived by a number of receiving individuals; the authorized entity that engages in cable distribution is also a “broadcasting organization”;

(e) “retransmission” means the simultaneous emission by one broadcasting organization of the broadcast of another broadcasting organization;

(f) “communication to the public” means making the broadcast of a broadcasting organization, or a fixation thereof, audible or visible in places accessible to the public;

(g) “fixation” means the embodiment of sounds or images, or of images with sound, or the representation thereof, from which they may be perceived, reproduced or communicated by means of a device.

ARTICLE 3

BENEFICIARIES OF PROTECTION UNDER THIS PROTOCOL

Contracting Parties shall accord the protection provided for in this Protocol to the broadcasting organizations of other Contracting Parties that meet the following conditions:

(a) the headquarters of the broadcasting organization must be located on the territory of another Contracting Party;

(b) the broadcast must be transmitted from a transmitter or transmitters located on the territory of another Contracting Party. In the case of satellite broadcasting, the relevant place shall be the point at which the sounds or images, or images with sound, or the representations thereof, intended for direct reception by the public are introduced, under the control and on the responsibility of the broadcasting organization, into an unbroken chain of communication towards the satellite and from it down to earth.

ARTICLE 4

NATIONAL TREATMENT

1. Every Contracting Party shall accord to the broadcasting organizations of other Contracting Parties, as defined in Article 3, the same treatment as it grants to its own broadcasting organizations with respect to the exclusive rights specifically granted in this Protocol.

2. Paragraph (1) shall not apply where the other Contracting Party avails itself of the right provided for in Article 11 of this Protocol.

CHAPTER II — RIGHTS OF BROADCASTING ORGANIZATIONS

ARTICLE 5

RIGHTS OF BROADCASTING ORGANIZATIONS

Broadcasting organizations shall have the following exclusive rights in relation to their broadcasts:

- I. retransmission;
- II. deferred transmission;
- III. cable distribution;
- IV. fixation in a physical medium;
- V. reproduction of fixations;
- VI. decrypting of encrypted broadcasts;
- VII. communication to the public;
- VIII. making fixations of broadcasts, available to the public, whether by wire or by wireless means, in such a way that members of that public may access them from a place and at a time individually chosen by them.

ARTICLE 6

LIMITATIONS AND EXCEPTIONS

1. Contracting Parties may, in their national legislation, provide for the same kinds of limitation or exception with regard to the protection of broadcasting organizations as that legislation already contains with regard to the protection of the copyright in literary and artistic works.
2. The Contracting Parties may understand the mere supply of the physical installations that serve to facilitate or make a communication as not, in itself, constituting communication to the public.
3. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Protocol to certain special cases that do not conflict with the normal exploitation of the broadcast or unreasonably prejudice the legitimate interests of the broadcasting organization.
4. Contracting Parties may provide in their national legislation that the simultaneous cable distribution, without change, of a wireless broadcast of a broadcasting organization within the area serviced by the latter does not constitute retransmission or communication to the public.

ARTICLE 7

TERM OF PROTECTION

The protection to be granted to broadcasting organizations under this Protocol shall have a term of not less than 50 years counted from the first of January of the year following that in which the broadcast was first transmitted.

ARTICLE 8

OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Protocol and that restrict acts, in respect of their broadcasts, that are not authorized by the broadcasting organizations concerned or permitted by law.

In particular, effective legal remedies shall be provided against those who:

- I. decrypt an encrypted program-carrying signal;
- II. receive and distribute or communicate to the public an encrypted program-carrying signal that has been decrypted without the express authorization of the broadcasting organization that emitted it;
- III. participate in the manufacture, importation, sale or any other act that makes available a device or system capable of decrypting or helping to decrypt an encrypted program-carrying signal.

ARTICLE 9

OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

Contracting Parties shall provide adequate and effective legal remedies against any person who knowingly performs any one of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any of the rights provided for in this Protocol:

- removing or altering any electronic rights management information without authority;
- distributing, importing for distribution, transmitting, communicating or making available to the public, without authority, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authority.

As used in this Article, “rights management information” means information that identifies the broadcasting organization and/or the broadcast and/or the owner of any right in the broadcast, or information about the terms and conditions of use of the broadcast, and any numbers or codes that represent such information, when any of those items of information accompany the transmission, communication or making available to the public of the broadcast or a fixation thereof.

