

## **Standing Committee on Copyright and Related Rights**

**Twenty-Second Session**  
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Elements for a Draft Treaty on the Protection of Broadcasting Organizations

*Prepared by the Chair of the Informal Consultations on the Protection of Broadcasting Organizations held in Geneva on April 14 and 15, 2011*

I. INTRODUCTION

1. Further to the conclusions of the 21st Session of the Standing Committee on Copyright and Related Rights (SCCR) in November 2010, an informal consultation meeting of the World Intellectual Property Organization's (WIPO) Members and observers on the protection of broadcasting organizations was held in Geneva on April 14 and 15, 2011. The consultation meeting, involving technical experts, was mandated to clarify outstanding technical and technological issues, relevant for the updated protection of the broadcasting organizations in the traditional sense, by following the signal-based approach and to report its suggestions to the 22nd Session of the SCCR, to be held from June 15 to 24, 2011.
2. The informal consultations held in April 2011 highlighted the evolution of broadcasting in the past years and the usage of sophisticated technologies in constant evolution, while new rapid technological developments are further expected. They made clear that signal piracy was common across all the platforms including mobile, Web/Internet and was no more limited to traditional platforms such as satellite, cable and terrestrial frequencies. Having in mind the WIPO General Assembly's mandate of 2006, these elements raised the questions of the opportunity to continue to develop a draft treaty on the protection of broadcasting organizations that would ignore the technological development and the relevance of such a treaty. The impact of technological development especially on the digital platforms has to be taken fully into account as evidenced by the issues relating to the broadcasting of sporting events where significant signal piracy takes place.
3. As a conclusion of the consultation, it was agreed that the Chair would prepare a non-paper for the SCCR meeting of June 2011, setting out possible elements for a draft treaty on the protection of broadcasting organizations following a technology-neutral approach. The document will be based on the presentations and exchanges of views that took place in the consultation meeting in April 2011.
4. According to the results of the informal consultation, the present non-paper constitutes the Chair's proposals for the minimal possible functional elements to be considered for a new draft treaty on the protection of broadcasting organizations which would update their protection at the international level and respond to the broadcasters' needs in the new technological environment, while fulfilling the mandate given by the WIPO General Assembly in 2007 (objectives, specific scope and object of protection). These elements take into account the proposals made by Member States of WIPO, in particular the more recent proposals made by the Governments of Canada<sup>1</sup>, Japan<sup>2</sup> and South Africa<sup>3</sup>, the document SCCR/15/2 dating from 2006, presentations and exchanges of views that took place during the informal consultation meeting referred to above, as well as inputs and advices provided by the technical experts participating in it.

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<sup>1</sup> Document WIPO/CR/CONSULT/GE/11/2/3.

<sup>2</sup> Document WIPO/CR/CONSULT/GE/11/2/5.

<sup>3</sup> Document WIPO/CR/CONSULT/GE/11/2/2.

II. ELEMENTS FOR A DRAFT TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

(a) Objectives

5. The objective of a draft treaty on the protection of broadcasting organizations should be to provide adequate and effective legal protection for broadcasting organizations against unauthorized use of their broadcast signals, being understood that only *program carrying signals* should be considered in the draft treaty.
6. In an era of convergence where the activity of broadcasting is no longer confined to traditional platforms, the draft treaty should be based on:
- a signal-based approach, which does not preclude granting of exclusive rights to the broadcasting organizations;
  - a technologically neutral approach, in order to ensure adequate protection for broadcasting organizations on all platforms where the activity of broadcasting is carried out; and
  - a distinction between *platform of origin* and the *platform of exploitation*<sup>4</sup>.
7. The new draft treaty on the protection of broadcasting organizations should be seen as a complementary instrument to the WIPO International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome in October 26, 1961.

