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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

**COMPARISON OF PROPOSALS OF WIPO MEMBER STATES
AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES
RECEIVED BY SEPTEMBER 15, 2003**

prepared by the Secretariat

TABLE OF CONTENTS7

| | <u>Page</u> |
|---|-------------|
| INTRODUCTORY NOTE..... | 2 |
| I. TITLE | 3 |
| II. PREAMBLE | 4 |
| III. RELATION TO OTHER CONVENTIONS AND TREATIES; RELATION TO COPYRIGHT AND OTHER CATEGORIES OF RELATED RIGHTS HOLDERS | 6 |
| IV. DEFINITIONS..... | 12 |
| V. BENEFICIARIES OF PROTECTION..... | 18 |
| VI. NATIONAL TREATMENT..... | 23 |
| VII. RIGHTS OF BROADCASTING, CABLECASTING AND WEBCASTING ORGANIZATIONS | 26 |
| VIII. LIMITATIONS AND EXCEPTIONS..... | 37 |
| IX. TERM OF PROTECTION | 43 |
| X. OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES | 46 |
| XI. OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION | 49 |
| XII. FORMALITIES | 54 |
| XIII. RESERVATIONS | 57 |
| XIV. APPLICATION IN TIME | 59 |
| XV. PROVISIONS ON ENFORCEMENT OF RIGHTS | 61 |
| XVI. ADMINISTRATIVE AND FINAL CLAUSES | 65 |

INTRODUCTORY NOTE

1. The Secretariat of the World Intellectual Property Organization (WIPO) has prepared a document which contains a comparison of the proposals on the protection of the rights of broadcasting organizations submitted by the Member States and the European Community to the Secretariat up to September 15, 2003.
2. This document is based on the following other documents:
 - SCCR/2/5: containing submissions received from Member States of WIPO and the European Community by March 31, 1999 (including a proposal by Switzerland);
 - SCCR/2/7: containing a submission by Mexico;
 - SCCR/2/10 Rev.: containing the Report on the Regional Roundtable for Central European and Baltic States on the Protection of the Rights of Broadcasting Organizations and on the Protection of Databases, held in Vilnius, from April 20 to 22, 1999 (referred to in the document as “Certain Central European and Baltic States”);
 - SCCR/2/12: containing a submission by Cameroon;
 - SCCR/3/2: containing the Report of the Regional Roundtable for African Countries on the Protection of Databases and on the Protection of the Rights of Broadcasting Organizations, held in Cotonou, from June 22 to 24, 1999 (referred to in the document as “Certain States of Africa”);
 - SCCR/3/4: containing a proposal by Argentina;
 - SCCR/3/5: containing a submission by the United Republic of Tanzania;
 - SCCR/3/6: containing the Statement adopted at the Regional Roundtable for Countries of Asia and the Pacific on the Protection of Databases and on the Protection of the Rights of Broadcasting Organizations, held in Manila, from June 29 to July 1, 1999 (referred to in the document as “Certain States of Asia and the Pacific”);
 - SCCR/5/4: containing a proposal by Japan;
 - SCCR/6/2: containing a proposal by the European Community and its Member States;
 - SCCR/6/3: containing a proposal by Ukraine;
 - SCCR/7/7: containing a proposal by the Eastern Republic of Uruguay;
 - SCCR/8/4: containing a proposal submitted by Honduras;
 - SCCR/9/3: containing a proposal submitted by Kenya;
 - SCCR/9/4: containing a proposal submitted by the United States of America; and
 - SCCR/9/8 Rev.: containing a proposal submitted by Egypt.

I. TITLE

ARGENTINA

3. The Delegation of Argentina has proposed the following wording:

WIPO Protocol on the Protection of the Broadcasts of Broadcasting Organizations.

CAMEROON

4. The Delegation of Cameroon has proposed the following wording:

The new instrument should be in the form of a Protocol like the Berne Protocol.

CERTAIN STATES OF AFRICA

5. The Representative of Certain States of Africa has proposed the following wording:

The country representatives expressed themselves in favor of a treaty.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

6. The Delegation of the European Community and its Member states has proposed the following wording:

WIPO Treaty on the Protection of Broadcasting Organizations.

HONDURAS

7. The Delegation of Honduras has proposed the following wording:

Draft WIPO Treaty on the Protection of Broadcasting Organizations

JAPAN

8. The Delegation of Japan has proposed the following wording:

WIPO Broadcasting Organizations Treaty.

KENYA

9. The Delegation of Kenya has proposed the following wording:

The Proposed Treaty on the Protection of the Rights of Broadcasting Organizations.

MEXICO

10. The Delegation of Mexico has proposed the following wording:

Treaty on the Protection of the Rights of Broadcasting Organizations.

SWITZERLAND

11. The Delegation of Switzerland has proposed the following wording:

Protocol on the Protection of the Rights of Broadcasting Organizations Under the WIPO Performances and Phonograms Treaty.

UKRAINE

12. The Delegation of Ukraine has proposed the following wording:

WIPO Treaty on Broadcasting Organizations.

UNITED REPUBLIC OF TANZANIA

13. The Delegation of the United Republic of Tanzania has proposed the following wording:

The envisaged international instrument for the protection of the rights of broadcasting organizations should be an independent treaty.

UNITED STATES OF AMERICA

14. The Delegation of the United States of America has proposed the following wording:

WIPO Treaty for the Protection of the Rights of Broadcasting, Cablecasting and Webcasting Organizations.

URUGUAY

15. The Delegation of Uruguay has proposed the following wording:

WIPO Treaty on the Protection of Broadcasting Organizations.

II. PREAMBLE

EUROPEAN COMMUNITY AND ITS MEMBER STATES

16. The Delegation of the European Community and its Member states has proposed the following wording:

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across frontiers,

Recognizing the need for a balance between the rights of broadcasting organizations and the larger public interest, particularly education, research and access to information, as well as for broadcasting organizations to acknowledge the rights of authors and holders of related rights in works and other protected subject matter contained in their broadcasts.

HONDURAS

17. The Delegation of Honduras has proposed the following wording:

The Contracting Parties,

Wishing to develop and maintain impartial protection of the rights of broadcasting organizations in the most effective and uniform manner possible,

Recognizing the need for the international standard to correspond and give timely responses to the questions raised by economic, social, cultural and technological occurrences,

Recognizing the profound impact which the development and convergence of information and communication technologies have had, the natural result of which has been the possibility of unauthorized uses of broadcasts in different cultural contexts.

Recognizing the need to maintain a balance between the rights of broadcasting organizations, and the rights and interests of the general public, in particular in education, research and access to information.

KENYA

18. The Delegation of Kenya has proposed the following wording:

The Contracting Parties,

Desiring to reinforce the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules and widen the application of certain existing rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Acknowledging the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across frontiers,

Stressing the direct benefit to authors, performers and producers of phonograms of effective and uniform protection against piracy of broadcasts, which also include their works, performances and phonograms,

Recognizing the need for a balance between the rights of the broadcasting organizations and the larger public interest, particularly education, research and access to information.

UNITED STATES OF AMERICA

19. The Delegation of the United States of America has proposed the following wording:

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of broadcasting, cablecasting and webcasting organizations in a manner as effective and uniform as possible without diminishing the protection afforded to works, performances and phonograms included in broadcasts, cablecasts and webcasts,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts, cablecasts and webcasts both within and across frontiers,

Recognizing the need to maintain a balance between the rights of broadcasting, cablecasting and webcasting organizations and the larger public interest, particularly education, research and access to information, [as reflected in the Berne Convention],

Stressing the direct benefits to authors and holders of related rights in works and other protected subject matter contained in broadcasts, cablecasts and webcasts by protecting the rights of broadcasting, cablecasting and webcasting organizations.

III. RELATION TO OTHER CONVENTIONS AND TREATIES;
RELATION TO COPYRIGHT AND OTHER CATEGORIES
OF RELATED RIGHTS HOLDERS

ARGENTINA

20. The Delegation of Argentina has proposed the following wording:

Article 1

Relation to Other Conventions

(a) 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”).

(b) 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.

(c) This Protocol shall not affect the copyright of broadcasting organizations and/or other owners of rights in relation to the works that are broadcast.

(d) This Protocol shall not have any connection with, or prejudice any rights or obligations under, any other treaties.

CERTAIN CENTRAL EUROPEAN AND BALTIC STATES

21. The Representative of Certain Central European and Baltic States has proposed the following wording:

When updating broadcasters' rights the proper balance between the various groups of right holders should be taken into consideration.

CERTAIN STATES OF AFRICA

22. The Representative of Certain States of Africa has proposed the following wording:

The country representatives, having carefully studied the proposals submitted by Switzerland (SCCR/2/5) and a group of broadcasting organizations (SCCR/2/6), highlighted the following issues for further study and discussion:

- the relationship of the new instrument to other international instruments for the protection of copyright and neighboring rights;
- the balancing, also with reference to socio-cultural factors in the various regions, of the rights of all interested parties, including authors, broadcasting organizations, performers and producers of phonograms.

CERTAIN STATES OF ASIA AND THE PACIFIC

23. The Representative of Certain States of Asia and the Pacific has proposed the following wording:

It is important to strike a balance between the interests of the different stakeholders (i.e., the big and small broadcasting organizations, the authors, the performers, the producers and the public).

There should be no derogation from the rights and obligations conferred under other international treaties/agreements.

