

WIPO



SCCR/14/2

ORIGINAL: English

DATE: February 8, 2006

E

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**STANDING COMMITTEE ON COPYRIGHT
AND RELATED RIGHTS**

Fourteenth Session
Geneva, May 1 to 5, 2006

**DRAFT BASIC PROPOSAL
FOR THE WIPO TREATY
ON THE PROTECTION OF BROADCASTING ORGANIZATIONS**

INCLUDING

**A NON-MANDATORY APPENDIX
ON THE PROTECTION IN RELATION TO WEBCASTING**

*prepared by the Chair of the Standing Committee on Copyright and Related Rights in
cooperation with the Secretariat*

Introductory Notes by the Chairman of the Standing Committee

The WIPO General Assembly discussed in its thirty-second session which took place from September 26 to October 5, 2005, the question of the protection of the rights of broadcasting organizations and decided that

“two additional meetings of the Standing Committee on Copyright and Related Rights (SCCR) would be scheduled to accelerate discussions on the second revised Consolidated Text (SCCR/12/2 Rev.2) and on the Working Paper (SCCR/12/5 Prov.). These meetings shall aim to agree and finalize a Basic Proposal for a treaty on the protection of the rights of broadcasting organizations in order to enable the 2006 General Assembly to recommend the convening of a Diplomatic Conference in December 2006 or at an appropriate date in 2007”.

The Standing Committee discussed extensively the above-mentioned document in its thirteenth session in November 2005. In the end of the meeting there was an understanding that a new revised consolidated text would be prepared for the next session of the Committee.

On the basis of the understanding referred to above a new revised text has been prepared, and in order to fulfill the mandate received from the General Assembly it is presented in the form of a Draft Basic Proposal. It contains “a clean text” of a draft treaty without presentation of alternative provisions and including a draft solution in relation to webcasting, in the form of a draft appendix, without presenting different options.

In order to achieve a comprehensive and complete basis for the consideration of the Committee, a separate Working Paper for the Preparation of the Basic Proposal has been prepared to accompany the Draft Basic Proposal. The Working Paper contains all the alternative provisions that have been removed from the body of the Draft Basic Proposal, as well as all elements from the new proposals received at the November meeting of the Committee.

Both documents should be read in conjunction with the previous set of documents, especially with the Second Revised Consolidated Text (SCCR/12/2 Rev.2).

The two new documents together form the basis for the work of the Committee in its fourteenth session, May 1 to 5, 2006.

It should be stressed that the Draft Basic Proposal is just a draft text. There is no agreement on any element in its content, and it is open for changes based on the discussions on the Draft Basic Proposal and the Working Paper in the Committee. The fact that there are no alternative provisions in the Draft Basic Proposal does not mean that there should be no alternatives in the final Basic Proposal.

It is understood that the Basic Proposal would be prepared after the fourteenth session of the Standing Committee. Again, it should be stressed that even the Basic Proposal will be a draft, forming a working document for the Diplomatic Conference, and subject to change in the conference itself.

[Draft Basic Proposal follows]

*Draft Basic Proposal for the
WIPO Treaty on the Protection of Broadcasting Organizations*

Contents

Preamble.....	7
Article 1 - Relation to Other Conventions and Treaties.....	11
Article 2 - Definitions	13
Article 3 - Scope of Application	17
Article 4 - Beneficiaries of Protection.....	19
Article 5 - National Treatment	21
Article 6 - Right of Retransmission.....	23
Article 7 - Right of Fixation.....	25
Article 8 - Right of Reproduction	27
Article 9 - Right of Transmission Following Fixation.....	29
Article 10 - Right of Making Available of Fixed Broadcasts	31
Article 11 - Protection in Relation to Signals Prior to Broadcasting	33
Article 12 - Limitations and Exceptions	35
Article 13 - Term of Protection	37
Article 14 - Obligations Concerning Technological Measures.....	39
Article 15 - Obligations Concerning Rights Management Information	41
Article 16 - Formalities	43

[Preamble starts on page 7]

[Explanatory Comments on the Title and the Preamble start on page 6]

[Preamble starts on Page 7]

Article 17 - Reservations.....	45
Article 18 - Application in Time	47
Article 19 - Provisions on Enforcement of Rights	49
Article 20 - Assembly	51
Article 21 - International Bureau	55
Article 22 - Eligibility for Becoming Party to the Treaty	57
Article 23 - Rights and Obligations Under the Treaty	59
Article 24 - Signature of the Treaty	61
Article 25 - Entry into Force of the Treaty.....	63
Article 26 - Effective Date of Becoming Party to the Treaty.....	65
Article 27 - Denunciation of the Treaty	67
Article 28 - Languages of the Treaty	69
Article 29 - Depository	71

*Non-Mandatory Appendix
on the Protection in Relation to Webcasting
to the WIPO Treaty on the Protection of Broadcasting Organizations*

Preamble.....	73
Article 1 – Appendix	75
Article 2 – Definitions.....	75
Article 3 - Scope of Application	77
Article 4 – National Treatment.....	77
Article 5 - Entry into Force of and Becoming Bound to the Appendix	77

Explanatory Comments on the Title and the Preamble

0.01 On the cover page and before the table of contents a working *title* for the Treaty has been suggested. The title refers only to the protection of “broadcasting organizations”. Although the title is nominally limited to broadcasting organizations, it will become clear from the substantive provisions that the Treaty may easily be extended to functionally similar entities.