(b) Object of protection

8. Under the signal-based approach the object of protection is the broadcast. This approach is necessary to ensure that the underlying content of the broadcast remains outside the scope of the instrument.
9. Without precluding introduction of other definitions, the following definitions should at least be considered as elements of a draft treaty on the protection of broadcasting organizations:

- **“broadcasting”** means

(alternative 1) the *transmission* of radio or television assembled *programs* for reception by the public, based on a *program schedule*; all such transmissions are to be regarded as broadcasting whether the means of transmission is by satellite, wire or wireless, and whether encrypted or not as long as the means of decrypting the transmission are made available by the broadcasting organization or with its consent;

(alternative 2) the process whereby the output signal of a broadcasting organization is taken from the point of origin, being the point where such signal is made available in its final content format, and is conveyed to any broadcast target area by means of electronic communications, and ‘broadcast’ is construed accordingly; it is to be understood that such signals carry images and/or sounds intended for reception by the public;

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<sup>4</sup> Following this distinction and keeping in mind the General Assembly mandate of 2006, the platform of origin from which the signal originates has to be strictly limited to traditional platforms, such as over the air transmissions, satellite, transmission towers, etc. in order to qualify for protection as a broadcaster, while, broadcasters ought to be given complete protection of their signals on all platforms of exploitation where the signals are disseminated with a view to ensuring effective protection against unauthorized use of broadcasts.

- **“broadcasting organization”** means the legal entity which takes the initiative for the assembly, and arranges the *transmission*, of the *program* output, in an encrypted or non-encrypted form, and in accordance with its *program schedule*, informing the public of its programme schedule, taking legal and editorial responsibility for the communication to the public of everything which is included in its program output;
- **“signal”** means the conveyance of broadcast radio or television *programme* via an *electronic means*; and
- Other definitions, such as a **“transmission”**<sup>5</sup>, **“electronic communication means”**<sup>6</sup>.

(c) Specific Scope

Preliminary considerations

10. The protection of broadcasting organizations is to be granted under copyright or related rights.
11. The protection afforded by the draft treaty should apply both in relation to the visual and sound elements of programs.
12. The rights should cover the authorization of the use of the broadcast subject to exceptions and limitations and public interest safeguards.
13. The protection granted under the draft treaty should extend only to the transmission of programs by the broadcasting organizations and to pre-broadcast transmissions intended for them, and not to works and other protected subject matter carried by such transmissions, nor to any material in the public domain.

Substantive Provisions

14. The object of protection under the provisions of the draft treaty should not include mere retransmissions.
15. The simultaneous and unchanged transmission of its programs over computer networks by a broadcasting organization should be regarded as if it were broadcasting, and shall be afforded the same protection under the draft treaty.

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<sup>5</sup> **“Transmission”** means the sending, for reception by the public, of visual images, sounds or their representations by way of an electronic carrier.

<sup>6</sup> The definition of **“electronic communications”** is linked to the definition of **“signal”**.  
“Electronic communications” means the emission, transmission or reception of sounds, visual images or other visible signals whether with or without accompanying sounds by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct.”

Protection

16. Under the provisions of the draft treaty, broadcasting organizations should enjoy the exclusive right to authorize:
    - the communication of their programs to the public, by any means, including the making available to the public of their programs in such a way that members of the public may access them from a place and at a time individually chosen by them;
    - the performance in public of their programs for commercial advantage, and
    - the use of a pre-broadcast transmission intended for them.
  17. With respect to the acts mentioned under the last two bullet points, it shall be a matter for the domestic law of the country where protection of this right is claimed to determine the conditions under which it may be exercised, provided that such protection is adequate and effective.
- (d) Other important elements of the draft treaty
18. In addition to the key elements mentioned above under (a) Objectives, (b) Object of protection and (c) Specific scope; the following elements should also be considered for a draft treaty on the protection of broadcasting organizations:
    - Exceptions and limitations;
    - Protection of encryption and rights management information;
    - Minimum term of protection;
    - Other provisions and operative clauses, such as national treatment, enforcement and relation to other conventions.

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