EGYPT

24. The Delegation of Egypt has proposed the following wording:

Article 1
Relation to Other Conventions and Treaties

1. Nothing in this treaty shall derogate from existing obligations that Contracting Parties have to each other under existing copyright and related rights treaties, including but not limited to the Berne Convention for the Protection of literary and Artistic Works (1971), the

Agreement on Trade-Related Aspects, of Intellectual Property Rights (TRIPS Agreement), the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961.

2. Protection granted under this treaty shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts, cablecasts and consequently no provisions of this treaty may be interpreted as prejudicing such protection.

3. This treaty shall not have any connection with, nor shall it prejudice any obligations under, any other treaties.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

25. The Delegation of the European Community and its Member states has proposed the following wording:

Article 1

Relation to Other Conventions and Treaties

(a) Nothing in this Treaty 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 in Rome, October 26, 1961.

(b) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or neighboring rights in program material incorporated in broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(c) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

HONDURAS

26. The Delegation of Honduras has proposed the following wording:

Article 1

Relation to other Conventions and Treaties

Nothing in this Treaty 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 in Rome, October 26, 1961 (hereinafter referred to as the "Rome Convention").

Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or neighboring rights in program material incorporated in broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

JAPAN

27. The Delegation of Japan has proposed the following wording:

Article I
Relation to Other Conventions And Treaties

(a) Nothing in this Treaty 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 in Rome, October 26, 1961.

(b) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(c) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

KENYA

28. The Delegation of Kenya has proposed the following wording:

Article I
Relation to Other Conventions

1. Nothing in this Treaty 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 in Rome on October 26, 1961 (hereinafter known as the "Rome Convention").

2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in program material contained in the broadcasts.

3. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under any other treaties.

MEXICO

29. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting

organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.¹

SWITZERLAND

30. The Delegation of Switzerland has proposed the following wording:

Article 1²
Relation to Other Conventions

(a) This treaty constitutes a protocol under the WIPO Performances and Phonograms Treaty (WPPT).

(b) 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 (Rome Convention).

(c) 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.

(d) This Protocol shall not prejudice any rights and obligations under any other treaties.

UKRAINE

31. The Delegation of Ukraine has proposed the following wording:

Article 1
Relation to Other Conventions and Treaties

(a) Nothing in this Treaty shall limit from existing obligations, that Contracting Parties have to each other under the International Convention for the Protection of Interests of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, on October 26, 1961 (hereinafter the “Rome Convention”).

(b) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(c) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under any other treaties.

¹ See WIPO document SCCR/2/6.

² [Note on Article 1 contained in the proposal:] “This proposal is presented as a protocol under the WIPO Performances and Phonograms Treaty (WPPT). Additionally, Article 1 excludes any prejudice of the existing treaties or of copyright protection (see also Article 1 of the WPPT).”

UNITED REPUBLIC OF TANZANIA

32. The Delegation of the United Republic of Tanzania has proposed the following wording:

The proposed instrument should address clearly the following issues:

- the balance of rights between broadcasters and the owners of broadcast contents, in cable retransmission;
- the balance of all rights owners involved, i.e., the broadcasters, authors, performers, producers of phonograms and cable operators

UNITED STATES OF AMERICA

33. The Delegation of the United States of America has proposed the following wording:

Article I
Relation to Other Conventions and Treaties

1. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under existing copyright and related rights treaties, including but not limited to the Berne Convention for the Protection of Literary and Artistic Works (1971), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, 26 October 1961.
2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts, cablecasts or webcasts. Consequently no provisions of this Treaty may be interpreted as prejudicing such protection.
3. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

URUGUAY

34. The Delegation of Uruguay has proposed the following wording:

Article I
Relation to Other Conventions and Treaties

- (a) Nothing in this Treaty 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 in Rome, October 26, 1961 (hereinafter referred to as “the Rome Convention”).
- (b) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or neighboring rights in program material incorporated in

broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(c) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

IV. DEFINITIONS

ARGENTINA

35. The Delegation of Argentina has proposed the following wording:

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.

CAMEROON

36. The Delegation of Cameroon has proposed the following wording:

Definitions

Certain expressions and concepts deriving from the progress of technology and deserving international protection should be clearly defined, including:

- satellite;
- encrypted satellite signals;
- communication to the public by satellite;
- cable retransmission;
- terrestrial broadcasting and satellite broadcasting;
- digital networks;
- program-carrying signals.

Organizations Protected

The protection of broadcasting organizations should extend not only to cable distribution organizations that distribute their own programs by cable, but also to signals transmitted by satellite.

CERTAIN STATES OF AFRICA

37. The Representative of Certain States of Africa has proposed the following wording:

The definitions of the terms of “broadcast,” “broadcasting,” “cable transmission,” “communication to the public,” “program output” and “rebroadcasting” should be further studied and discussed.

EGYPT

38. The Delegation of Egypt has proposed the following wording:

Article 2
Definitions

For the purposes of this treaty:

(a) “broadcasting” means the transmission by wireless means for public reception of sounds, images or sounds and images, or of the representations thereof. Such transmission by satellite is also “broadcasting.” Wireless transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent. “Broadcasting” shall not be understood as including transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) “cablecasting” means the transmission by wire for public reception of sounds, images, or sounds and images or of the representations thereof. Transmission by wire of encrypted signals is “cablecasting” where the means for decrypting are provided to the public

by the cablecasting organization or with its consent. “Cablecasting” shall not be understood as including transmission over computer networks or any transmission where the time and place of reception may be individually chosen by members of the public;

(c) a “broadcasting organization” or a “cablecasting organization” means the person or the legal entity, who or which takes the initiative and has the responsibility for:

(i) the transmission to the public of sounds, images or sounds and images or the presentations thereof and/or

(ii) the assembly and scheduling of the content of the transmission;

(d) “rebroadcasting” means the simultaneous broadcasting by one broadcasting organization of the broadcast, cablecast of another broadcasting, cablecasting organization;

(e) “fixation” means the embodiment of sounds, images, or sounds and images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

39. The Delegation of the European Community and its Member states has proposed the following wording:

Article 1bis Definitions³

For the purposes of this Treaty, “broadcasting” means the transmission by wire or over the air, including by cable or satellite, for public reception of sounds or of images and sounds or of the representations thereof; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent. The mere retransmission by cable of broadcasts of a broadcasting organization or the making available of fixations of broadcasts as set out in Article 7 shall not constitute broadcasting.

HONDURAS

40. The Delegation of Honduras has proposed the following wording:

Article 2 Definitions

For the purposes of this Treaty, “broadcasting” means the transmission by wire or wireless means, for public reception, of sounds or of images, or of images and sounds or of the representations thereof; transmission of encrypted signals is “broadcasting” where the

³ The European Community and its Member States remain open to further discussion on the question whether further definitions should be added to this Article, as well as on the question whether definitions should be contained in a separate Article or in the provisions concerning the substantive rights.

means for decrypting are supplied to the public by the broadcasting organization or with its consent.

JAPAN

41. The Delegation of Japan has proposed the following wording:

Article 2
Definitions

For the purposes of this Treaty:

(a) “broadcasting” means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

(b) “rebroadcasting” means the simultaneous or deferred broadcasting by one broadcasting organization of the broadcast of another broadcasting organization;

(c) “communication to the public” of a broadcast means the transmission to the public by any medium, otherwise than by broadcasting, of a broadcast; “communication to the public” includes making a broadcast audible or visible or audible and visible to the public.

KENYA

42. The Delegation of Kenya has proposed the following wording:

Article 2
Definitions

For the purposes of this Treaty:

(a) “broadcast” means the transmission by wire or wireless means of sounds or images or both or their representations thereof, in such manner as to cause such sounds or images to be received by the public and includes transmission by satellite;

(b) “broadcasting organization” means an organization that assembles the schedule of programs and transmits the sounds and images or both or representations thereof, in such a manner as to cause such sounds and or images to be received by the public;

(c) “cable distribution” means the simultaneous or deferred transmission of broadcasts *via* physical conductors, such as wires, cables, telephone lines or optical fibres or microwave systems, for reception by the public;

(d) “communication to the public” of a broadcast means making the broadcast or a fixation thereof audible or visible to places accessible to the public;

(e) “fixation” means the embodiment of sounds or images, or of the representation thereof from which they can be communicated through a device;

(f) “re-broadcasting” means the simultaneous or subsequent broadcasting by one or more broadcasting authorities of the broadcast of another broadcasting authority.

MEXICO

43. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.⁴

UNITED REPUBLIC OF TANZANIA

44. The Delegation of the United Republic of Tanzania has proposed the following wording:

The instrument should clearly define the following terms:

- broadcasting by satellite,
- cable retransmission,
- terrestrial broadcasting,
- encrypted satellite signals,
- program-carrying signals,
- digital networks.