0.02 The *Preamble* sets forth the objective of the Treaty and the main arguments and considerations relating thereto. The body of the first four paragraphs follows the model and the language of the Preamble of the WPPT.

0.03 The *first paragraph* of the Preamble follows *mutatis mutandis* the first paragraph of the WPPT which took its inspiration from the first paragraph of the preamble of the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention).

0.04 The *second paragraph* reproduces the corresponding paragraph in the WPPT.

0.05 The *third paragraph* follows *mutatis mutandis* the corresponding paragraph in the WPPT. The reference to “unauthorized use of broadcasts” emphasizes the “anti-piracy function” of the Treaty.

Preamble

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 borders,

[Preamble continues, page 9]

0.06 The *fourth paragraph* reproduces *mutatis mutandis* the corresponding paragraph in the WPPT.

0.07 The *fifth paragraph* sets the high objective not to compromise but to recognize the rights of the owners of the content carried by broadcasts.

0.08 The *sixth paragraph* stresses the benefits of the protection of broadcasting organizations to other rightholders.

[End of Explanatory Comments on the Title and the Preamble]

[Preamble, continued]

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

Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the need for broadcasting organizations to acknowledge these rights,

Stressing the benefits to authors, performers and producers of phonograms of effective and uniform protection against illegal use of broadcasts,

Have agreed as follows:

[End of Preamble]

Explanatory Comments on Article 1

1.01 The provisions of *Article 1* concern the nature of the Treaty and define its relation to other conventions and treaties.

1.02 *Paragraph (1)* contains a “sweeping safeguard clause” making a reference to all other conventions and treaties addressing copyright and related rights.

1.03 *Paragraph (2)* contains a “non-prejudice clause” concerning the protection of copyright and related rights following the model of Article 1 of the Rome Convention and Article 1(2) of the WPPT.

1.04 *Paragraph (3)* contains a “no-connection and non-prejudice clause” concerning any other treaties. The Treaty would be a free-standing treaty, in substance not linked to any other treaty.

[End of Explanatory Comments on Article 1]

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 any international, regional or bilateral treaties addressing copyright or related rights.

(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. Consequently, no provision 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.

[End of Article 1]

Explanatory Comments on Article 2

2.01 *Article 2* contains definitions of the key terms used in the Treaty. This follows the tradition of the treaties in the field of related rights, the Rome Convention and the WPPT. The set of definitions presented in the Draft Basic Proposal includes definitions of some of the most decisive terms and concepts. The explanatory comments concerning the definitions are elementary and minimalist, and they may be clarified and further developed following the discussions in the Standing Committee.

2.02 The definition of “broadcasting” in *item (a)* contains the classical definition of broadcasting. It attaches itself to the tradition of copyright and related rights treaties in which the notion of “broadcasting” is confined exclusively to transmissions by wireless means, by radio waves propagating freely in space, i.e., radio waves or Herzian waves. Consequently, no transmissions by wire are included in “broadcasting”. Because this definition would be based on the traditional notion of broadcasting, no possibility of uncertainty or interference could emerge in the interpretations of existing treaties. The definition follows the definition found in Article 2 of the WPPT. The first sentence of the definition is built on the prototype definition of broadcasting found in Article 3(f) of the Rome Convention. Article 11*bis* of the Berne Convention operates with the same concept of broadcasting. For the sake of completeness, the expression “of sounds or of images and sounds” has been replaced by “of sounds or of images or of images and sounds”. It is proposed that “transmissions over computer networks” be excluded from “broadcasting” in order to make clear that computer network transmissions, even when transmitted by wireless means, are not intended to qualify as broadcasting.

2.03 Certain Delegations proposed a broader definition of “broadcasting” that would comprise not only wireless transmissions but also transmissions by wire, “including by cable or satellite”. A narrower definition of “broadcasting” has been proposed in the Draft Basic Proposal for consistency with existing treaties in the field of copyright and related rights. Transmissions by wire, including by cable, are defined as “cablecasting” in the Draft Basic Proposal. The end result concerning the scope of application of the Treaty (by providing separate definitions for “broadcasting” and “cablecasting”) is exactly the same as by using the broader definition of “broadcasting”.

2.04 *Item (b)* defines the term “cablecasting”. The definition follows *mutatis mutandis* the definition of “broadcasting” in *item (a)*, and also in the WPPT. The notion of “cablecasting” is confined to transmissions by wire. No wireless transmissions, including by satellite, are included in “cablecasting”. In the definition, the interpretative clause referring to encrypted signals is maintained. For the same reason as in the case of the definition of “broadcasting”, “transmissions over computer networks” are excluded from the notion of “cablecasting”. The definition of “cablecasting” is needed if the notion of traditional broadcasting is adopted in the Treaty as proposed, but would be superfluous if the Treaty were based on a broader notion.

Article 2

Definitions

For the purposes of this Treaty,

(a) “broadcasting” means the transmission by wireless means for the reception by the public of sounds or of images or of images and sounds 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;

(b) “cablecasting” means the transmission by wire for the reception by the public of sounds or of images or of images and sounds 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 transmissions over computer networks;

[Article 2 continues, page 15]

2.05 *Item (c)* contains a definition of “broadcasting organization” and “cablecasting organization”. In the discussions in the Standing Committee it was felt that some limits should be set concerning the persons benefiting from the protection of the Treaty. Not everybody transmitting program-carrying signals shall be regarded as a “broadcasting organization” or as a “cablecasting organization”. The definition proposed in item (c) consists of three main elements: (1) the person shall be a “legal entity”, (2) taking “the initiative” and having “the responsibility”, for “the transmission”, and (3) for “the assembly and scheduling of the content of the transmission”.

