

Informal Consultation Meeting on the Protection of Broadcasting Organizations

Geneva, April 14 and 15, 2011

Proposal on the WIPO Draft Treaty on the Protection
of Broadcasting Organizations

Proposal by the Delegation of Canada

On March 7, 2011, the Secretariat received a proposal on the WIPO Draft Treaty for the Protection of Broadcasting Organizations submitted by the Government of Canada.

The proposal is annexed to this document.

[Annex follows]

ANNEX

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

1. Canada is pleased to provide this submission on the draft proposal for the WIPO Treaty on the Protection of Broadcasting Organizations (SCCR/15/2). Most of the points in this submission are based on Canada's submission to the SCCR of June 18, 2007 (SCCR/S2/3).

Article 7

Beneficiaries of Protection

2. Canada proposes an additional alternative to this article, to ensure that Contracting Parties be allowed to require 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). The proposed treaty text reads as follow:

Alternative H1

- (3) *By means of a notification deposited with the Director General of the World Intellectual Property Organization (WIPO), any Contracting Party may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting Party and the broadcasts are transmitted from a transmitter situated in another Contracting Party. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.*

Article 8, National Treatment

3. In light of our recommendation that the Treaty should allow Contracting Parties a limited opt-out with respect to the simultaneous retransmission of unencrypted broadcasts (see article 9), there should be a restriction on national treatment so that other Contracting Parties would be allowed to retransmit broadcasts from Contracting Parties which have exercised the opt-out. The proposed treaty text reads as follow:

Alternative FF1

- (2) *The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the provisions in Article 9(2), (3) and (4), Article 12(2), Article 14(2) and Article 15(2) of this Treaty.*

Article 9

Retransmission

4. Canada recommends that Contracting Parties which did not give broadcasters a right to authorize simultaneous retransmission of unencrypted wireless transmissions immediately prior to joining the treaty be allowed to opt out of the simultaneous retransmission right with respect to unencrypted broadcasts (i.e., unencrypted wireless transmissions) provided that:
 - (A) the retransmission is not to another country (i.e., is not to a third country or back to the country of origin), and
 - (B) the owners of all content being transmitted by the signal, other than material protected by copyright or related rights which has fallen into the public in the country of reception, be entitled to compensation consistent with Article 11 *bis* of the Berne Convention.

5. The proposed treaty text is as follows:
 - (1) *Subject to paragraph (2) broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission of their broadcasts by any means, including rebroadcasting, retransmission by wire, and retransmission over computer networks.*

 - (2) *If, prior to ratifying or acceding to this treaty, a Contracting Party has allowed the retransmission of unencrypted [wireless] broadcasts that Contracting Party may continue to allow such retransmission provided that:*
 - (a) *compensation is provided to the owners of all content [in]/[transmitted by] the broadcasts including live events consistent with Article 11bis of the Berne Convention, and*

 - (b) *the broadcast is not retransmitted to another country (including the country in which it originated).*

 - (3) *For purposes of paragraph 2, a broadcast shall not be considered as being retransmitted to another country if it is retransmitted by an encrypted satellite signal and the means of decrypting the satellite signal are not provided to persons outside the Contracting Party by the satellite retransmitter or with its consent.*

 - (4) *For purposes of paragraph 2, a Contracting Party may provide that live events are protected only if the material being broadcast is fixed by or with the consent of the broadcaster. Such fixation may be simultaneous with the broadcast.*

(NOTE: In paragraph (2) the word "wireless" would not be needed if the treaty maintains the distinction between broadcasts and cablecasts).

Article 17

Limitations and Exceptions

6. The appropriate wording of this article may depend upon what substantive rights and protections are included in the treaty. In general, Canada favors 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.

7. 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 18

Term of Protection

8. Canada recommends adding a new paragraph 2:

(2) If a Contracting Party provides a term longer than that required under this treaty either in general or for a particular type of broadcast or cablecast, it shall be entitled to grant a shorter term to a broadcast or cablecast originating in another Contracting Party with a shorter term. Such term shall be no less than the term for that type of broadcast or cablecast in that Contracting Party in which the broadcast or cablecast originated.

Article 22

Reservations

9. Since our proposal includes a limited opt out for simultaneous retransmission of broadcasts, this article should be amended accordingly in order to allow for that reservation. The proposed treaty text is as follows:

Alternative 001

Reservations to this Treaty shall be permitted only according to the provisions of Articles 9(2),(3) and (4), 12(2), 13(3), 14(2) and 15(2).

[End of annex and of document]