UNITED STATES OF AMERICA

45. The Delegation of the United States of America has proposed the following wording:

Article 2 *Definitions*

For purposes of this Treaty:

(a) “Broadcasting” means the transmission by wireless means for public reception of sounds, images or sounds and images, or of the representations thereof; such transmission by satellite is also “broadcasting.” Wireless transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent. “Broadcasting” shall not be understood as including transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) “Cablecasting” means the transmission by wire for public reception of sounds, images, or sounds and images or of the representations thereof. Transmission by wire of encrypted signals is “cablecasting” where the means for decrypting are provided to the public by the cablecasting organization or with its consent. “Cablecasting” shall not be understood

⁴ See WIPO document SCCR/2/6.

as including transmissions over computer networks or any transmission where the time and place of reception may be individually chosen by members of the public;

(c) “Webcasting” means the making accessible of transmissions of the same sounds, images, or sounds and images or the representations thereof, by wire or wireless means over a computer network at substantially the same time. Such transmissions, when encrypted, shall be considered as “webcasting” where the means for decrypting are provided to the public by the webcasting organization or with its consent. Webcasting and other computer network transmissions, whether by wire or wireless means, shall not be understood as “broadcasting” or “cablecasting”;

(d) A “broadcasting organization” a “cablecasting organization” or a “webcasting organization” means the legal entity that takes the initiative and has the responsibility for: (i) the first transmission to the public of sounds, images or sounds and images or the representations thereof; and (ii) the assembly and scheduling of the content of the transmission; for purposes of Article 7, a “broadcasting organization” shall include a legal entity that takes the initiative and has the responsibility for the assembly and scheduling of the content of a signal transmitted to another broadcasting organization prior to broadcasting.

(e) “Rebroadcasting” means the simultaneous broadcasting by one broadcasting organization of the broadcast, cablecast or webcast of another broadcasting, cablecasting or webcasting organization;

(f) “Cable retransmission” means the simultaneous transmission to the public by wire of the broadcast, cablecast or webcast of another broadcasting, cablecasting or webcasting organization;

(g) “Computer network retransmission” means the simultaneous transmission by wire or wireless means over computer networks of the broadcast, cablecast or webcast of another broadcasting, cablecasting or webcasting organization;

(h) “Public rendition” of a broadcast, cablecast or webcast means making the transmission or a fixation of a broadcast, cablecast or webcast audible or visible or audible and visible in places accessible to the public;

(i) “Fixation” means the embodiment of sounds, images, or sounds and images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

URUGUAY

46. The Delegation of Uruguay has proposed the following wording:

Article 2 Definitions

For the purposes of this Treaty, “broadcasting” means the transmission by wireless means, for public reception, of sounds or of images and sounds or of the representations thereof; transmission of encrypted signals is “broadcasting” where the means for decrypting are supplied to the public; such transmission by satellite shall also be “broadcasting”; the

transmission of encrypted signals shall be “broadcasting” where the means of decrypting are supplied to the public by the broadcasting organization or with its consent.

The provisions of this Treaty shall apply to transmissions by wire, including by cable, and to any other similar form of transmission of sounds or of images and sounds, or of the representations thereof, whether encrypted or not.

V. BENEFICIARIES OF PROTECTION

ARGENTINA

47. The Delegation of Argentina has proposed the following wording:

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.

CAMEROON

48. The Delegation of Cameroon has proposed the following wording:

Organizations Protected

The protection of broadcasting organizations should extend not only to cable distribution organizations that distribute their own programs by cable, but also to signals transmitted by satellite.

Points of Attachment

Those written into Article 6 of the Rome Convention should apply.

EGYPT

49. The Delegation of Egypt has proposed the following wording:

Article 3
Beneficiaries of Protection Under this Treaty

1. Contracting parties shall accord protection provided under this treaty to broadcasting, cablecasting organizations which are nationals of the other contracting parties.

2. Nationals of other contracting parties shall be understood to be those broadcasting, cablecasting organizations which meet either of the following conditions:

(a) The headquarters of the broadcasting, cablecasting is situated in another contracting party, or

(b) a broadcast, cablecast is transmitted from or by a facility situated in another contracting party. In the case of satellite broadcasting, a facility shall be construed to be situated where the sounds, images, or sounds and images, or the presentations thereof, or accompanying analog or digital data, intended for direct public reception are introduced, under the control and responsibility of the broadcasting, cablecasting organization, into an uninterrupted chain of communication leading to the satellite and down towards the earth.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

50. The Delegation of the European Community and its Member states has proposed the following wording:

Article 2
Beneficiaries of Protection

(a) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations, which meet either of the following conditions:

(i) the headquarters of the broadcasting organization is situated in another Contracting Party, or

(ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be that at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(b) By means of a notification deposited with the Director General of the World Intellectual Property Organization, any Contracting Party may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting Party and the broadcasts are transmitted from a transmitter situated in the same Contracting Party. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

HONDURAS

51. The Delegation of Honduras has proposed the following wording:

Article 3
Beneficiaries of Protection under this Treaty

Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations of the other Contracting Parties which meet the following conditions:

- the headquarters of the broadcasting organization is situated in another Contracting Party; or
- the broadcasts are transmitted from a transmitter or transmitters situated in the territory of another Contracting Party. In the case of satellite broadcasts, the relevant place shall be that at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

JAPAN

52. The Delegation of Japan has proposed the following wording:

Article 3
Beneficiaries of Protection under this Treaty

(a) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations which are nationals of other Contracting Parties.

(b) The nationals of other Contracting Parties shall be understood to be those broadcasting organizations which meet either of the following conditions:

- (i) the headquarters of the broadcasting organization is situated in another Contracting Party;
- (ii) the broadcast is transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasting, a transmitter shall be construed to be situated where the sounds or images, or images and sounds, or the representations thereof, intended for direct reception by the public are introduced, under the control and responsibility of the broadcasting organization, into an uninterrupted chain of communication leading to the satellite and down towards the earth.

KENYA

53. The Delegation of Kenya has proposed the following wording:

Article 3
Beneficiaries of Protection Under this Treaty

1. Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations, which are nationals of other Contracting Parties.
2. Nationals of other Contracting Parties shall be understood to be those broadcasting organizations whose
 - (a) headquarters are situated in another Contracting Party, or
 - (b) broadcasts are transmitted from one transmitter or transmitters situated in another Contracting Party. In the case of a satellite broadcast, the relevant location shall be the point at which, under the control and responsibility of the broadcasting organization, the sounds, images and sounds or representations thereof intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

MEXICO

54. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.⁵

SWITZERLAND

55. The Delegation of Switzerland has proposed the following wording:

Article 2⁶
Beneficiaries of Protection Under this Protocol

- (a) Contracting Parties shall accord the protection provided under this Protocol to the broadcasting organizations that are nationals of other Contracting Parties.
- (b) “Nationals of other Contracting Parties” means broadcasting organizations that satisfy either of the following conditions:

⁵ See WIPO document SCCR/2/6.

⁶ [Note on Article 2 contained in the proposal:] “This Article reproduces the criteria under the Rome Convention (Article 6) and adapts them to the accepted provisions on satellite television.”

(i) the headquarters of the broadcasting organization are located in another Contracting Party or

(ii) the broadcasts are transmitted from a transmitter located on the territory of another Contracting Party. In the case of satellite broadcasts, the effective place shall be that at which the program-carrying signals intended for reception by the public are introduced, under the control and responsibility of the broadcasting organization, into an uninterrupted chain of communication leading to the satellite and down towards the earth.

UNITED STATES OF AMERICA

56. The Delegation of the United States of America has proposed the following wording:

Article 3
Beneficiaries of Protection Under This Treaty

1. Contracting Parties shall accord protection provided under this Treaty to broadcasting, cablecasting and webcasting organizations that are nationals of the other Contracting Parties.

2. Nationals of other Contracting Parties shall be understood to be those broadcasting, cablecasting and webcasting organizations that meet either of the following conditions:

(a) The headquarters of the broadcasting, cablecasting or webcasting organization is situated in another Contracting Party, or

(b) A broadcast, cablecast or webcast is transmitted from or by a facility situated in another Contracting Party. In the case of satellite broadcasting, a facility shall be construed to be situated where the sounds, images, or sounds and images, or the representations thereof, or accompanying analog or digital data, intended for direct public reception are introduced, under the control and responsibility of the broadcasting, cablecasting or webcasting organization, into an uninterrupted chain of communication leading to the satellite and down towards the earth.

URUGUAY

57. The Delegation of Uruguay has proposed the following wording:

Article 3
Beneficiaries of Protection

(a) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations, which meet either of the following conditions:

(i) the headquarters of the broadcasting organization is situated in another Contracting Party, or

(ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be that at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(b) By means of a notification deposited with the Director General of the World Intellectual Property Organization, any Contracting Party may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting Party and the broadcasts are transmitted from a transmitter situated in the same Contracting Party. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

VI. NATIONAL TREATMENT

ARGENTINA

58. The Delegation of Argentina has proposed the following wording:

Article 4
National Treatment

(a) 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.

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

EGYPT

59. The Delegation of Egypt has proposed the following wording:

Article 4
National Treatment

Each contracting party shall accord to nationals of other contracting parties the rights which their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts or cablecasts for which such nationals are protected under this treaty, as well as rights specifically granted by this treaty.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

60. The Delegation of the European Community and its Member states has proposed the following wording:

Article 3
National Treatment

Each Contracting Party shall accord to broadcasting organizations of other Contracting Parties, as set out in Article 2, national treatment with regard to the exclusive rights specifically granted in this Treaty.

HONDURAS

61. The Delegation of Honduras has proposed the following wording

Article 4
National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, as set out in Article 3 on definitions, the treatment which it grants to its own nationals with regard to the exclusive rights specifically granted in this Treaty.

JAPAN

62. The Delegation of Japan has proposed the following wording:

Article 4
National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(b), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty.

