

**Non-paper
on the
WIPO Treaty on the Protection of Broadcasting Organizations**

April 20, 2007

Introductory Note

1. The work of the special session of the Standing Committee on Copyright and Related Rights (SCCR) from January 17 to 19, 2007, was based on the decision of the General Assembly of the World Intellectual Property Organization (WIPO) in its thirty third session in 2006, which stated that:

“the sessions of the SCCR should aim to agree and finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal, which will amend the agreed relevant parts of the Revised Draft Basic Proposal (document SCCR/15/2). The Diplomatic Conference will be convened if such agreement is achieved.”

2. The work of the Committee was in the January meeting based on a series of non-papers prepared by the Chair (which were eventually in the meeting combined into a consolidated package). After discussions the Committee requested the Chair to prepare a new non-paper for the Second Special Session in June 2007. To facilitate this process, the Chair was asked, through the e-mail address <copyright.mail@wipo.int>, to invite the Coordinators of the Regional Groups, Member States, and the European Community, to submit their comments for developing the non-paper before its finalization. The focus of the non-paper should be on the provisions that are relevant in the light of the objectives, specific scope and object of protection of the treaty being under preparation.

3. A draft non-paper prepared by the Chair was distributed by e-mail and made available on the WIPO website on March 9, 2007, and a number of Member States as well as the European Community submitted their comments on the draft.

Notes on the non-paper

4. This new non-paper has been prepared by the Chair maintaining the structure of document SCCR/15/2, and respecting both the proposals made earlier by Governments and groups of Governments, but at the same time recognizing the positions differing from these proposals, expressed later in the debates in the SCCR, and the comments referred to above.

5. The non-paper endeavors to lend full recognition to the “signal-based” approach, and to the focus determined by the General Assembly and the SCCR.

6. During the preparatory process of the non-paper, representatives of the broadcasting organizations have made a very serious point that cannot be omitted. If the Treaty is not based on some elementary and absolutely necessary rights, the process should be abandoned. Therefore the non-paper now includes, as the main operative part of protection, specific related-rights-type rights in two instances where the protection of a signal is most relevant, namely retransmission and deferred transmission.

7. This represents the narrowest meaningful functional protection for broadcasting organizations. If Member States so wish, provisions may be added allowing for optional wider protection, notably of post-fixation rights or protection, which would enable international protection, linked to a clause on national treatment and reciprocity regarding optional rights or protection.

8. The following elaboration and drafting has the objective to achieve broader acceptance and to fulfill the focus set by the General Assembly and the SCCR:

- the signal-based approach covers the whole instrument through the definition of “broadcast”;
- the object of protection, the “broadcast,” is explicitly defined as the program-carrying signal; the denomination of that object, the “broadcast”, is maintained in this non-paper to secure coherence with the TRIPS Agreement and the Rome Convention;
- the main objective against signal theft is determined in the new Article 1;
- definitions in Article 2 are tailored for the more precise and narrow scope of application;
- the specific scope and object of protection and the scope of application are determined in detail in new Article 3;
- in Article 3(4)(iii) the expression “transmissions over computer networks” refers to transmissions like “webcasting” or “netcasting”, or “simulcasting”; the latter are simultaneous transmissions over computer networks of broadcasts made by the broadcasting organizations themselves;
- the treaty provides for minimum norms only (providing more protection than the treaty requires is allowed);
- the number of rights and protection clauses, and the amount of text, is reduced;
- in the very condensed clause in Article 7 concerning retransmission and deferred transmission, the expression “fixed broadcasts” refers to any temporary or permanent first fixation, subsequent fixation and any reproduction of the broadcast that is used as a basis for the transmissions;
- as the protection against retransmission and deferred transmission is confined to transmissions to the public only, the protection of broadcasting organizations would in no case interfere in the activities of the recipients in their private sphere, e.g. in the use of broadcasts in the home or personal network environment.

9. The indicative list of allowed limitations and exceptions found in Article 11(3) in the draft non-paper of March 8, has been deleted because virtually all acts covered by them are subject to fixation and/or reproduction. There are no rights concerning these acts in the present non-paper. The Treaty would in no instance affect public interest, access to information, consumer interests or technology innovation.

10. The principles of public interest safeguards contained in Articles 2 to 4 in document SCCR/15/2 have been moved to the preamble, and adapted to fit the reduced text.

Concluding note

11. The task of the preparation of a new non-paper has been complex because the opinions and comments expressed by the delegations diverge greatly, and in many cases point to opposite directions.

