

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

### **Twenty-third Session**

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### **DRAFT TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS**

*Proposal presented by the Delegations of South Africa and Mexico*

## PREAMBLE

The Contracting Parties,

[A paragraph and preamble recognizing the Developmental Agenda to be discussed]

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 using a signal-based approach in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the 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 signals, both, within and across borders,

Recognizing the need to maintain a balance between the rights of broadcasting organizations and the larger public interest, particularly in relation to 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 signals, as well as the need for broadcasting organizations to acknowledge these rights,

Recognizing the benefits to the owners of copyright works and related rights works of effective and uniform protection against illegal use of broadcasts signals,

Have agreed as follows:

## ARTICLE 1

### RELATION TO OTHER CONVENTIONS AND TREATIES

1. Nothing in this Treaty shall derogate from existing rights and 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 subject matter incorporated in broadcasts signals. Consequently, no provision of this Treaty shall 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.

## ARTICLE 2 DEFINITIONS

For the purposes of this Treaty:

- (a) "signal", means the electronically-generated carrier of information, data and/or audiovisual content, consisting of sounds or images or sounds and images or representations thereof, whether encrypted or not.
- (b) "broadcast", means the transmission of the signal by a broadcasting organization for reception by the public of sounds or images or images and sounds, and broadcasting shall be construed accordingly. Such transmission does not include any rights with respect to the data and/or representations thereof.
- (c) "broadcast signal" means the signal that is broadcast by the broadcasting organization.
- (d) "broadcasting organization", means the legal entity that takes the initiative for packaging, assembling and scheduling of program content for which it has, where necessary, been authorized by rights holders and takes the legal and editorial responsibility or otherwise has rights of use for the broadcasting to the public of everything which is included in its broadcast signal.
- (e) "retransmission", means the simultaneous or delayed transmission for the reception by the public by any means of a broadcast by any other person than the original broadcasting organization; simultaneous transmission of a re-broadcasting shall be understood as well to be a retransmission.
- (f) "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.

## ARTICLE 3 SCOPE OF APPLICATION

1. The protection granted under this Treaty extends only to broadcast signals, and not to works and other subject matter carried by broadcast signals, whether such works and other subject matter are protected by copyright or are in the public domain.
2. The object of protection granted under the provisions of this Treaty shall not include mere retransmission.

## 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 point of origin of the broadcast output signal in an uninterrupted chain of communication intended for direct reception by the public, sections of the public or subscribers is situated in another Contracting Party.

## ARTICLE 5 NATIONAL TREATMENT

1. Each Contracting Party, shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights recognized expressly under this Treaty.

## ARTICLE 6 RIGHTS OF BROADCASTING ORGANIZATIONS

### Alternative A

Broadcasting organizations shall enjoy the right to authorize:

- (i) the communication of their broadcast signals to the public, by any means, including the making available to the public of their broadcast signals in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (ii) the transmission of their broadcast signal;
- (iii) the fixation of their broadcast signal;
- (iv) the direct or indirect reproduction, in any manner or form, of fixations of their broadcast signal;
- (v) the performance in public of their broadcast signals for direct profit-making purposes;
- (vi) the making available to the public of the original and copies of fixations of their broadcast signals, through sale or other transfer of ownership;
- (vii) the use of a pre-broadcast signal intended for them;
- (viii) the transmission by any means for the reception by the public of their broadcasts signals following fixation of such broadcasts signals.

### Alternative B

(1) Broadcasting organizations shall enjoy the right to authorize:

- (i) The transmission of their broadcast signal to the public, by any means.
- (ii) The performance in public of their broadcast signals for direct profit-making purposes.
- (iii) The use of pre-broadcast signal.

(2) With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party 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.

## ARTICLE 7 LIMITATIONS AND EXCEPTIONS

(1) Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Treaty as regards:

- (i) private use;
- (ii) use of short excerpts in connection with the reporting of current events;
- (iii) use solely for the purposes of education and scientific research.

(2) Notwithstanding the contents of paragraph (1) of this Article, any Contracting State may, in its domestic laws and regulations, provide for same or further limitations or exceptions as are applied in connection with the protection of copyright in copyrightable works to the extent such exceptions and limitations are confined to special cases that do not conflict with the normal exploitation of the broadcast signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

## ARTICLE 8 TERM OF PROTECTION

The term of protection to be granted to broadcasting organizations under this Treaty shall last for a minimum period of 20 years computed from the end of the year in which the broadcast signal was broadcast.

## ARTICLE 9 OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

(1) 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 broadcast signals, that are not authorized by the broadcasting organizations concerned or are not permitted by law.

(2) Contracting parties may, in the absence of voluntary measures by the relevant rights holders, expressly provide that the legal protection and legal remedies contemplated in paragraph 1) of this Article shall not apply to situations where national laws relating to the protection of the work being broadcast or the broadcast itself would permit the work to be used, where the enforcement and exercise of such legal protections or remedies would adversely impact such permitted uses.

## ARTICLE 10 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 authorization;
- (ii) to distribute or import broadcast signals for distribution, retransmission or communication to the public, broadcasting, or making available to the public, without authorization, knowing that electronic rights management information has been, removed from or altered in the broadcast signal or the signal prior to broadcast without authorization.

(2) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast signal, the owner of any right in the broadcast signal, or information about the terms and conditions of use of the broadcast signal, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast signal or the signal prior to broadcast or its use in accordance with Article 6.

#### ARTICLE 11 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.

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