2.06 In the Treaty there is no definition of the term “broadcast”. The object of protection of the Treaty is the broadcast, that is the program-carrying signal constituting the transmission. The broadcast represents the output of the activity in which a broadcasting organization is engaged, namely “broadcasting”, which is already defined in item (a). For this reason there is no need for a definition of “broadcast”.

2.07 *Item (d)* contains a definition of “retransmission”. The notion of “retransmission”, in the defined form, embraces all forms of retransmission by any means, *i.e.* by wire or wireless means, including combined means. It covers rebroadcasting, retransmission by wire or cable, and retransmission over computer networks. Retransmission is relevant only when it is done by another person than the original transmitting organization. This is manifested in explicit terms in the proposed definition. All proposals contained suggestions on retransmission in narrower or broader form, either in the definitions or in the clauses on rights. In the defined open-ended form, “retransmission” covers the substance of all proposals. Language has been added to make clear that protection should extend to subsequent retransmissions. The definition is confined to simultaneous retransmissions only. It follows the definition of “rebroadcasting” of the Rome Convention which is confined only to simultaneous broadcasting of the broadcast of another broadcasting organization. The Berne Convention also operates in a similar manner; Article 11bis(1)(ii) sets forth the rights of authors in respect of their broadcast works, using the concept of simultaneous retransmission (using the expression “communication to the public by wire or by rebroadcasting”).

2.08 The definition is premised on the notion that non-simultaneous transmissions may only take place using a fixation of the original transmission, and such transmissions may thus be considered as new transmissions. Some delegations made in their proposals this distinction between simultaneous retransmissions and (deferred) transmissions based on fixations. A number of other Delegations proposed that the exclusive right of retransmission also cover (deferred) transmissions based on fixations. All Delegations suggested in one way or another that broadcasting organizations would enjoy protection against deferred transmissions based on fixations. To address this issue, a separate Article 9 on transmission following fixation is presented below.

2.09 *Item (e)* defines the term “fixation”. It follows the definition of “fixation” in the WPPT. After the phrase “embodiment of sounds”, the phrase “or of images or of images and sounds” has been added. The term “embodiment” covers the result of incorporating or recording program material carried by a signal using whatever means and whatever medium. Furthermore, it should be pointed out that, as in the corresponding definition in the WPPT, the definition of fixation does not qualify or quantify the duration of the life of the embodiment necessary to result in fixation. There are no conditions regarding the requisite permanence or stability of the embodiment.

[End of Explanatory Comments on Article 2]

[Article 2, continued]

(c) “broadcasting organization” and “cablecasting organization” mean the legal entity that takes the initiative and has the responsibility for the transmission to the public of sounds or of images or of images and sounds or of the representations thereof, and the assembly and scheduling of the content of the transmission;

(d) “retransmission” means the simultaneous transmission to the public by any means of a transmission referred to in provisions (a) or (b) of this Article by any other person than the original broadcasting or cablecasting organization; simultaneous transmission of a retransmission shall be understood as well to be a retransmission;

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

[End of Article 2]

Explanatory Comments on Article 3

3.01 The provisions of *Article 3* are formulated and organized in such a way that the scope of application is explicit and unambiguous.

3.02 *Paragraph (1)*, in order to define clearly the scope of the protection provided by the Treaty, manifests the distinction between the carrier and the content. The object of protection is the program-carrying signal. The protection provided by this Treaty is completely separate from the protection of the works and other protected subject matter carried by the signals.

3.03 *Paragraph (2)* lays down the fundamental basis of the scope of application of the Treaty in the area of broadcasting.

3.04 *Paragraph (3)* is the provision by which Contracting Parties will extend protection, by *mutatis mutandis* application, to cablecasting organizations.

3.05 *Paragraph (4)* contains provisions that exclude certain transmissions from the scope of application of the Treaty.

3.06 The provisions of *paragraph (4)(i)* exclude from protection all retransmission activities. This includes rebroadcasting, retransmission by wire, by cable and by any other means. This maybe illustrated by using the case of rebroadcasting. Rebroadcasting is broadcasting. What is broadcast by a rebroadcaster is a broadcast of another broadcasting organization. According to the definition in Article 2(c), a rebroadcaster would never qualify as a broadcasting organization. It does not have the initiative and the responsibility for the transmission to the public, nor the assembly and the scheduling of the content of the transmission. Consequently, on the basis of the definition of “broadcasting organization”, “rebroadcasting” is outside of the sphere of protection of the Treaty. It is thus most logical to exclude from the sphere of protection the whole concept of retransmission, including rebroadcasting, retransmission by wire or cable, and retransmission over computer networks. It should, under this reasoning, be emphasized that this does not, by any means, affect the protection of the prospective rightholders of the Treaty – broadcasting and cablecasting organizations – against any retransmission of their original transmissions or retransmissions thereof. It is the initial originator of a broadcast or cablecast who still enjoys the protection concerning its original transmission being retransmitted by the entity engaged in retransmission activities.