WIPO Treaty on the Protection of Broadcasting Organizations

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Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective as possible,

Recognizing the need to update international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing 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 borders,

Recognizing the need to maintain a balance between the rights of broadcasting organizations and the interests of the general public, and *recognizing* the need to promote access to knowledge and information and national educational and scientific objectives, to curb anti-competitive practices, and to promote the public interest in sectors of vital importance to its socio-economic, scientific and technological development,

Emphasizing the value of cultural diversity and the need to safeguard and promote the diversity of cultural expressions,

Acknowledging the need to avoid the abuse of the protection granted under this Treaty or the resort to practices which unreasonably restrain trade or adversely affect competition in the market or the international transfer of technology,

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, as well as the need for broadcasting organizations to acknowledge and respect these rights,

Stressing the benefits to authors, performers and producers of phonograms of effective protection against illegal use of broadcasts,

Have agreed as follows:

GENERAL PROVISIONS

Article 1 *Objective*

The objective of this Treaty is to provide effective and uniform international legal protection, on a signal-based approach, for broadcasting organizations against unauthorized use of their broadcasts.

Article 2 *Definitions*

For the purposes of this Treaty:

- (a) “broadcast” means an electronically generated signal transmitted by wireless means and carrying assembled and scheduled programs for the reception by the public;
 - such signals transmitted by satellite are also “broadcasts”;
 - such signals are also “broadcasts” when encrypted, if the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- (b) “program” means live or recorded material consisting of images, sounds or both;
- (c) “broadcasting organization” means the legal entity that takes the initiative and makes arrangements for the transmission of a broadcast for the reception by the public;
- (d) “cablecast” means the same as “broadcast” but transmitted for the reception by the public by wire and excluding transmission by satellite;
- (e) “retransmission” means the simultaneous 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 retransmission shall be understood as well to be a retransmission;
- (f) “fixation” means the embodiment of a broadcast on a physical support from which the programs carried by the broadcast can be perceived, reproduced, communicated or transmitted through a device.

Article 3 *Specific Scope and Object of Protection*

- (1) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.
- (2) The provisions of this Treaty shall apply to the protection of cablecasting organizations in respect of their cablecasts in the same way as they apply to broadcasting organizations and broadcasts.
- (3) The provisions of this Treaty do not give rise to any rights in the programs that are transmitted by broadcasting organizations.

- (4) The provisions of this Treaty shall not provide any protection
- (i) to retransmitting third parties in respect of their mere retransmissions by any means of broadcasts by broadcasting organizations;
 - (ii) to any person for transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or
 - (iii) to any person for transmissions over computer networks.

Article 4

Relation to Other Conventions and Treaties

- (1) Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the protection of copyright or related rights in the programs incorporated in broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.
- (2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under any international treaties addressing copyright or related rights.

Article 5

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 one of the following conditions:
- (i) the headquarters of the broadcasting organization is situated in another Contracting Party, or
 - (ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be the point at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for direct reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

Article 6

National Treatment

Alternative J (“WPPT Model”)

Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the rights specifically granted and the protection provided for in this Treaty.

Alternative K (“Berne Model”)

Each Contracting Party shall accord to nationals of other Contracting Parties the rights that their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted and the protection provided for in this Treaty.

SUBSTANTIVE PROVISIONS

Article 7

Protection of Broadcasts

Broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission of their broadcasts, and the deferred transmission by any means to the public of their fixed broadcasts.

Article 8

Protection of the Pre-broadcast Signal

Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Articles 7 and 9 of this Treaty in relation to their signals prior to broadcasting.

Article 9

Protection of Encryption and Rights Management Information

Contracting Parties shall provide adequate and effective legal protection against unauthorized

1. decryption of an encrypted broadcast, or circumvention of any technological protection measure having the same effect as encryption;

(i) manufacture, importation, sale or any other act that makes available a device or system capable of decrypting an encrypted broadcast; and

(ii) removal or alteration of any electronic rights management information used for the application of the protection of the broadcasting organizations.

Article 10
Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the rights and protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.
- (2) 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 organization.

Article 11
Formalities

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

Article 12
Reservations

No reservations to this Treaty shall be permitted.

Article 13
Application in Time

- (1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights and the protection of broadcasting organizations provided for in this Treaty.
- (2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.

Article 14
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 protection covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

ADMINISTRATIVE AND FINAL CLAUSES

Unchanged (SCCR/15/2):

Article 15 – Assembly

Article 16 – International Bureau

Article 17 – Eligibility for Becoming Party to the Treaty

Article 18 – Rights and Obligations Under the Treaty

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[End of non-paper]