KENYA

63. The Delegation of Kenya has proposed the following wording:

Article 4
National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty.

MEXICO

64. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.⁷

⁷ See WIPO document SCCR/2/6.

SWITZERLAND

65. The Delegation of Switzerland has proposed the following wording:

Article 3⁸
National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 2(b), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Protocol.

UKRAINE

66. The Delegation of Ukraine has proposed the following wording:

Article 2
National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article ..., the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty.

UNITED STATES OF AMERICA

67. The Delegation of the United States of America has proposed the following wording:

Article 4
National Treatment

Subject to Article 5(g)(ii) of this Treaty, each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the rights which their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts, cablecasts or webcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted by this Treaty.

URUGUAY

68. The Delegation of Uruguay has proposed the following wording:

Article 4
National Treatment

Each Contracting Party shall accord to broadcasting organizations of other Contracting Parties, as set out in Article 2, national treatment with regard to the exclusive rights specifically granted in this Treaty.

⁸ [Note on Article 3 contained in the proposal:] “The draft Protocol adopts the principle of national treatment without it being necessary to include any restrictions comparable with those under the WPPT (cf. Article 4 of the WPPT).”

VII. RIGHTS OF BROADCASTING, CABLECASTING AND WEBCASTING ORGANIZATIONS

ARGENTINA

69. The Delegation of Argentina has proposed the following wording:

Article 5
Rights of Broadcasting Organizations

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

- retransmission;
- deferred transmission;
- cable distribution;
- fixation in a physical medium;
- reproduction of fixations;
- decrypting of encrypted broadcasts;
- communication to the public;
- 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.

CAMEROON

70. The Delegation of Cameroon has proposed the following wording:

Cameroon endorses the proposals concerning the exclusive right of broadcasting organizations to authorize or prohibit the acts specified in paragraph 59 of the International Bureau memorandum (document SCCR/1/3 of September 7, 1998).⁹

⁹ Paragraphs 58 and 59 of the document SCCR/1/3 read as follow:

“58. From April 28 to 30, 1997, WIPO organized, in cooperation with the Government of the Philippines and with the assistance of the *Kapisanan ng mga Brodkaster ng Pilipinas* (KBP) (National Association of Broadcasters of the Philippines) the WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property, in Manila. (The proceedings of the Symposium are published in WIPO publication No. 757 (E/F/S).) At this symposium, representatives of broadcasting organizations pointed out a number of issues which they proposed to be addressed at the international level. Some of these issues are listed in the following paragraph.

59. According to these proposals, broadcasters should be granted exclusive rights to authorize or prohibit the following acts:

- simultaneous or deferred rebroadcasting of their broadcasts, whether these are transmitted via satellite or by any other means;
- simultaneous and deferred retransmission of their broadcasts in cable systems;
- the making available to the public of their broadcasts, by any means, including interactive transmissions;
- the fixation of their broadcasts on any media, existing or future, including the making of photographs from television signals;
- the transmission to the public of programs, transmitted by cable;
- the decoding of encrypted signals; and

In the case of cable distribution organizations, we propose that those which distribute their own programs be entitled to the rights granted to broadcasting organizations.

Program-carrying signals should also be given protection. They should not be received by broadcasting organizations for which they are not intended, on pain of civil or criminal sanctions or both, depending on the seriousness of the infringement.

Moreover, a general right of communication should be recognized to cover communication by interactive transmission.

CERTAIN CENTRAL EUROPEAN AND BALTIC STATES

71. The Representative of Certain Central European and Baltic States has proposed the following wording:

The country representatives considered that the rights of performers and phonogram producers have been updated through the WIPO Performances and Phonograms Treaty (WPPT) and that the Rome Convention of 1961 needs updating also in respect of the rights of broadcasters, in order to cope with new technological and market developments in the field of broadcasting. In particular, they take the view that an enhanced protection of related rights of broadcasters at the international level is needed in order to fight piracy of broadcast programs. When updating broadcasters' rights the proper balance between the various groups of right holders should be taken into consideration.

CERTAIN STATES OF AFRICA

72. The Representative of Certain States of Africa has proposed the following wording:

The country representatives, having carefully studied the proposals submitted by Switzerland (SCCR/2/5) and a group of broadcasting organizations (SCCR/2/6), highlighted the following issues for further study and discussion:

- the balancing, also with reference to socio-cultural factors in the various regions, of the rights of all interested parties, including authors, broadcasting organizations, performers and producers of phonograms;

- the scope of the new instrument, with special reference to:

- the exclusive rights granted to broadcasting organizations, with specific reference to the nature of the rights required by broadcasting organizations to protect their legitimate interests

[Footnote continued from previous page]

- the importation and distribution of fixations or copies of fixations of broadcasts, made without authorization.

- In addition, broadcasters should be granted a right of remuneration for private copying, and it should be clarified that the protection applies to not only the sounds and/or images of broadcasts, but also to (digital) representations of such sounds and/or images.”

CERTAIN STATES OF ASIA AND THE PACIFIC

73. The Representative of Certain States of Asia and the Pacific has proposed the following wording:

The countries present agreed that there was a need to study the possibility of updating the rights of broadcasting organizations, taking into account the technological changes that have occurred between the adoption of the Rome Convention in 1961 up to the present. In any such study, it is important to strike a balance between the interests of the different stakeholders (i.e., the big and small broadcasting organizations, the authors, the performers, the producers and the public). At the same time, the interests of the developing and least developed countries should be a primary concern. In this context, the special circumstances of least developed countries should be kept in mind.

EGYPT

74. The Delegation of Egypt has proposed the following wording:

Article 5
Specific Protection

Broadcasting, cablecasting organizations shall enjoy the exclusive right of authorizing:

- (a) the rebroadcasting of their broadcasts, cablecasts;
- (b) the deferred transmission by wire or wireless means, including by means of a computer network, of their broadcasts, from fixations of their broadcasts or cablecasts;
- (c) the fixation of broadcasts, cablecasts;
- (d) the reproduction of their broadcasts, cablecasts fixations made:
 - (i) without their consent, or
 - (ii) pursuant to Article 8 when such reproduction would not be permitted by that Article;
- (e) (i) the public rendition of their broadcasts, cablecasts of sounds and images embodied in audiovisual works in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the party where protection is claimed to determine the conditions under which it may be exercised;
- (ii) any contracting party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (i) only in respect of certain communications, or that it will limit their application in some other way, or that it will not apply these provisions at all. If a contracting party makes such a declaration, the other contracting parties shall not be obliged to grant the right referred to in paragraph (i) to broadcasting, cablecasting organizations whose headquarters are in that state.

Article 6
Rights to prohibit

Broadcasting, cablecasting organizations shall have the right to prohibit the following acts when undertaken without their authorization:

- (a) the making available to the public of fixations of their broadcasts, cablecasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (b) the reproduction of fixations of their cablecasts and broadcasts;
- (c) the distribution to the public and importation of reproductions of fixations of their broadcasts, cablecasts.

Article 7
Protection in Relation to Signals Prior to Broadcasting, Cablecasting

Broadcasting and cablecasting organizations shall also enjoy adequate and effective legal protection against any acts referred to in Articles 5 and 6 in relation to their signals prior to broadcasting, cablecasting.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

75. The Delegation of the European Community and its Member states has proposed the following wording:

Article 4
Right of Fixation

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the fixation of their broadcasts.

Article 5
Right of Reproduction

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.

Article 6
Right of Retransmission

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the retransmission, by wire or wireless means, whether simultaneous or based on fixations, of their broadcasts.

Article 7
Right of Making Available of Fixed Broadcasts

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the making available to the public, by wire or wireless means, of fixations of their broadcasts, in

such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 8
Right of Communication to the Public

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the communication to the public of their broadcasts, if such communication is made in places accessible to the public against payment of an entrance fee.

Article 9
Right of Distribution

(a) Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the making available to the public of the original and copies of fixations of their broadcasts, through sale or the transfer of ownership.

(b) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (a) applies after the first sale or other transfer of ownership of the original or a copy of the fixation with the authorization of the broadcasting organization.

Article 10
*Protection in Relation to Signals Prior to Broadcasting*¹⁰

Broadcasting organizations shall enjoy adequate legal protection against any acts referred to in Article 4 to 9 of this Treaty in relation to their signals prior to broadcasting.

HONDURAS

76. The Delegation of Honduras has proposed the following wording:

Article 5
Rights of Broadcasting Organizations

Economic rights of broadcasting organizations:

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit:

- the retransmission, by wire or wireless means, whether simultaneous or based on fixations, of their broadcasts;
- delayed transmission by any means;
- distribution by television;
- the fixation of their broadcasts on a material carrier, including obtaining photographs from television signals;

¹⁰ The precise nature of this protection and the circumstances in which it would apply may require further consideration in the light of the exclusive rights it is decided to grant to broadcasting organizations and the manner in which these are expressed.

- direct or indirect reproduction, by any procedure or in any form, of the fixations of their broadcasts;
- the decrypting of encoded broadcasts;
- the transmission of programs by cable to the public;
- the import and distribution of fixations or of copies of fixations of broadcasts produced without authorization;
- commercial hiring to the public;
- the communication to the public of their broadcasts, where such communication is made by television and is in places accessible to the public against payment of an entrance fee;
- the making available to the public, by wire or wireless means, of fixations of their broadcasts, in such a way that members of the public may access them from a place and at a time of their own choosing.