3.07 The provisions of *paragraph (4)(ii)* are mainly explanatory. They exclude all on-demand or interactive transmissions from the scope of the Treaty. A large part of such transmissions takes place over computer networks. All transmissions over computer networks are excluded from broadcasting and cablecasting already in the definitions.

3.08 Broadcasters enjoy protection in respect of their broadcasts. In some cases, for e.g., geographic reasons or for urban planning, broadcasters may deliver their broadcasts to the recipients using transmissions over cable networks after receiving first their own broadcasts. By definition this practice is not retransmission. Broadcasters enjoy protection in respect of their broadcasts even if delivered at some instance by cable. Cablecasters may use delivery by broadcasting e.g. in the sparsely populated fringe area of their network. Cablecasters’ transmissions are similarly protected even if delivered at some instance over the air.

[End of Explanatory Comments on Article 3]

Article 3

Scope of Application

(1) The protection granted under this Treaty extends only to signals used for the transmissions by the beneficiaries of the protection of this Treaty, and not to works and other protected subject matter carried by such signals.

(2) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.

(3) The provisions of this Treaty shall apply *mutatis mutandis* to the protection of cablecasting organizations in respect of their cablecasts.

(4) The provisions of this Treaty shall not provide any protection in respect of

(i) mere retransmissions by any means of transmissions referred to in Article 2(a), (b) and (d);

(ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public.

[End of Article 3]

Explanatory Comments on Article 4

4.01 *Article 4* establishes the points of attachment for granting national treatment to broadcasting organizations under Article 5.

4.02 Two slightly different legal techniques have been used in the proposals to define the criteria for granting national treatment.

4.03 A number of delegations have proposed in the style of Article 6 of the Rome Convention a simple listing of the conditions that trigger the obligation of national treatment.

4.04 Other delegations suggested in their proposals using a method following the model of the WPPT, and to some extent the TRIPS Agreement, to establish a definition of “nationals”.

4.05 Both techniques lead to the same result. In *paragraphs (1) and (2)* the latter technique has been presented. This is in concordance with the heading and language of Article 5 on “national treatment”, and it follows the latest generation of treaties (the WPPT and the TRIPS Agreement). In line with all proposals a clause complementary to those of the Rome Convention has been included. It defines, in the case of satellite broadcasting, the relevant place / point of attachment and adds to the criteria the origin of the signal using the doctrine of the “uninterrupted chain of communication”.

[End of Explanatory Comments on Article 4]

Article 4

Beneficiaries of Protection

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

(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that 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 the point at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for direct reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

[End of Article 4]

Explanatory Comments on Article 5

5.01 *Article 5* contains the provisions concerning national treatment.

5.02 Provisions of *paragraph (1)* limit the obligation to accord national treatment to the rights specifically granted in the Treaty. A clause on national treatment has been included with regard to the protection provided for signals prior to broadcasting in Article 11. This proposal continues the tradition of a limited, non-global national treatment, which, in the area of related rights takes its origin from Article 2.2 of the Rome Convention. The same solution was adopted in the WPPT with regard to the exclusive rights.

5.03 Provisions of *paragraph (2)* provide for a reciprocal treatment instead of national treatment in the areas of the two-tier level protection in the context of rights concerning acts that follow the first fixation, in Articles 8 to 10.

[End of Explanatory Comments on Article 5]

Article 5

National Treatment

(1) Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 4(2), the treatment it accords to its own nationals with regard to the rights specifically granted in this Treaty and with regard to the protection provided for in Articles 8(2), 9(2), 10(2) and 11 of this Treaty.

(2) The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the provisions in Article 8(2), Article 9(2) and Article 10(2) of this Treaty.

[End of Article 5]

Explanatory Comments on Article 6

6.01 *Article 6* contains the provisions on the rights of broadcasting organizations concerning the retransmission to the public of their broadcasts. The right in respect of retransmission would provide protection against all retransmissions, by any means, including rebroadcasting and retransmission by wire, by cable or over computer networks. The expression “exclusive right of authorizing” has been used, for the sake of consistency with the language of the WPPT and the WCT, in Article 6 and all subsequent Articles providing for an exclusive right.

6.02 Article 6 is based on the concept of retransmission, which on the international level is traditionally confined to simultaneous retransmission only and it corresponds to the definition of “retransmission” in Article 2(d) of the Treaty.

6.03 According to this conceptual architecture, delayed transmission following fixation shall be treated separately, as it is in fact a new transmission. Thus, Article 9 has been included on transmission following fixation.

[End of Explanatory Comments of Article 6]

Article 6

Right of Retransmission

Broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission of their broadcasts by any means, including rebroadcasting, retransmission by wire, and retransmission over computer networks.

[End of Article 6]

Explanatory Comments on Article 7

7.01 *Article 7* lays down the exclusive right of broadcasting organizations with respect to the fixation of their broadcasts. The provision follows *mutatis mutandis* the corresponding provision of Article 6 of the WPPT concerning the fixation of unfixed performances.

[End of Explanatory Comments on Article 7]

Article 7

Right of Fixation

Broadcasting organizations shall enjoy the exclusive right of authorizing the fixation of their broadcasts.

[End of Article 7]

Explanatory Comments on Article 8

8.01 *Article 8* lays down the provisions on the rights of broadcasting organizations with regard to the reproduction of fixations of their broadcasts or of the fixed broadcasts themselves.