ARTICLE 10

FORMALITIES

The enjoyment and exercise of the rights provided for in this Protocol shall not be subject to any formality.

ARTICLE 11

APPLICATION IN TIME

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of broadcasting organizations provided for in this Protocol.

This Protocol shall not detract from the rights acquired in any Contracting Party prior to the date of its entry into force for that Party.

ARTICLE 12

PROVISIONS ON ENFORCEMENT OF RIGHTS

1. Contracting Parties undertake to adopt, in conformity with their legal systems, the measures necessary to ensure the application of this Protocol.
2. Contracting Parties shall ensure that enforcement procedures are available in their legislation to permit effective action against any act of infringement of rights referred to in this Protocol, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to further infringement.

CHAPTER III — ADMINISTRATIVE AND FINAL CLAUSES

ARTICLE 13

ASSEMBLY

- (1)(a) The Contracting Parties shall have an Assembly.
- (b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisers and experts.
- (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed it. The Assembly may ask WIPO to grant bilateral assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
- (2)(a) The Assembly shall deal with matters concerning the maintenance and development of this Protocol and its application and operation.
- (b) The Assembly shall perform the function allocated to it under Article 15(2) regarding the admission of certain intergovernmental organizations to become party to this Protocol.
- (c) The Assembly shall decide on the convocation of any Diplomatic Conference for the revision of this Protocol and give the necessary instructions to the Director General of WIPO for the preparation of such Diplomatic Conference.
- (3)(a) Every Contracting Party that is a State shall have one vote and shall vote only in its own name.
- (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its member States, with a number of votes equal to the number of its member States that are party to this Protocol. No such intergovernmental organization shall participate in the vote if any of its member States exercises its right to vote, and vice versa.
- (4) The Assembly shall meet in ordinary session every two years on convocation by the Director General of WIPO.
- (5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Protocol, the required majority for various kinds of decision.

ARTICLE 14

INTERNATIONAL BUREAU

The International Bureau of WIPO shall perform the administrative tasks concerning this Protocol.

ARTICLE 15

ELIGIBILITY TO BECOME PARTY TO THE PROTOCOL

1. Any Member State of WIPO may become party to this Protocol.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Protocol that declares that it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Protocol and that it has been duly authorized, in accordance with its internal procedures, to become party to this Protocol.
3. The European Community, which made the declaration referred to in the preceding paragraph at the Diplomatic Conference that adopted this Protocol, may become party to this Protocol.

ARTICLE 16

RIGHTS AND OBLIGATIONS UNDER THE PROTOCOL

Subject to any specific requirements to the contrary in this Protocol, every Contracting Party shall enjoy all the rights and assume all the obligations provided for in this Protocol.

ARTICLE 17

SIGNATURE OF THE PROTOCOL

This Protocol shall remain open until, for signature by any Member State of WIPO and by the European Community.

ARTICLE 18

ENTRY INTO FORCE OF THE PROTOCOL

This Protocol shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

ARTICLE 19

EFFECTIVE DATE OF BECOMING PARTY TO THE PROTOCOL

This Protocol shall bind:

- (i) the 30 States referred to in Article 18 from the date on which this Protocol enters into force;

- (ii) any other State from the expiry of three months from the date on which the State deposits its instrument with the Director General of WIPO;
- (iii) the European Community from the expiration of three months after the deposit of its instrument of ratification or accession if it is deposited after the entry into force of this Protocol according to Article 18, or three months after the entry into force of this Protocol if it is deposited before the entry into force of this Protocol;
- (iv) any other intergovernmental organization that is admitted to become party to this Protocol from the expiration of three months after the deposit of its instrument of accession.

ARTICLE 20

DENUNCIATION OF THE PROTOCOL

This Protocol may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO receives the notification.

ARTICLE 21

LANGUAGES OF THE PROTOCOL

1. This Protocol shall be signed in a single original in English, Arabic, Chinese, French, Russian and Spanish, the versions in all those languages being equally authentic.
2. An official text in any language other than those referred to in paragraph 1. shall be established by the Director General of WIPO at the request of an interested party after consultation with all the interested parties. For this purposes of this paragraph “interested party” means any Member State of WIPO whose official language or one of whose official languages is involved, or the European Community or any other intergovernmental organization that may become party to this Treaty if one of its official languages is involved.

ARTICLE 22

DEPOSITARY

The Director General of WIPO is the depositary of this Protocol.

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