



SCCR/24/5
ORIGINAL: ENGLISH
DATE: JULY 2, 2012

Standing Committee on Copyright and Related Rights

Twenty-fourth Session
Geneva, July 16 to 25, 2012

DRAFT TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

Joint Proposal by the Delegations of South Africa and Mexico

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 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, including in the digital realm which have given rise to increasing possibilities and opportunities for unauthorized use of broadcast signals both within and across borders,

Recognizing the need to maintain a balance between the rights of broadcasting organizations and the larger public interest, [as being served also by broadcasting organizations,] 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 broadcast signals, as well as the need for broadcasting organizations to acknowledge these rights,

Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the Convention establishing the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,

Recognizing the benefits to the owners of copyright and related rights of effective and uniform protection against unauthorized use of their broadcasts,

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 carried by broadcast 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 other content, consisting of sounds or images or sounds and images or representations thereof, whether encrypted or not.
- (b) “broadcast”, means the transmission of a signal by, or on behalf of, a broadcasting organization for reception by the public.
- (c) “broadcast signal” means a signal that is broadcast by a 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 for the communication to the public of everything which is included in its broadcast signal.
- (e) “retransmission”, means the transmission by any means by any person other than the original broadcasting organization for reception by the public, whether simultaneous or delayed;
- (f) “fixation”, means the embodiment of sounds or of images or of images and sounds or the representations thereof, from which they can be perceived, reproduced or communicated through a device.
- (g) “communication to the public”, means any transmission or retransmission to the public of a broadcast signal, or a fixation thereof, by any medium or platform.
- (h) “pre-broadcast signal”, means a private transmission of content to a broadcasting organization which that broadcasting organization intends to include in its program schedule.
- (i) “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 the broadcast or the pre-broadcast signal or its use in accordance with Article 6.

Article 3

Scope of Application

- (1) The protection granted under this Treaty extends only to broadcast signals used by a broadcasting organization, and not to works or other protected subject matter carried by such signals.
- (2) The provisions of this Treaty shall not provide any protection in respect of mere retransmissions by any means;
- (3) Any Contracting Party may deposit with the Director General of WIPO a declaration that it will limit the protection provided under this Treaty in respect of broadcasts over computer networks to the [simultaneous and unchanged] transmission by a broadcasting organization of its own broadcasts transmitted by other means, provided that such reservation shall only have effect for a period not exceeding three years from the date of entry into force of this Treaty.
- (4) To the extent that a Contracting Party to this Treaty makes use of the reservation permitted under the preceding paragraph, the obligation of other Contracting Parties provided for in Article 5 paragraph 1 does not apply.

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 broadcast signal was transmitted from a transmitter situated in another Contracting Party.
- (3) In the case of a broadcast signal by satellite the transmitter shall be understood to be situated in the Contracting Party from which the uplink to the satellite is sent in an uninterrupted chain of communication leading to the satellite and down towards the earth.

Article 5

National Treatment

- (1) Each Contracting Party, shall accord to the broadcasting organizations of other Contracting Parties the same treatment it accords to its own broadcasting organizations in respect of the enjoyment of the rights recognized expressly under this Treaty.

Article 6 **Rights of Broadcasting Organizations**

- (1) Broadcasting organizations shall enjoy the exclusive right to authorize:
- (i) the communication of their broadcast signals to the public, by any means, including the making available to the public of fixations of the broadcast signal 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 performance in public of their broadcast signal to obtain commercial advantage; and
 - (iii) the use of a pre-broadcast signal intended for them.
- (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; and
 - (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 other limitations or exceptions as are applied in connection with works protected by copyright 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

Alternative A

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.

Alternative B

(1) Contracting parties may provide in its national law the term of protection to be granted to the beneficiaries under this treaty,

(2) Notwithstanding the contents of paragraph (1), such a term of protection shall not be in conflict with the normal exploitation of the broadcast signal and do not unreasonably prejudice the legitimate rights of the Broadcasting Organizations nor the rights holders.

Alternative C

No such provision.

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

(2) Without limiting the foregoing, Contracting Parties shall provide adequate and effective legal protection against:

- (i) unauthorized decryption of an encrypted broadcast signal;
- (ii) removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.

(3) Contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of 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, which are not authorized by the broadcasting organizations concerned or permitted by law.

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 retransmission or communication to the public, broadcasting, or copies of fixations of their broadcast signals, without authorization, knowing that electronic rights management information has been, removed from or altered in the broadcast signals or pre- broadcast signals without authorization.

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 unauthorized use as covered or prohibited by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

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