8.02 *Paragraph (1)* provides the right of fixation as an unqualified intellectual property-type exclusive right.

8.03 Provisions of *paragraph (2)* offers to Contracting Parties a possibility to opt in, by a notification, to another formula of the right of reproduction. In this formula protection against reproduction is divided in two categories.

8.04 *Paragraph (2)(i)* provides an exclusive right of authorizing the reproduction in specified cases; these include reproduction of broadcasts from fixations made pursuant to Article 12 when such reproduction would not be permitted by that Article, as well as from any other fixations made without the consent of a broadcasting organization. This formula corresponds to Article 13(c)(i) and (ii) of the Rome Convention.

8.05 *Paragraph (2)(ii)* introduces to the Contracting Parties an obligation to prohibit the reproduction of fixations of the broadcasts, other than those specified in paragraph (2)(i), in cases where the broadcasting organization has not authorized such reproduction. According to Article 19, broadcasting organizations shall have recourse to effective legal remedies in respect of breach of this prohibition.

[End of Explanatory Comments on Article 8]

Article 8

Right of Reproduction

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

(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), the following protection:

(i) broadcasting organizations shall enjoy the exclusive right of authorizing the reproduction of their broadcasts from fixations made pursuant to Article 12 when such reproduction would not be permitted by that Article or otherwise made without their authorization, and

(ii) reproduction, without the consent of the broadcasting organizations, of fixations of their broadcasts other than those referred to in subparagraph (i) shall be prohibited.

[End of Article 8]

Explanatory Comments on Article 9

9.01 *Article 9* contains the provisions concerning transmissions of broadcasts based on fixation or made from fixations.

9.02 This right of authorizing transmission covers all transmissions, including broadcasting, cablecasting and transmission over computer networks, following fixation.

9.03 *Paragraph (1)* provides the right of deferred transmission as an exclusive right,

9.04 Provisions of *paragraph (2)* offer to the Contracting Parties a possibility to choose, by a notification, to provide to broadcasting organizations protection by prohibiting transmission from unauthorized fixations, in cases the broadcasting organizations have not authorized such transmission. According to Article 19, broadcasting organizations shall have recourse to effective legal remedies in respect of breach of this prohibition.

[End of Explanatory Comments on Article 9]

Article 9

Right of Transmission Following Fixation

(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the transmission by any means for the reception by the public of their broadcasts following fixation of such broadcasts.

(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), by providing that the transmission, without the consent of the broadcasting organizations, of their broadcasts from unauthorized fixations of their broadcasts shall be prohibited.

[End of Article 9]

Explanatory Comments on Article 10

10.01 *Article 10* contains the provisions on the rights of broadcasting organizations concerning making available to the public, by wire or wireless means, of their fixed broadcasts.

10.02 *Paragraph (1)* provides for broadcasting organizations an exclusive right of authorizing the making available to the public of their broadcasts from fixations.

10.03 Provisions of *paragraph (2)* give Contracting Parties an option, by a notification, to grant broadcasting organizations protection through a prohibition of making available to the public of broadcasts from unauthorized fixations, in cases the broadcasting organizations have not authorized such acts. According to Article 19, broadcasting organizations shall have recourse to effective legal remedies in respect of breach of this prohibition.

10.04 No rights are exhausted in connection with making broadcasts available to the public in the sense of Article 10.

[End of Explanatory Comments on Article 10]

Article 10

Right of Making Available of Fixed Broadcasts

(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of their broadcasts from fixations, 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.

(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), by providing that the making available to the public, without the consent of the broadcasting organizations, of their broadcasts from unauthorized fixations, 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, shall be prohibited.

[End of Article 10]

Explanatory Comments on Article 11

11.01 *Article 11* contains the provisions on the protection of broadcasting organizations in relation to their “signals prior to broadcasting” or “pre-broadcast signals”. The Contracting Parties are called upon to grant adequate and effective legal protection that covers the acts corresponding to the relevant uses in Articles 6 to 10 concerning the rights of broadcasting organizations in respect of their broadcasts.

11.02 Pre-broadcast signals are signals that are not intended for direct reception by the public. Such signals are used by broadcasting organizations to transport program material from a studio or e.g., from the site of an event to the place where a transmitter is situated. Such signals may also be used for transport of program material between broadcasting organizations, as may be used for broadcast after a delay or after some editing of the material.

11.03 Contracting Parties may provide for “adequate and effective legal protection” in their national legislation to the transmitting broadcasting organization, to the receiving broadcasting organization or to both of them.

[End of Explanatory Comments on Article 11]

Article 11

Protection in Relation to Signals Prior to Broadcasting

Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Article 6 to 10 of this Treaty in relation to their signals prior to broadcasting.

[End of Article 11]

Explanatory Comments on Article 12

12.01 *Article 12* sets forth limitations of and exceptions to the rights of broadcasting organizations provided for in the Treaty. It follows closely, *mutatis mutandis*, the corresponding provisions in the WPPT.

12.02 *Paragraph (1)* reproduces the main principle of Article 15.2 of the Rome Convention, and it corresponds to Article 16(1) of the WPPT.

12.03 *Paragraph (2)* contains the provisions of the three-step test originally established in Article 9(2) of the Berne Convention. Corresponding provisions were used in Article 13 of the TRIPS Agreement, Article 16(2) of the WPPT, and Article 10(2) of the WCT. Interpretation of the proposed Article, as well as of this whole family of provisions, follows the established interpretation of Article 9(2) of the Berne Convention.

