

WIPO



SCCR/9/3Rev.

ORIGINAL:English

DATE:May1,2003

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

E

STANDINGCOMMITTEEO NCOPYRIGHT ANDRELATEDRIGHTS

NinthSession

Geneva,June23to27,2003

PROPOSALONTHELEGA LPROTECTIONOFBROA DCASTINGORGANIZATIONS

ProposalsubmittedbyKenya

The Delegation of Kenya would like to make the following proposal on the protection of the rights of broadcasting organizations:

The Proposed Treaty on the Protection of the Rights of Broadcasting Organizations.

PREAMBLE

The Contracting Parties,

Desiring to reinforce 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 and widen the application of certain existing rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Acknowledging 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 frontiers,

Stressing the direct benefit to authors, performers and producers of phonograms of effective and uniform protection against piracy of broadcasts, which also includes their works, performances and phonograms,

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

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

Article 1

Relation to Other Conventions

1. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome on October 26, 1961 (hereinafter known as the "Rome Convention").
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 contained in the broadcasts.
3. This Treaty shall have no connection with, nor shall it prejudice any rights and obligations under any other treaties.

Article 2
Definitions

For the purposes of this Treaty:

- (a) “broadcast” means the transmission by wire or wireless means of sounds or images or both or their representation thereof, in such manner as to cause such sounds or images to be received by the public and include transmission by satellite;
- (b) “broadcasting organization” means an organization that assembles the schedule of programs and transmits the sounds and images or both or representation thereof, in such a manner as to cause such sounds and/or images to be received by the public;
- (c) “cabled distribution” means the simultaneous or deferred transmission of broadcasts *via* physical conductors, such as wires, cables, telephoned lines or optical fibres or microwave systems, for reception by the public;
- (d) “communication to the public” of a broadcast means making the broadcast or a fixation thereof audible or visible to places accessible to the public;
- (e) “fixation” means the embodiment of sounds or images, or of their representation thereof from which they can be communicated through a device;
- (f) “re-broadcasting” means the simultaneous or subsequent broadcasting by one or more broadcasting authorities of the broadcast of another broadcasting authority.

Article 3
Beneficiaries of Protection Under this Treaty

1. Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations, which are national of other Contracting Parties.
2. National of other Contracting Parties shall be understood to be those broadcasting organizations whose
 - (a) headquarters are situated in another Contracting Party, or
 - (b) broadcasts are retransmitted from one transmitter or transmitters situated in another Contracting Party. In the case of a satellite broadcast, the relevant locations shall be the point at which, under the control and responsibility of the broadcasting organization, the sounds, images and sounds or representations thereof intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

Article 4
National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty.

CHAPTER II
RIGHTS OF BROADCASTING ORGANIZATIONS

Article 5
Specific Protection

1. Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit:
 - (a) the fixation of their broadcasts other than for private purposes;
 - (b) the reproduction of their fixations;
 - (c) the making available to the public of fixations of their broadcasts, 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;
 - (d) communication to the public of their broadcasts;
 - (e) the cable transmission of their broadcasts;
 - (f) the re-broadcasting of their broadcasts;
 - (g) the making available to the public of original and/or copies of fixations of their broadcasts;
 - (h) the decrypting and decoding of their broadcasts.
2. Broadcasting organizations shall enjoy adequate legal protection against any acts referred to in Article 5, Section 1 (a) to (f) of this Treaty in relation to their signals before broadcasting.

Article 6
Limitations and Exceptions

1. Contracting Parties, in their national legislation, may provide for the same kind of limitations and 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.
2. Contracting Parties shall confine any limitations or exceptions to rights provided for in this Treaty to certain special cases, which do not conflict with the normal exploitation of

the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

Article 7
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 fifty years (50) computed from the end of the year in which the broadcast first took place.

Article 8
Obligations Concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective 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 can restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations concerned or permitted by law.

Article 9
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, 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:

(a) to remove or alter any electronic rights management information without authority,

(b) to distribute, import for distribution, transmit, communicate or make available to the public, without authority, broadcasts or fixations thereof, knowing that the electronic rights management information has been removed or altered without authority.

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 members or codes that represent such information, when any of these items of information accompanies the transmission, communication or making available of a broadcast, or any fixation thereof, to the public.

Article 10
Formalities

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

Article 11
Reservations

No reservations to this Treaty shall be permitted.

Article 12
Application in Time

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. on

Article 13
Provisions on the Enforcement of Rights

1. Contracting Parties shall 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 laws so as to permit effective action against any act of infringement of rights or violation against any prohibition covered by this Treaty, including expeditious remedies to prevent infringements or violations, which constitute a deterrent to further infringements and violations.

CHAPTER III

ADMINISTRATIVE CLAUSES

Article 16
Assembly

1. (a) The Contracting Parties shall have an Assembly.
(b) Each Contracting Party shall be represented by one delegate whom may be assisted by alternated delegates, advisors and experts.
(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (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. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
(b) The Assembly shall perform the functions allocated to it under Article 18(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) 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.

3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its name.

(b) 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 of its Member States exercises its right to vote and vice versa.

4. The Assembly shall meet in ordinary sessions once every two years upon convocation by the Director General of WIPO.

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.

Article 17

International Bureau

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

Article 18

Eligibility to Become Party to the Treaty

1. Any Member State of WIPO may become party to the 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 its Member States, in accordance with its internal procedure, 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.

Article 19

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.

Article 20
Signature of the Treaty

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

Article 21
Entry into Force

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.

Article 22
Effective Date of Becoming Party to the Treaty

The Treaty shall bind:

- (i) the.....States referred to in Article 21, from the date on which the State has entered into force;
- (ii) each other State from the expiration of the 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 21, or, three months after the entry into force of this Treaty if such instrument has been deposited before entry into force of this Treaty;
- (iv) any other intergovernmental organization that is admitted to become a party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 23
Denunciation of the Treaty

Any Contracting Party may denounce this Treaty 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.

Article 24
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. The Director General of WIPO, on the request of an interested party, shall establish an official text in any language other than those referred to in Paragraph 1 after consultation with all interested parties. For the purposes of this paragraph, "interested party" means any

Member State of WIPO whose official language, or one whose official languages, is involved and the European Community, and any other intergovernmental organization that may become a party to this Treaty, if one of its official languages is involved.

Article 25
Depositary

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

[End of document]