JAPAN

77. The Delegation of Japan has proposed the following wording:

Article 5

Rights of Rebroadcasting, Communication to the Public and Fixation

Broadcasting organizations shall enjoy the exclusive right of authorizing, as regards their broadcasts:

- the rebroadcasting and communication to the public of their broadcasts; it shall be a matter for the domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised; and
- the fixation of their broadcasts; the fixation includes the making of any still photograph of a television broadcast.

Article 6

Right of Reproduction

Broadcasting organizations shall enjoy the exclusive right of authorizing the direct or indirect reproduction of fixations of their broadcasts, in any manner or form.

Article 7

Right of Making Available

Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of their broadcasts and fixations thereof, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

KENYA

78. The Delegation of Kenya has proposed the following wording:

Article 5
Specific Protection

1. Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit:
 - (a) the fixation of their broadcasts other than for private purposes;
 - (b) the reproduction of their fixations;
 - (c) the making available to the public of fixations of their broadcasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
 - (d) communication to the public of their broadcasts;
 - (e) the cable transmission of their broadcasts;
 - (f) the re-broadcasting of their broadcasts;
 - (g) the making available to the public of original and/or copies of fixations of their broadcasts;
 - (h) the decrypting and decoding of their broadcasts.
2. Broadcasting organizations shall enjoy adequate legal protection against any acts referred to in Article 5, Section 1(a) to (f) of this Treaty in relation to their signals before broadcasting.

MEXICO

79. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.¹¹

¹¹ See WIPO document SCCR/2/6.

SWITZERLAND

80. The Delegation of Switzerland has proposed the following wording:

Article 4¹²
Right of Retransmission

Broadcasting organizations shall enjoy the exclusive right to authorize the retransmission of their broadcasts in any manner or form whatsoever.

Article 5¹³
Right of Communication to the Public

Broadcasting organizations shall enjoy the exclusive right to authorize the communication to the public of their broadcasts in any manner or form whatsoever.

Article 6¹⁴
Right of Decoding

Broadcasting organizations shall enjoy the exclusive right to authorize the decoding of their encrypted broadcasts.

Article 7¹⁵
Right of Fixation

Broadcasting organizations shall enjoy the exclusive right to authorize the fixation in whole or in part, direct or indirect, of their broadcasts on phonograms, videograms or other data carriers.

¹² [Note on Article 4 contained in the proposal:] “This Article is drafted in a sufficiently broad manner to include at the same time in particular rebroadcasting, cable distribution and distribution of carrier signals. Moreover, it covers both simultaneous and recorded retransmission.”

¹³ [Note on Article 5 contained in the proposal:] “Contrary to Article 13(d) of the Rome Convention, the concept of communication to the public is defined here in a broad sense and is not restricted to those instances where an entrance fee is required. The cases concerned are, in particular, public reception of broadcasts in hotels, restaurants and other public premises of like nature. This right corresponds to the right “to make broadcasts perceivable” under Article 37(b) of the Swiss Copyright Law.”

¹⁴ [Note on Article 6 contained in the proposal:] “Faced with the advance of technology, broadcasting organizations must be given the right to combat the fraudulent decoding of their broadcasts. What is basically aimed at is the making available to individuals of the means of decoding encrypted broadcasts. Decoding by an individual would normally take place within the private circle of that individual and could therefore be permitted by the national provisions that authorize private use (see Article 11 of this draft Protocol on limitations and exceptions).”

¹⁵ [Note on Article 7 contained in the proposal:] “By specifying that fixation may be in whole or in part, this Article also covers the making of a still photograph from an individual image in a broadcast. Additionally, the proposed right also covers both the direct fixation of a broadcast and a fixation on the basis of a simultaneous rebroadcast.”

Article 8¹⁶
Right of Reproduction

Broadcasting organizations shall enjoy the exclusive right to authorize the direct or indirect reproduction of fixations of their broadcasts in any manner or form whatsoever.

Article 9¹⁷
Right of Distribution

(a) Broadcasting organizations shall enjoy the exclusive right to authorize the making available to the public of the original and copies of fixations of their broadcasts through sale or other transfer of ownership.

(b) Nothing in this Protocol shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (a) applies after the first sale or other transfer of ownership of the original or a copy of the fixation with the authorization of the author.

Article 10¹⁸
Right of Making Available to the Public

Broadcasting organizations shall enjoy the exclusive right to authorize the making available to the public, by wire or wireless means, of fixations of their broadcasts in such a way that members of the public may access them from a place and at a time individually chosen by them.

UNITED REPUBLIC OF TANZANIA

81. The Delegation of the United Republic of Tanzania has proposed the following wording:

The proposed instrument should address clearly the following issues:

- the balance of rights between broadcasters and the owners of broadcast contents, in cable retransmission;
- the balance of all rights owners involved, i.e., the broadcasters, authors, performers, producers of phonograms and cable operators;

¹⁶ [Note on Article 8 contained in the proposal:] “This Article specifies the requirement to obtain authorization not only for the direct fixation of a broadcast, but also for indirect fixation.”

¹⁷ [Note on Article 9 contained in the proposal:] “This Article corresponds to Article 6 of the WCT and Articles 8 and 12 of the WPPT.”

¹⁸ [Note on Article 10 contained in the proposal:] “This Article corresponds to the right of making available to the public contained at the end of Article 8 of the WCT and in Articles 10 and 14 of the WPPT. To ensure concordance with those provisions, it therefore reproduces exactly the same formulation, particularly the term “by wire or wireless means.” However, there is no fundamental difference intended with the term “in any manner or form whatsoever” used in Articles 4 and 5 of this draft Protocol with respect to retransmission and communication to the public.

– the nature of the rights accorded. It is proposed that they should not be absolute and should have clearly spelt exceptions and limitations.

UNITED STATES OF AMERICA

82. The Delegation of the United States of America has proposed the following wording:

Article 5
Specific Protections

Broadcasting, cablecasting and webcasting organizations shall enjoy the exclusive right to authorize and prohibit:

- (a) The rebroadcasting of their broadcasts, cablecasts or webcasts;
- (b) The computer network retransmission of their broadcasts, cablecasts or webcasts;
- (c) The cable retransmission of their broadcasts, cablecasts or webcasts;
- (d) The deferred transmission for public reception by wire or wireless means, including by means of a computer network, of their broadcasts, cablecasts or webcasts from fixations of their broadcasts, cablecasts or webcasts;
- (e) The fixation of their broadcasts, cablecasts or webcasts;
- (f) The reproduction of their broadcasts, cablecasts or webcasts from fixations made: (1) without their consent; or (2) pursuant to Article 8 when such reproduction would not be permitted by that Article;
- (g) (i) The public rendition of their broadcasts, cablecasts or webcasts of audiovisual sounds and images in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the Party where protection of this right is claimed to determine the conditions under which it may be exercised;
- (ii) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (i) only in respect of certain communications, or that it will limit their application in some other way, or that it will not apply these provisions at all. If a Contracting Party makes such a declaration, the other Contracting Parties shall not be obliged to grant the right referred to in paragraph (i) to broadcasting, cablecasting or webcasting organizations whose headquarters are in that State.

Article 6
Rights to Prohibit

Broadcasting, cablecasting and webcasting organizations shall have the right to prohibit the following acts:

- (a) The making available to the public of unauthorized fixations of their broadcasts, cablecasts or webcasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them

(b) The reproduction of unauthorized fixations of their broadcasts, cablecasts or webcasts,

(c) The distribution to the public and importation of reproductions of unauthorized fixations of their broadcasts, cablecasts or webcasts.

Article 7

*Protection in Relation to Signals Prior to Broadcasting,
Cablecasting or Webcasting*

Broadcasting, cablecasting and webcasting organizations shall also enjoy adequate and effective legal protection against any acts referred to in Articles 5 and 6 in relation to their signals prior to broadcasting, cablecasting or webcasting.

URUGUAY

83. The Delegation of Uruguay has proposed the following wording:

Article 5

Right of Fixation

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the fixation of their broadcasts.

Article 6

Right of Reproduction

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.

Article 7

Right of Retransmission

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the retransmission, by wire or wireless means, whether simultaneous or based on fixations, of their broadcasts.

Article 8

Right of Making Available of Fixed Broadcasts

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the making available to the public, by wire or wireless means, of fixations of their broadcasts, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 9

Right of Communication to the Public

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the communication to the public of their broadcasts, if such communication is made in places accessible to the public against payment of an entrance fee.

[This is the wording of the draft submitted by the European Community. The broadcasting organizations are advocating a broader formulation, which we regard as affording more suitable protection for present uses.]

Article 10
Right of Distribution

(a) Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the making available to the public of the original and copies of fixations of their broadcasts, through sale or the transfer of ownership.

(b) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (a) applies after the first sale or other transfer of ownership of the original or a copy of the fixation with the authorization of the broadcasting organization.

Article 11
Right of Decrypting

Broadcasting organizations shall have the exclusive right to authorize or prohibit the decrypting of their broadcasts.

Article 12
Protection in Relation to Signals Prior to Broadcasting

Broadcasting organizations shall enjoy adequate legal protection against any acts referred to in Articles 4 to 9 of this Treaty in relation to their signals prior to broadcasting.

VIII. LIMITATIONS AND EXCEPTIONS

ARGENTINA

84. The Delegation of Argentina has proposed the following wording:

Article 6
Limitations and exceptions

(a) 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.