[End of Explanatory Comments on Article 12]

Article 12

Limitations and Exceptions

(1) 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, and the protection of related rights.

(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 a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

[End of Article 12]

Explanatory Comments on Article 13

13.01 The provision on the term of protection in *Article 13* follows *mutatis mutandis* the corresponding provision in Article 17(1) of the WPPT concerning the term of protection of performers' rights.

13.02 In the majority of the proposals, the counting of the term of protection has been suggested to begin in the year in which the broadcast took place "for the first time". The qualification "for the first time" has been omitted from the Draft Basic Proposal because the Treaty deals with the protection of signals which by their nature occur only one time.

[End of Explanatory Comments on Article 13]

Article 13

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.

[End of Article 13]

Explanatory Comments on Article 14

14.01 *Article 14* contains provisions on obligations concerning technological measures.

14.02 The provisions of this Article reproduce *mutatis mutandis* the corresponding provisions of the WPPT.

14.03 The interpretation of Article 14 follows the interpretation of the corresponding provisions of the WPPT. The provisions of Article 14 do not contain any obligation or mandate for the broadcasters to use technological measures. They apply only in cases where technological measures *de facto* are used. In order to comply with the obligations of this Article the Contracting Parties may choose appropriate remedies according to their own legal traditions. The main requirement is that the measures provided are effective and thus constitute a deterrent and sufficient sanction against the prohibited acts.

[End of Explanatory Comments on Article 14]

Article 14

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

[End of Article 14]

Explanatory Comments on Article 15

15.01 *Article 15* contains provisions on obligations with regard to rights management information. It follows *mutatis mutandis* the corresponding provisions of Article 19 of the WPPT.

15.02 The operative parts of the provisions in *paragraph (1)* and *paragraph (2)* are intended to be in line with the corresponding provisions of the WPPT. The wording of *paragraph (1)(ii)* has been amended in order to adapt it to the context of the protection of broadcasting organizations. The clauses at the end of *paragraph (2)* (“when any of these items of information is attached to or associated with...”) have been clarified in order to cover all relevant uses of broadcasts.

15.03 The interpretation of the proposed Article 15 follows the interpretation of the corresponding provisions of the WPPT.

[End of Explanatory Comments on Article 15]

Article 15

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 covered by this Treaty:

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

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

(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 numbers or codes that represent such information, when any of these items of information is attached to or associated with (1) the broadcast or the signal prior to broadcast, (2) the retransmission, (3) transmission following fixation of the broadcast, (4) the making available of a fixed broadcast, or (5) a copy of a fixed broadcast.

[End of Article 15]

Explanatory Comments on Article 16

16.01 *Article 16* states the fundamental principle of formality-free protection. The provisions of this Article reproduce exactly the corresponding provisions of Article 20 of the WPPT.

[End of Explanatory Comments on Article 16]

Article 16

Formalities

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

[End of Article 16]

Explanatory Comments on Article 17

17.01 The driving principle behind this Article is that reservations are permitted to the Treaty only in explicitly enumerated cases. This provision includes an exhaustive list of the permissible reservations. References to Article 8(2), Article 9(2) and Article 10(2) have been included because the mechanism to allow a two-tier level of protection in these provisions is based on the use of reservations by the Contracting Parties.

[End of Explanatory Comments on Article 17]

Article 17

Reservations

Reservations to this Treaty shall be permitted only according to the provisions of Articles 8(2), 9(2) and 10(2).

[End of Article 17]

Explanatory Comments on Article 18

18.01 *Article 18* lays down the provisions that govern the applicability of the Treaty to broadcasts that occurred before or after the Treaty comes into force.

18.02 *Paragraph (1)* reproduces *mutatis mutandis* the provisions of Article 22(1) of the WPPT.

[End of Explanatory Comments on Article 18]

Article 18

Application in Time

(1) 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.

(2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.

[End of Article 18]

Explanatory Comments on Article 19

19.01 *Article 19* contains provisions on enforcement of rights. The provisions of this Article reproduce, with a minor addition, the corresponding provisions of Article 23 of the WPPT.

19.02 The two additional words “or violation of any prohibition” are based on the inclusion of specific clauses on prohibition in the Treaty.

[End of Explanatory Comments on Article 19]

Article 19

Provisions on Enforcement of Rights

(1) Contracting Parties 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 of any prohibition covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

[End of Article 19]

Explanatory Comments on Article 20

20.01 *Article 20* reproduces the provisions of Article 24 of the WPPT except that *paragraph (4)*, regarding the frequency and convocation of the Assembly, is revised to provide that the Assembly would meet during the same period and at the same place as the General Assembly of WIPO.

[End of Explanatory Comments on Article 20]

Article 20

Assembly

(1) (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.

(2) (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 22(2) 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.

[Article 21 starts on page 54]

[Article 20, continued]

(3) (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.

(4) The Assembly shall meet in ordinary session upon convocation by the Director General of WIPO and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(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.

[End of Article 20]

Explanatory Comments on Article 21

21.01 *Article 21* is in standard form and is self-explanatory.

[End of Explanatory Comments Article 21]

Article 21

International Bureau

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

[End of Article 21]

Explanatory Comments on Article 22

22.01 *Article 22* lays down rules on the eligibility for becoming party to the Treaty.

22.02 *Paragraph (1)* declares the Treaty open for all State Members of WIPO to become party to the Instrument.

