

Standing Committee on Copyright and Related Rights

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NOTE ON THE DRAFT TREATY TO PROTECT BROADCASTING ORGANIZATIONS

document submitted by the Delegation of Argentina

1.- One of the core issues still pending in the basic proposal of a WIPO Treaty on the protection of broadcasting organizations relates to deferred transmissions. It is essential for the future treaty to provide protection for deferred transmissions, given the importance that such transmissions have acquired in recent years, in particular owing to new technologies that enable members of the public to access a transmission at the time and in the place of their choice. However, the protection afforded to deferred transmissions must depend on the type of deferred transmission concerned.

2.- Accordingly, we propose that deferred transmissions be classified into (i) equivalent deferred transmissions; (ii) closely-related deferred transmissions (see SCCR/33/5, Section 4); and (iii) unrelated deferred transmissions.

3.- Equivalent deferred transmissions are those that correspond to the live linear broadcasts of the broadcasting organization and are available for up to a limited number of weeks or months after such live linear broadcasts, such as online repeats, on-demand catch-up services and highlights of sports events.

4.- Closely-related deferred transmissions are those that are broadcast only online, ancillary to the offline broadcasts of the broadcasting organization and available for up to a limited number of weeks or months, such as parallel sport events, extra footage on news or programs, previews, additional interviews and behind-the-scenes programs.

5.- Unrelated deferred transmissions are those that are broadcast only online, but which are not ancillary to the live linear broadcasts of the broadcasting organization, such as pure on-demand streaming channels, or which may be accessed by members of the public without limitation as to time, such as on-demand catalogues that are available after the expiration of the term for online repeats and on-demand catch-up services.

6.- In view of the above, we propose the following amendments to part A of document SCCR/35/12:

I. DEFINITIONS

- (a) “broadcasting”: eliminate Alternatives A and B and replace them with the definition found in Part B which will then read as follows:

(a) “broadcasting” means the transmission either by wire or wireless means for reception by the public of a programme-carrying signal; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent. Transmissions over computer networks shall not constitute “broadcasting”. For the purpose of this Treaty, the definition of “broadcasting” does not affect the Contracting Parties’ national regulatory frameworks.

- (e) “retransmission”: remove the square brackets from “or deferred”, so that the definition reads as follows:

(e) “retransmission” means the transmission for reception by the public by any means of a programme-carrying signal broadcast by any other person than the original broadcasting organization or someone acting on its behalf, whether simultaneous, near-simultaneous or deferred.

- Item (h) “pre-broadcast signal” becomes the new item (k) and the following new items (h), (i) and (j) are added:

h) “equivalent deferred transmission” means the deferred transmission that corresponds to the live linear broadcasts of the broadcasting organization and is available for up to a limited number of weeks or months after such linear broadcasts, such as online repeats, on-demand catch-up services and highlights of sport events.

i) “closely-related deferred transmission” means the deferred transmission that is broadcast only online, ancillary to the live linear broadcasts of the broadcasting organization and available for up to a limited number of weeks or months, such as parallel sport events, extra footage on news or programs, previews, additional interviews and behind-the-scenes programs.

j) “unrelated deferred transmission” means a deferred transmission that is broadcast only online, but which is not ancillary to the live linear broadcasts of the broadcasting organization, such as pure on-demand streaming channels, or which may be accessed by members of the public without limitation as to time, such as on-demand catalogues that are available after the expiration of the term for online repeats and on-demand catch-up services.

II. OBJECT OF PROTECTION

(1) The protection granted under this Treaty extends only to programme-carrying signals including pre-broadcast signals transmitted by, or on behalf of, a broadcasting organization, but not to programmes contained therein.

(2) Broadcasting organizations shall also enjoy protection for:

- (i) a simultaneous transmission;
- (ii) a near simultaneous transmission; and,
- (iii) an equivalent deferred transmission.

(3) Contracting Parties shall provide adequate and effective protection for closely-related deferred transmissions.¹

(4) (i) Broadcasting organizations may enjoy protection for an unrelated deferred transmission.

(ii) A Contracting Party may provide that a broadcasting organization of another Contracting Party shall enjoy the right referred to in subparagraph (i) above only if the legislation of that other Contracting Party provides comparable protection.

7.- In conclusion, we hope that these contributions will help to finalize a basic proposal of the Treaty on the Protection of Broadcasting Organizations, which is consistent with the mandate of the 2007 General Assembly and, at the same time, reflects the changes in technology and habits of the public that have occurred in recent years, with a view to convening a diplomatic conference.

[End of document]

¹ **Agreed Statement concerning “adequate and effective protection”**: Adequate and effective protection allows flexibility to Contracting Parties in their national implementation, provided that the broadcasting organization has an independent right from the holder of the copyright and other related rights, as the case may be, to take legal action in order to stop or prevent piracy of its closely-related deferred transmissions, unless the user of such transmission can demonstrate its authorization by law or contract.