(b) 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.

(c) 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.

(d) 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.

CAMEROON

85. The Delegation of Cameroon has proposed the following wording:

The “permitted exceptions” of Article 15 of the Rome Convention should be retained in the new instrument.

CERTAIN CENTRAL EUROPEAN AND BALTIC STATES

86. The Representative of Certain Central European and Baltic States has proposed the following wording:

When updating broadcasters’ rights the proper balance between the various groups of right holders should be taken into consideration.

CERTAIN STATES OF AFRICA

87. The Representative of Certain States of Africa has proposed the following wording:

The country representatives highlighted the following issues for further study and discussion:

- the balancing, also with reference to socio-cultural factors in the various regions, of the rights of all interested parties, including authors, broadcasting organizations, performers and producers of phonograms;

- the scope of the new instrument, with special reference to:

exceptions and limitations

CERTAIN STATES OF ASIA AND THE PACIFIC

88. The Representative of Certain States of Asia and the Pacific has proposed the following wording:

It is important to strike a balance between the interests of the different stakeholders (i.e., the big and small broadcasting organizations, the authors, the performers, the producers and the public). At the same time, the interests of the developing and least developed countries should be a primary concern. In this context, the special circumstances of least developed countries should be kept in mind.

EGYPT

89. The Delegation of Egypt has proposed the following wording:

Article 8
Limitations and Exceptions

1. The rights of broadcasting and cablecasting organizations set forth in Articles 5, 6 and 7 shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts, cablecasts.
2. Contracting Parties may, in their national legislation, provide for the same kind of limitations or exceptions with regard to the protection of broadcasting, cablecasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works and with the protection of the related rights of performers and producers of phonograms.
3. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this treaty to certain special cases which do not conflict with a normal exploitation of the broadcast, cablecast and do not unreasonably prejudice the legitimate interests of the broadcasting, cablecasting organizations as set forth herein.
4. If on the date of the Diplomatic Conference a Contracting Party has in force limitations and exceptions to the rights conferred in Article 5(a)-(c) in respect of non-commercial broadcasting organizations it may maintain such limitations and exceptions.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

90. The Delegation of the European Community and its Member states has proposed the following wording:

Article 11
Limitations and Exceptions

- (a) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.
- (b) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

HONDURAS

91. The Delegation of Honduras has proposed the following wording:

Article 6
Limitations and Exceptions

Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with the normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

JAPAN

92. The Delegation of Japan has proposed the following wording:

Article 8
Limitations and Exceptions

(a) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(b) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

KENYA

93. The Delegation of Kenya has proposed the following wording:

Article 6
Limitations and Exceptions

1. Contracting Parties, in their national legislation, may provide for the same kind of limitations and exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

2. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases, which do not conflict with the normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

MEXICO

94. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.¹⁹

SWITZERLAND

95. The Delegation of Switzerland has proposed the following wording:

Article 11²⁰
Limitations and Exceptions

(a) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(b) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Protocol to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

UNITED REPUBLIC OF TANZANIA

96. The Delegation of the United Republic of Tanzania has proposed the following wording:

It is proposed that the rights accorded should not be absolute and should have clearly spelt exceptions and limitations.

¹⁹ See WIPO document SCCR/2/6.

²⁰ [Note on Article 11 contained in the proposal:] “This Article corresponds to Article 16 of the WPPT.”

UNITED STATES OF AMERICA

97. The Delegation of the United States of America has proposed the following wording:

Article 8²¹
Limitations and Exceptions

1. The rights of broadcasting, cablecasting and webcasting organizations set forth in Articles 5, 6, and 7 shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts, cablecasts or webcasts.
2. Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting, cablecasting and webcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works and with the protection of the related rights of performers and producers of phonograms.
3. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast, cablecast or webcast and do not unreasonably prejudice the legitimate interests of the broadcasting, cablecasting or webcasting organizations as set forth herein.
4. If on [the date of the Diplomatic Conference], a Contracting Party has in force limitations and exceptions to the rights conferred in Article 5 (a)-(c) in respect of non-commercial broadcasting organizations, it may maintain such limitations and exceptions.

URUGUAY

98. The Delegation of Uruguay has proposed the following wording:

Article 13
Limitations and Exceptions

(a) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

²¹ The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 8(2) and 8(3) (on Limitations and Exceptions) of the WIPO Treaty for the Protection of the Rights of Broadcasting, Cablecasting and Webcasting Organizations. The text of the agreed statement concerning Article 10 of the WCT reads as follows: “It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment.
“It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.”

(b) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

IX. TERM OF PROTECTION

ARGENTINA

99. The Delegation of Argentina has proposed the following wording:

*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.

CAMEROON

100. The Delegation of Cameroon has proposed the following wording:

Cameroon proposes that the term of protection should be extended to 50 years counted from the date on which the program was broadcast.

CERTAIN STATES OF AFRICA

101. The Representative of Certain States of Africa has proposed the following wording:

The term of protection, including the possible extension of such term by rebroadcasting, should be further studied and discussed.

EGYPT

102. The Delegation of Egypt has proposed the following wording:

*Article 9
Term of Protection*

The term of protection to be granted to broadcasting and cablecasting organizations under this treaty shall last at least 50 years until the end of a period computed from the end of the year in which the broadcast, cablecast took place.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

103. The Delegation of the European Community and its Member states has proposed the following wording:

Article 12
Term of Protection

The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast took place for the first time.

HONDURAS

104. The Delegation of Honduras has proposed the following wording:

Article 7
Term of Protection

The term of protection to be granted to broadcasting organizations under this Treaty shall be not less than 50 years, calculated from the end of the year in which the broadcast took place for the first time.

JAPAN

105. The Delegation of Japan has proposed the following wording:

Article 9
Term of Protection

The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcasting took place.

KENYA

106. The Delegation of Kenya has proposed the following wording:

Article 7
Term of Protection

The term of protection to be granted to broadcasting organizations under this treaty shall last at least, until the end of a period of fifty years (50) computed from the end of the year in which the broadcast first took place.

MEXICO

107. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into

consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.²²

SWITZERLAND

108. The Delegation of Switzerland has proposed the following wording:

Article 12²³
Term of Protection

The term of protection to be granted to broadcasting organizations under this Protocol shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast was broadcast for the first time.

UKRAINE

109. The Delegation of Ukraine has proposed the following wording:

Article 3
Term of Protection

The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 50 years computed from January 1 of the year following the year of the first broadcast of the broadcasting program.

UNITED STATES OF AMERICA

110. The Delegation of the United States of America has proposed the following wording:

Article 9
Term of Protection

The term of protection to be granted to broadcasting, cablecasting and webcasting organizations under this Treaty shall last at least 50 years until the end of a period computed from the end of the year in which the broadcast, cablecast or webcast took place.

²² See WIPO document SCCR/2/6.

²³ [Note on Article 12 contained in the proposal:] “It is proposed that the term of protection be aligned on that under the WPPT (Article 17) for performers and phonogram producers. The fifty-year term of protection also corresponds to the term laid down by the Swiss Copyright Law (Article 39). The draft Protocol provides that the term should run once only as from the first broadcasting.”

URUGUAY

111. The Delegation of Uruguay has proposed the following wording:

Article 14
Term of Protection

The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast took place for the first time.

X. OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

ARGENTINA

112. The Delegation of Argentina has proposed the following wording:

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:

- (a) decrypt an encrypted program-carrying signal;
- (b) 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;
- (c) 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.

EGYPT

113. The Delegation of Egypt has proposed the following wording:

Article 10
Obligations Concerning Technological Measures

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

EUROPEAN COMMUNITY AND ITS MEMBER STATES

114. The Delegation of the European Community and its Member states has proposed the following wording:

Article 13

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 Treaty and that restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations concerned or permitted by law.

HONDURAS

115. The Delegation of Honduras has proposed the following wording

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 Treaty and that restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations concerned or permitted by law.

JAPAN

116. The Delegation of Japan has proposed the following wording:

Article 10

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 Treaty and that restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations concerned or permitted by law.

KENYA

117. The Delegation of Kenya has proposed the following wording:

Article 8

Obligations Concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective remedies against the circumvention of effective technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Treaty and that can

restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations concerned or permitted by law.

MEXICO

118. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.²⁴

SWITZERLAND

119. The Delegation of Switzerland has proposed the following wording:

Article 13²⁵

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, which are not authorized by the broadcasting organizations or permitted by law.

Article 14²⁶

Obligations Concerning the Manufacture and Marketing of Appliances for the Fraudulent Decoding of Encrypted Broadcasts

Contracting Parties shall prohibit and provide effective legal remedies against the manufacture, import, export, transport, marketing or installation of appliances of which the components or data processing programs serve to fraudulently decode encrypted broadcasts or are used to that end.

²⁴ See WIPO document SCCR/2/6.

²⁵ [Note on Article 13 contained in the proposal:] “This Article corresponds to Article 18 of the WPPT.”

²⁶ [Note on Article 14 contained in the proposal:] “The fact that a broadcasting organization is given the right to oppose the decoding of its broadcast is not enough. It is also necessary to prohibit the manufacture and marketing of apparatus used for decoding encrypted broadcasts. This provision corresponds largely to that of Article 150*bis* of the Swiss Penal Code.”

