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AND RELATED RIGHTS**

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**SUBMISSION BY CANADA ON THE PROPOSED WIPO TREATY ON THE
PROTECTION OF BROADCASTING ORGANIZATIONS**

Document prepared by the Secretariat

The Annex to this document contains a submission by Canada relating to the WIPO treaty on the protection of broadcasting organizations, received on June 18, 2007.

[Annex follows]

ANNEX

SUBMISSION BY CANADA ON THE PROPOSED WIPO TREATY ON THE
PROTECTION OF BROADCASTING ORGANIZATIONS

Canada is pleased to make this submission on the proposed WIPO Treaty on the Protection of Broadcasting Organization. The submission largely addresses the April 20, 2007, non-paper provided to member states by the WIPO Secretariat.

I. General Comment:

Paragraph 9 of the “Notes on the non-paper” states: “The Treaty would in no instance affect public interest, access to information, consumer interests or technology innovation.” This, in Canada’s view, is highly debatable. Indeed, Canada is quite concerned that should the treaty contain an exclusive right of retransmission, there could well be additional costs to retransmitting over-the-air television that might at least in part be passed on to consumers. In addition, in the event that there are such increased consumer costs, consumer spending may be diverted from optional cablecasts and specialty satellite services.

II. Comments on the text of the April 20 Non-paper:

Article 2, Definitions

For the purposes of the Basic Proposal, Canada recommends that there be a separate definition of “cablecasting organization” and that it be used in addition to “broadcasting organization” in all of the relevant parts of the text. It may be that the final treaty will give different rights to broadcasting and cablecasting organizations and using separate definitions in the Basic Proposal will make this option more obvious.

Article 5, Beneficiaries of Protection

Canada recommends that *both* the origin of the transmission and the headquarters of the broadcasting or cablecasting organization be in another Contracting Party (but no requirement that they be in the same Contracting Party).

Article 6, National Treatment

Canada supports alternative J

If the Basic Proposal includes a term of protection, Canada recommends that this article include a rule of the shorter term.

In light of our recommendation allowing Contracting Parties a limited opt-out with respect to the simultaneous retransmission of unencrypted broadcasts, there should be a restriction on national treatment so that other Contracting Parties would be allowed to retransmit broadcasts from Contracting Parties which had exercised the opt-out.

Article 7, Protection of Broadcasts

Canada recommends that Contracting Parties which did not give broadcasters a right to authorize simultaneous retransmission immediately prior to joining the treaty be allowed to opt out of simultaneous retransmission right with respect to unencrypted broadcasts (i.e. unencrypted wireless transmissions) provided that the retransmission is:

- (i) not to another country (i.e. is not to a third country or back to the country of origin).
- (ii) not over a computer network accessible in another country
- (iii) not by unencrypted satellite signal

And provided that all content in the broadcast, including live events which are not protected by copyright, other than works which have fallen into the public domain or performances or sound recordings (where domestic performances or sound recordings are not entitled to compensation for retransmission in the country of reception), be entitled to compensation for such retransmission. Contracting Parties may require that live events must be fixed at the time of broadcast to be entitled to such compensation. It shall be a matter of the law of the state in which protection is claimed to determine whether the recipient of such compensation is the originating broadcaster or the organizer or producer of the event.

With respect to satellite retransmission, if the retransmission is encrypted and the retransmitter does not provide the means of decryption or consent to decryption in the other country, it is deemed not to be a retransmission to that country.

Article 9, Protection of Encryption and Rights Management Information

Protection of Encryption

If wording of this type is included in the Basic Proposal, the text “capable of decrypting” in paragraph (I) may be too broad. Canada would recommend focusing on devices or systems whose primary purpose or effect is decrypting.

Rights Management Information

Canada recommends that this be limited to factual and identifying information relevant to the protection of broadcasting organizations.

Article 10, Limitations and Exceptions

The appropriate wording of this article may depend upon what substantive rights and protections are included in the treaty. In general Canada favours retaining the specific limitations and exceptions allowed under the WTO TRIPS Agreement, but applying the three-step-test to other limitations and exceptions.

In light of this Canada recommends adding a new paragraph after the current paragraph 1.

1A “Contracting Parties may in relation to the rights and protection conferred under this treaty provide for limitations of or exceptions to the protection of broadcasts and cablecasts to the extent that such limitations and exceptions would be permitted for broadcasts by the WTO TRIPS Agreement”

Paragraph 2 should be amended to read:

“Other than for limitations or exceptions provided for in paragraph (1A), Contracting Parties shall confine any limitations of or exceptions to the rights and protection provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting [or cablecasting] organization.”

Article 12, Reservations

Given our proposal that there be a limited opt-out for simultaneous retransmission of broadcasts, this article should be amended to allow that reservation.

[End of Annex and of document]