22.03 *Paragraph (2)* and *paragraph (3)* are in substance identical to the corresponding provisions of the WPPT.

[End of Explanatory Comments Article 22]

Article 22

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 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.

[End of Article 22]

Explanatory Comments on Article 23

23.01 *Article 23* reproduces Article 27 of the WPPT.

[End of Explanatory Comments on Article 23]

Article 23

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.

[End of Article 23]

Explanatory Comments on Article 24

24.01 Article 24 follows the model of Article 28 of the WPPT.

[End of Explanatory Comments on Article 24]

Article 24

Signature of the Treaty

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

[End of Article 24]

Explanatory Comments on Article 25

25.01 In *Article 25* the Contracting Parties will fix the number of instruments of ratification or accession by States that would be required to bring the Treaty into force.

[End of Explanatory Comments on Article 25]

Article 25

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.

[End of Article 25]

Explanatory Comments on 26

26.01 *Article 26* establishes the effective date of becoming party to the Treaty as to each Contracting Party. It reproduces the corresponding provisions of Article 30 of the WPPT.

[End of Explanatory Comments on Article 26]

Article 26

Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

(i) the States referred to in Article 25, from the date on which this Treaty has entered into force;

(ii) 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;

(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 25, 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;

(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.

[End of Article 26]

Explanatory Comments on Article 27

27.01 *Article 27* on denunciation of the Treaty is identical to Article 31 of the WPPT.

[End of Explanatory Comments on Article 27]

Article 27

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.

[End of Article 27]

Explanatory Comments on Article 28

28.01 *Article 28* sets out customary provisions on languages and official texts in the same form as in Article 32 of the WPPT.

[End of Explanatory Comments on Article 28]

Article 28

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 Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

[End of Article 28]

Explanatory Comments on Article 29

29.01 *Article 29* sets out a customary provision on depositary functions entrusted to the Director General of WIPO in treaties administered by WIPO. It is identical to Article 33 of the WPPT.

29.02 The functions of the depositary of a treaty are listed in Article 77(1) of the Vienna Convention on the Law of Treaties.

[End of Explanatory Comments on Article 29]

Article 29

Depositary

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

[End of Article 29]

Explanatory Comments of the Appendix

A single non-mandatory solution on the protection of webcasts, including simulcasts, is presented as part of the Draft Basic Proposal. The model of an Appendix merges the previous three alternative solutions in a simplified form.

This non-mandatory Appendix is based on the “opt-in” approach.

The benefit of an appendix is a high level of clarity. Provisions on the protection of webcasting are found as a separate entity, but attached and integrated to the Treaty. Technically, this is a compromise, and an intermediate solution between the body of the treaty and a separate protocol.

The main function of the Appendix is to extend the scope and the application of the Treaty for those Contracting Parties who want to include webcasting in the area of protection.

Without a specific notification there would be no obligation for any Contracting Party of the Treaty to apply the Appendix. They would be free to leave it aside and without active attention, or subscribe to it by notification at any time when they feel ready to do so.

Explanatory Comments on the Preamble

0.01 The draft *Preamble* is tailored for the purposes of the Appendix.

0.02 The *first paragraph* makes clear that the Appendix is intended to extend the protection of the Treaty to webcasting organizations. Webcasting includes simulcasting.

0.03 The *second paragraph* expresses the legal policy argument and objective of the Appendix. The principle of technological neutrality means that similar things should be treated similarly in legal terms.

0.04 The *third paragraph* deepens the legal policy argument by establishing that technological development has increased the threat of piracy even in the area of webcasting.

0.05 The *fourth paragraph* emphasizes the need to keep apart the protection of the program-carrying webcast and the rights of the owners of the content carried by webcasts, and stresses the benefits of the protection to such rightholders.

*Non-Mandatory Appendix
on the Protection in Relation to Webcasting
to the WIPO Treaty on the Protection of Broadcasting Organizations*

Preamble

The Parties to the Treaty on the Protection of Broadcasting Organizations, who have declared to be bound to this Appendix,

Desiring to extend to webcasting organizations the protection provided for in the Treaty on the Protection of Broadcasting Organizations (hereinafter the Treaty) in an analogous and adequate manner,

Recognizing the value of the principle of technological neutrality, and the need to grant in respect of those activities of webcasting that are similar to broadcasting, protection that takes into account the similar need for protection,

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 webcasts both within and across borders,

Stressing the distinction between the protection in respect of webcasts and the rights of holders of copyright and related rights in works and other protected subject matter carried by webcasts, and stressing the benefits for such rightholders of this protection against illegal use of webcasts,

Will apply the following:

Explanatory Comments on Article 1

1.01 *Article 1* explains the legal nature and function of the Appendix.

1.02 *Paragraph (1)* of Article 1 declares that the Appendix is an integral part of the Treaty. It, however, makes also clear that the Appendix is not binding without an active assuming of the obligations by a notification.

1.03 *Paragraph (2)* makes clear that the Appendix adds its provisions to be applicable in addition to the Treaty. The Appendix does not change or reduce any of the obligations of the Treaty.