UNITED STATES OF AMERICA

120. The Delegation of the United States of America has proposed the following wording:

Article 10
Obligations Concerning Technological Measures

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

URUGUAY

121. The Delegation of Uruguay has proposed the following wording:

Article 15
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 Treaty and that restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations concerned or permitted by law.

XI. OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

ARGENTINA

122. The Delegation of Argentina has proposed the following wording:

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.

EGYPT

123. The Delegation of Egypt has proposed the following wording:

Article 11
Obligations Concerning Rights Management Information

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any 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 right or violation of any prohibition covered by this treaty:

(a) to remove or alter any electronic rights management information without authority;

(b) to distribute, import for distribution, retransmit, communicate or make available to the public, without authority, broadcasts, cablecasts or fixations thereof, knowing that electronic rights management information has been removed or altered without authority.

2. As used in this Article, “rights management information” means information provided by the broadcasting organization which identifies such an organization, the broadcast, cablecast or the owner of any right in the broadcast, cablecast or information about the terms and conditions of use of the broadcast, cablecast or any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast, cablecast.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

124. The Delegation of the European Community and its Member states has proposed the following wording:

Article 14
Obligations Concerning Rights Management Information

(a) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any 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 right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, retransmit, communicate or make available to the public, without authority, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authority.

(b) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast, 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 these items of information accompany the retransmission, the communication or making available of a broadcast or a fixation of a broadcast to the public.

HONDURAS

125. The Delegation of Honduras has proposed the following wording:

Article 9
Obligations Concerning Rights Management Information

Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any 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 right covered by this Treaty:

- to remove or alter any electronic rights management information without authorization;
- to distribute, import for distribution, retransmit, communicate or make available to the public, without authorization, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authorization.

JAPAN

126. The Delegation of Japan has proposed the following wording:

Article 11
Obligations Concerning Rights Management Information

(a) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any 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 right covered by this Treaty:

- (i) to remove or alter any electronic rights management information without authority;
- (ii) to distribute, import for distribution, rebroadcast, communicate or make available to the public, without authority, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authority.

(b) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast, 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 these items of information is attached to a broadcast.

KENYA

127. The Delegation of Kenya has proposed the following wording:

Article 9
Obligations Concerning Rights Management Information

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

(a) to remove or alter any electronic rights management information without authority,

(b) to distribute, import for distribution, transmit, communicate or make available to the public, without authority, broadcasts or fixations thereof, knowing that the electronic right management information has been removed or altered without authority.

2. As used in this article, “rights management information” means information which identifies the broadcasting organization, the broadcast, the owner of any right in the broadcast or information about the terms and conditions of use of the broadcast, and any members or codes that represent such information, when any of these items of information accompanies the transmission, communication or making available of a broadcast, or any fixation thereof, to the public.

MEXICO

128. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.²⁷

SWITZERLAND

129. The Delegation of Switzerland has proposed the following wording:

Article 15²⁸
Obligations Concerning Rights Management Information

(a) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any one of the following acts knowing, or with respect to

²⁷ See WIPO document SCCR/2/6.

²⁸ [Note on Article 15 contained in the proposal:] “This Article corresponds to Article 19 of the WPPT.”

civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Protocol:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, retransmit, communicate or make available to the public, without authority, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authority.

(b) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast, 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 these items of information accompany the retransmission, the communication or making available of a broadcast or a fixation of a broadcast to the public.

UNITED STATES OF AMERICA

130. The Delegation of the United States of America has proposed the following wording:

Article 11

Obligations Concerning Rights Management Information

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any 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 right or violation of any prohibition covered by this Treaty:

(a) To remove or alter any electronic rights management information without authority;

(b) To distribute, import for distribution, retransmit, communicate or make available to the public, without authority, broadcasts, cablecasts, webcasts or fixations thereof, knowing that electronic rights management information has been removed or altered without authority.

2. As used in this Article, “rights management information” means information provided by the broadcasting, cablecasting or webcasting organization which identifies such organization, the broadcast, cablecast or webcast, the owner of any right in the broadcast, cablecast or webcast, or information about the terms and conditions of use of the broadcast, cablecast or webcast, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast, cablecast or webcast.

URUGUAY

131. The Delegation of Uruguay has proposed the following wording:

Article 16
Obligations Concerning Rights Management Information

(a) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any 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 right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to distribute, import for distribution, retransmit, communicate or make available to the public, without authority, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authority.

(b) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast, 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 these items of information accompany the retransmission, the communication or making available of a broadcast or a fixation of a broadcast to the public.

XII. FORMALITIES

ARGENTINA

132. The Delegation of Argentina has proposed the following wording:

Article 10
Formalities

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

EGYPT

133. The Delegation of Egypt has proposed the following wording:

Article 12
Formalities

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

EUROPEAN COMMUNITY AND ITS MEMBER STATES

134. The Delegation of the European Community and its Member states has proposed the following wording:

Article 15
Formalities

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

HONDURAS

135. The Delegation of Honduras has proposed the following wording:

Article 10
Formalities

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

JAPAN

136. The Delegation of Japan has proposed the following wording:

Article 12
Formalities

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

KENYA

137. The Delegation of Kenya has proposed the following wording:

Article 10
Formalities

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

MEXICO

138. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting

organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.²⁹

SWITZERLAND

139. The Delegation of Switzerland has proposed the following wording:

Article 16³⁰
Formalities

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

UKRAINE

140. The Delegation of Ukraine has proposed the following wording:

Article 4
Formalities

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

UNITED STATES OF AMERICA

141. The Delegation of the United States of America has proposed the following wording:

Article 12
Formalities

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

URUGUAY

142. The Delegation of Uruguay has proposed the following wording:

Article 17
Formalities

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

²⁹ See WIPO document SCCR/2/6.

³⁰ [Note on Article 16 contained in the proposal:] “This Article corresponds to Article 20 of the WPPT.”

XIII. RESERVATIONS

EGYPT

143. The Delegation of Egypt has proposed the following wording:

*Article 13
Reservations*

Subject to the provisions of Article 5(g)(ii), no reservations to the treaty shall be permitted.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

144. The Delegation of the European Community and its Member states has proposed the following wording:

*Article 16
Reservations*

No reservations to this Treaty shall be permitted.

HONDURAS

145. The Delegation of Honduras has proposed the following wording:

*Article 11
Reservations*

No reservations to this Treaty shall be permitted.

JAPAN

146. The Delegation of Japan has proposed the following wording:

*Article 13
Reservations*

No reservations to this Treaty shall be permitted.

KENYA

147. The Delegation of Kenya has proposed the following wording:

*Article 11
Reservations*

No reservations to this Treaty shall be permitted.

MEXICO

148. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.³¹

SWITZERLAND

149. The Delegation of Switzerland has proposed the following wording:

Article 17³²
Reservations

No reservation to this Protocol shall be permitted.

UKRAINE

150. The Delegation of Ukraine has proposed the following wording:

Article 5
Reservations

No reservations to this Treaty shall be permitted.

UNITED STATES OF AMERICA

151. The Delegation of the United States of America has proposed the following wording:

Article 13
Reservations

Subject to the provisions of Article 5(g)(ii), no reservations to this Treaty shall be permitted.

URUGUAY

152. The Delegation of Uruguay has proposed the following wording:

Article 18
Reservations

No reservations to this Treaty shall be permitted.

³¹ See WIPO document SCCR/2/6.

³² [Note on Article 17 contained in the proposal:] “Contrary to the WPPT, there is no need to provide for the possibility of reservations to the Protocol.”

XIV. APPLICATION IN TIME

ARGENTINA

153. The Delegation of Argentina has proposed the following wording:

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.

EGYPT

154. The Delegation of Egypt has proposed the following wording:

Article 14
Application in Time

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

EUROPEAN COMMUNITY AND ITS MEMBER STATES

155. The Delegation of the European Community and its Member states has proposed the following wording:

Article 17
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 Treaty.

HONDURAS

156. The Delegation of Honduras has proposed the following wording:

Article 12
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 Treaty.

JAPAN

157. The Delegation of Japan has proposed the following wording:

Article 14
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 Treaty.

KENYA

158. The Delegation of Kenya has proposed the following wording:

Article 12
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 Treaty.

MEXICO

159. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.³³

SWITZERLAND

160. The Delegation of Switzerland has proposed the following wording:

Article 18³⁴
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.

³³ See WIPO document SCCR/2/6.

³⁴ [Note on Article 18 contained in the proposal:] “This Article corresponds to Article 22(1) of the WPPT and Article 13 of the WCT. There is no need to provide in the Protocol for derogations to the principle laid down in Article 18 of the Berne Convention.”

UKRAINE

161. The Delegation of Ukraine has proposed the following wording:

Article 6
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 Treaty.

UNITED STATES OF AMERICA

162. The Delegation of the United States of America has proposed the following wording:

Article 14
Application in Time

Contracting parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of broadcasting, cablecasting and webcasting organizations provided for in this Treaty.

URUGUAY

163. The Delegation of Uruguay has proposed the following wording:

Article 19
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 Treaty.

XV. PROVISIONS ON ENFORCEMENT OF RIGHTS

ARGENTINA

164. The Delegation of Argentina has proposed the following wording:

Article 12
Provisions on Enforcement of Rights

(a) Contracting Parties undertake to adopt, in conformity with their legal systems, the measures necessary to ensure the application of this Protocol.

(b) 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.

CAMEROON

165. The Delegation of Cameroon has proposed the following wording:

Sanctions for Violation of Rights

Cameroon proposes the inclusion in the instrument of strong criminal provisions to discourage the pirating of both broadcast and televised programs, or that of encrypted program-carrying satellite signals.

Civil sanctions should also be contemplated.

EGYPT

166. The Delegation of Egypt has proposed the following wording:

Article 15

Provisions on Enforcement of Rights

1. Contracting Parties shall undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this treaty.
2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation against any prohibition covered by this treaty, including expeditious remedies to prevent infringements or violations, which constitute a deterrent to further infringements and violations.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

167. The Delegation of the European Community and its member States has proposed the following wording:

Article 18

Provisions on Enforcement of Rights

- (a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
- (b) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

HONDURAS

168. The Delegation of Honduras has proposed the following wording:

Article 13

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that rights enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including efficient remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

JAPAN

169. The Delegation of Japan has proposed the following wording:

Article 15
Enforcement of Rights

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

KENYA

170. The Delegation of Kenya has proposed the following wording:

Article 13
Provisions on the Enforcement of Rights

1. Contracting Parties shall undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

2. Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation against any prohibition covered by this Treaty, including expeditious remedies to prevent infringements or violations, which constitute a deterrent to further infringements and violations.

MEXICO

171. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into

consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.³⁵

SWITZERLAND

172. The Delegation of Switzerland has proposed the following wording:

Article 19³⁶

Provisions on Enforcement of Rights

(a) Contracting Parties undertake to adopt, in conformity with their legal systems, the measures necessary to ensure the application of this Protocol.

(b) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights conferred by this Protocol, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

UKRAINE

173. The Delegation of Ukraine has proposed the following wording:

Article 7

Provisions on Enforcement of Rights

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

UNITED STATES OF AMERICA

174. The Delegation of the United States of America has proposed the following wording:

Article 15

Provisions on Enforcement of Rights

1. Contracting Parties shall undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

2. Contracting Parties shall ensure that enforcement procedures are available under their laws so as to permit effective action against any act of infringement of rights or violation

³⁵ See WIPO document SCCR/2/6.

³⁶ [Note on Article 19 contained in the proposal:] “This Article corresponds to Article 23 of the WPPT.”

against any prohibition covered by this Treaty, including expeditious remedies to prevent infringements or violations, which constitute a deterrent to further infringements and violations.

URUGUAY

175. The Delegation of Uruguay has proposed the following wording:

Article 20
Provisions on Enforcement of Rights

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

XVI. ADMINISTRATIVE AND FINAL CLAUSES

ARGENTINA

176. The Delegation of Argentina has proposed the following wording:

Article 13
Assembly

(a) (i) The Contracting Parties shall have an Assembly.

(ii) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisers and experts.

(iii) 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.

(b) (i) The Assembly shall deal with matters concerning the maintenance and development of this Protocol and its application and operation.

(ii) The Assembly shall perform the function allocated to it under Article 15(b) regarding the admission of certain intergovernmental organizations to become party to this Protocol.

(iii) 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.

(c) (i) Every Contracting Party that is a State shall have one vote and shall vote only in its own name.

(ii) 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.

(d) The Assembly shall meet in ordinary session every two years on convocation by the Director General of WIPO.

(e) 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

(a) Any Member State of WIPO may become party to this Protocol.

(b) 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.

(c) 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:

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

- (a) 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.
- (b) An official text in any language other than those referred to in paragraph (a) 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.

EGYPT

177. The Delegation of Egypt has proposed the following wording:

Article 16
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, advisors and experts.

(c) The expenses of the delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (hereinafter referred to as WIPO) to grant financial 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 treaty and the application and operation of this treaty.

(b) The Assembly shall perform the function allocated to it under Article 18(2) in respect of the admission of certain intergovernmental organizations to become party to this treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this treaty and give necessary instructions to the Director General of WIPO for the preparation of such a diplomatic conference.
3. (a) Each 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 treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
4. The Assembly shall meet in ordinary session once every two years upon 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 treaty, the required majority for various kinds of decisions.

Article 17
International Bureau

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

Article 18

Eligibility for Becoming Party to the Treaty

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

Article 19

Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this treaty.

Article 20

Signature of the Treaty

This treaty shall be open for signature until December 31, 200_, by any Member State of WIPO and by the European Union.

Article 21

Entry into Force of the Treaty

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

Article 22

Effective Date of Becoming Party to the Treaty

This treaty shall bind:

- (a) The ___ States referred to in Article 21, from the date on which this treaty has entered into force;
- (b) Each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (c) The European Union, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this treaty according to Article 21, or, three months after the entry into force of this treaty if such instrument has been deposited before the entry into force of this treaty;
- (d) Any other intergovernmental organization that is admitted to become party to this treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 23
Denunciation of the Treaty

This treaty 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 received the notification.

Article 24
Languages of the Treaty

1. This treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these 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 on the request of interested parties. For the purposes of this paragraph, “interested party” mean any Member State of WIPO whose official language, or one of whose official language, is involved in the European Union, and any other intergovernmental organization that may become party to this treaty, if one of its official languages is involved.

Article 25
Depositary

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

EUROPEAN COMMUNITY AND ITS MEMBER STATES

178. The Delegation of the European Community and its Member states has proposed the following wording:

Article 19
Assembly

- (a) (i) The Contracting Parties shall have an Assembly.
 - (ii) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.
 - (iii) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial 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.
- (b) (i) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
 - (ii) The Assembly shall perform the function allocated to it under Article 21(b) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(iii) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.

(c) (i) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.

(ii) 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 which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

(d) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.

(e) 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 Treaty, the required majority for various kinds of decisions.

Article 20

International Bureau

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

Article 21

Eligibility for Becoming Party to the Treaty

(a) Any Member State of WIPO may become party to this Treaty.³⁷

(b) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on its Member States, on matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

(c) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 22

Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

³⁷ In the event of it being decided that this instrument should be a protocol to the WPPT, Article 21(b) would read: “Any Member State of WIPO may become party to this protocol if it has deposited its instruments of ratification of the Berne Convention, the WCT and the WPPT.”

Article 23

Signature of the Treaty

This Treaty shall be open for signature until by any Member State of WIPO and by the European Community.

Article 24

Entry into Force of the Treaty

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

Article 25

Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (a) the States referred to in Article 24, from the date on which this Treaty has entered into force;
- (b) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (c) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 24, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;
- (d) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 26

Denunciation of the Treaty

This Treaty 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 received the notification.

Article 27

Languages of the Treaty

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

Article 28
Depositary

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

KENYA

179. The Delegation of Kenya has proposed the following wording:

Article 16
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, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (WIPO) to grant financial 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 Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 18(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its 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, which are party to this Treaty. 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 sessions once every two years upon 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 Treaty, the required majority for various kinds of decisions.

Article 17
International Bureau

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

Article 18
Eligibility to Becoming Party to the Treaty

1. Any Member State of WIPO may become party to the Treaty.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on its Member States, in accordance with its internal procedure, to become party to this Treaty.
3. The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 19
Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 20
Signature of the Treaty

This Treaty shall be open for signature until by any Member State of WIPO and by the European Community.

Article 21
Entry into Force

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

Article 22
Effective Date of Becoming Party to the Treaty

The Treaty shall bind:

- (i) the States referred to in Article 21, from the date on which the State has entered into force;
- (ii) each other State from the expiration of the three months from the date on which the State has deposited 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 such instrument has been deposited after the entry

into force of this Treaty according to Article 21, or, three months after the entry into force this Treaty if such instrument has been deposited before entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 23

Denunciation of the Treaty

Any Contracting Party may denounce this Treaty 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 received the notification.

Article 24

Languages of the Treaty

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

Article 25

Depositary

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

MEXICO

180. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.³⁸

SWITZERLAND

181. The Delegation of Switzerland has proposed the following wording:

Administrative and Final Clauses

In accordance with the provisions under the WPPT.

³⁸ See WIPO document SCCR/2/6.

UNITED STATES OF AMERICA

182. The Delegation of the United States of America has proposed the following wording:

Article 16
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, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (hereinafter referred to as “WIPO”) to grant financial 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 Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 18(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
3. (a) Each 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 Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*.
4. The Assembly shall meet in ordinary session once every two years upon 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 Treaty, the required majority for various kinds of decisions.

Article 17
International Bureau

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

Article 18

Eligibility for Becoming Party to the Treaty

1. Any Member State of WIPO may become party to this Treaty, provided that such state is a party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
3. The European Union, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty subject to paragraph 1 of this Article.

Article 19

Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 20

Signature of the Treaty

This Treaty shall be open for signature until December 31, 200_, by any Member State of WIPO and by the European Union.

Article 21

Entry into Force of the Treaty

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

Article 22

Effective Date of Becoming Party to the Treaty

This Treaty shall bind

- (a) The ___ States referred to in Article 21, from the date on which this Treaty has entered into force;
- (b) Each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (c) The European Union, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 21, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(d) Any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 23
Denunciation of the Treaty

This Treaty 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 received the notification.

Article 24
Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these 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 on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 25
Depositary

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

URUGUAY

183. The Delegation of Uruguay has proposed the following wording:

Administrative and Final Clauses

As in the proposal by the European Community.

*184. The Standing Committee on
Copyright and Related Rights is invited
to note the contents of the document.*

[End of document]