Explanatory Comments on Article 2

2.01 The definition of “webcasting” is necessary for the purposes of the Appendix. In *item (a)* of Article 2 its structure follows the definition of “broadcasting” in the Treaty. The operative term is “transmission” but qualified as an act taking place “by means of a program-carrying signal accessible for members of the public”. This qualification implies the modicum of interactivity in today’s technological environment that is necessary to access the streaming of a program-carrying signal. It is the receiver who activates or instigates the transmission over a telecommunications path. The elements “for members of the public” and “at substantially the same time” serve to limit the definition to accessibility of real-time streaming that may be received by several receivers at the same time. The receiver may log in to the program flow at a given point of time and receive what follows but cannot influence the program flow otherwise. The definition confines the making accessible of program-carrying signals to such activity over computer networks, which by nature may take place by wire or wireless means.

2.02 The definition of “webcasting organization” is established in *item (b)* of Article 2 in order to provide criteria for the application in respect of the persons enjoying protection according to the Appendix. Exactly the same criteria are laid down, as in the definition of “broadcasting organization” in Article 2 of the Treaty. Protection is subject to an investment in the programming, namely assembly and scheduling, of the content.

2.03 It becomes clear from these definitions how narrow and specific the area of protection is in respect of webcasting. Not whatever transmissions of content over the computer networks are protected. Only webcasting that in respect of all its qualities is comparable to traditional broadcasting may fall within the scope of protection. To this effect, transmissions that are within the scope of protection are defined in a restrictive manner. In addition, the criteria of the definition of a “webcasting organization” guarantee that protection is extended only to persons who deserve protection on the same basis as broadcasting organizations.

2.04 In the same way as concerning any protection under the Treaty, protection would apply only to the programme-carrying signal, and without prejudice to the rights of rightholders in the works and other protected subject matter being transmitted.

Article 1

Appendix

(1) This Appendix is a non-mandatory integral part of the Treaty. A Contracting Party of the Treaty is bound to apply the provisions of this Appendix only if it makes a notification according to Article 5 of the Appendix.

(2) The Contracting Parties bound to this Appendix apply its provisions in addition to the provisions of the Treaty.

Article 2

Definitions

(a) “webcasting” means the transmission by wire or wireless means over a computer network for the reception by the public, of sounds or of images or of images and sounds or of the representations thereof, by means of a program-carrying signal which is accessible for members of the public 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.

(b) “webcasting organization” means the legal entity that takes the initiative and has the responsibility for the transmission to the public of sounds or of images or of images and sounds or of the representations thereof, and the assembly and scheduling of the content of the transmission.

Explanatory Comments on Article 3

3.01 By the provisions of *Article 3* the application of the protection of the Treaty to webcasting and simulcasting is achieved through the extension of the scope of application.

3.02 *Paragraph (1)* extends the application of the substantive provisions of the Treaty to the protection of all webcasts, including simulcasts. This provision grants, by *mutatis mutandis* application, to webcasting organizations the same protection that will be accorded to broadcasting and cablecasting organizations.

3.03 *Paragraph (2)* offers the possibility of limiting the protection to the simultaneous and unchanged webcasting by the broadcasting organizations of their own broadcasts (“simulcasting”). Such application would be subject to making a notification to this effect to the Director General of WIPO.

3.04 In this way the Appendix offers in a non-mandatory way to the Contracting Parties a possibility to choose between two extensions of the scope: (1) to extend protection to all webcasting, including simulcasting, or (2) to extend the protection to simulcasting only.

Explanatory Comments on Article 4

4.01 The purpose of *Article 4* is to balance and adjust the obligations of the Treaty in situations where Contracting Parties through the Appendix opt in for different scopes of protection. The provisions of *Article 4* provide for reciprocity in application of *Article 5* of the Treaty, in order to avoid the obligation of those Contracting Parties who opt in for more extensive protection, to accord unilaterally this protection to Contracting Parties that provide for more restricted protections.

Explanatory Comments on Article 5

5.01 The provisions of *Article 5* are most concise and explicit. According to *paragraph (1)* only parties who are Contracting Parties of the Treaty may become bound to the Appendix.

5.02 In *paragraph (2)* the Appendix contains a clause on its own entry into force, linked to the entry into force of the Treaty itself. The clause on becoming bound to the Appendix on the basis of notification is in standard form.

5.03 No more final or administrative clauses would be necessary for the Appendix. As regards all other aspects, the provisions of the Treaty are applicable.

[End of Explanatory Comments on the Appendix]

Article 3

Scope of Application

- (1) Contracting Parties shall apply the provisions of the Treaty *mutatis mutandis* to the protection of webcasting organizations in respect of their webcasts.
- (2) Any Contracting Party may, in the notification referred to in Article 5, limit the protection granted according to paragraph (1) to the simultaneous and unchanged webcasts of the broadcasting organizations of their own broadcasts.

Article 4

National Treatment

Contracting Parties apply the obligation provided for in paragraph (1) of Article 5 of the Treaty in respect of webcasting only if another Contracting Party is bound to this Appendix and to the extent that the other Contracting Party applies Article 3 of this Appendix.

Article 5

Entry into Force of and Becoming Bound to the Appendix

- (1) Any Contracting Party of the Treaty may become bound to this Appendix, provided that such Contracting Party in a notification deposited with the Director General of WIPO, makes a declaration to that effect, when becoming Party to the Treaty or at any later time.

[Article 5 continues, page 79]

[Article 5, continued]

(2) The Appendix enters into force simultaneously with the Treaty. It will bind each Contracting Party from the expiration of three months from the date on which the Party has deposited its notification.

[End of Appendix and of document]