

International rules to protect television broadcasts from piracy have not been updated since the 1961 [Rome treaty](#), drafted at a time when cable was in its infancy and the Internet not even invented. Now that perfect digital copies of television programmes can be made and transmitted with a few mouse clicks, signal theft has become a big commercial headache for broadcasting organizations around the world.

Signal piracy can take physical form, such as unauthorized recordings of broadcasts on video tapes, DVDs or USB sticks, or it can be virtual, such as the unauthorized redistribution of signals over the air or online. Hacking into encrypted pay-TV signals with equipment designed to circumvent the security measures in set-top boxes is another common form of piracy, while live sports broadcasts have been a particular target for unauthorized retransmission on the Internet. Broadcasters, including those in developing countries, claim signal piracy of all kinds is costing them millions of dollars in lost pay-TV subscriptions and/or advertising revenues, affecting investment decisions and competitiveness.

After WIPO members agreed the so-called WIPO Internet treaties in 1996, on [copyright](#) and on [performers and producers of phonograms](#) (sound recordings), broadcasters too began to press for updated protection for the new broadcasting technologies.

However, although there is broad agreement in principle that broadcasters should have updated international protection from theft of their signals, WIPO members have so far failed to agree on how this should be done and what further rights, if any, broadcasters should be given. In 2007, WIPO's General Assembly agreed to pursue a "signal-based approach" to drafting a new treaty, to ensure that provisions on signal theft in themselves did not give broadcasters additional rights over programme content. But this still left many of the underlying differences of view in place.

In 2011 WIPO's [Standing Committee on Copyright and Related Rights](#), which is responsible for the broadcasting negotiations, agreed a work plan to come up with a new draft treaty that would be acceptable to all or most WIPO members.

The outstanding issues include:

- **What should be protected?** Broadcasters obviously want protection for all means of transmission of their signals ("technology neutral" protection, in the jargon) that would cover new technologies such as digital programme recording devices, on-demand video services and IPTV ("Internet protocol TV" or Internet TV), which can transmit programmes not only to televisions but to computers and mobile phones. However,

some countries and civil society groups are wary of restrictions affecting Internet transmissions. In 2006, WIPO members agreed to put aside, for discussion on a different and later track, the issue of webcasting (broadcasting over the Internet or video content intended for Internet streaming). But there are concerns that protecting Internet transmissions by broadcasters could pre-empt these discussions by giving some protection to webcasters as well.

- **How should broadcast signals be protected?** Broadcasters want the proposed treaty to contain provisions similar to those in the WIPO Internet treaties that would outlaw the breaking of anti-piracy "locks" on digital signals, such as encryption and "tagging". Critics argue that, by restricting what can be viewed on what equipment, these rules could also block perfectly legal uses of TV broadcasts, such as recording programmes for personal or educational uses, as well as inhibit technological innovation.

- **What further rights should be given to broadcasters?**

Under the Rome Convention, broadcasters have exclusive rights for 20 years to authorize rebroadcasting, “fixation” (recording), reproduction and communication to the public of their broadcasts. Most broadcasters want the new treaty to extend and update those rights for the new technologies, especially to prevent unauthorized retransmission of their programmes over the Internet. Although some countries (including the 27-member European Union) have relevant domestic legislation, this does not provide any protection from foreign piracy. In much of the world it is perfectly legal to retransmit a broadcast over the Internet without permission.

Civil society critics and a number of governments argue that broadcasters do not need strong near-copyright protection for their broadcasts in addition to protection from signal theft. They point out that half WIPO’s membership have not joined the Rome Convention. Giving broadcasters a range of exclusive rights would, say the critics, hinder access to copyrighted material by requiring permission to use it not only from the copyright owner (such as the producer of a TV show or documentary) but from the broadcaster. This could also

diminish the rights of copyright owners by giving broadcasters the power to determine the conditions (and exact a licensing fee) under which a work could be used. By the same token, there are concerns that giving broadcasters exclusive rights over their broadcasts could “privatize” material in the public domain, such as films that are out of copyright or sporting or news events that are not subject to copyright (because they are not creative works).

Supporters of giving broadcasters extended international rights say the situation regarding underlying content would not change, because it would always be open to others to broadcast or transmit their own (authorized) versions of the same content. For example, while the broadcast of a concert featuring Beethoven’s Fifth Symphony would be protected, the symphony itself would remain in the public domain for others to play, record or broadcast. However, broadcasters argue that they need to protect the broadcast itself, which can involve significant investment in infrastructure as well as the purchase of broadcasting rights.

A related but distinct issue concerns the purchase of exclusive rights to broadcast sporting and other events, which is outside the scope of

the proposed treaty but affects how its provisions might work in practice. This is because rights over the broadcast in this case may also restrict access to the underlying content if no other source is available. In a number of countries, including the European Union, India and Australia, certain events (for example, the Football Association Cup Final and the Wimbledon Tennis Final in the UK) are deemed of sufficient national importance to guarantee coverage by free-to-air broadcasters.

- **What limitations and exceptions should there be?**

The Rome Convention allows the use of transmissions without permission in news broadcasts and for education and scientific research. WIPO members agree that the proposed treaty should permit some “limitations and exceptions” to the need to seek authorization for the use of broadcasts, similar to those relating to copyright protection in a number of countries (such as personal use, use for parody and library use). But they differ on whether the treaty should set a general test for individual countries to decide on limitations or exceptions, or whether it should specify certain uses binding on all signatories. As noted above, some argue that whatever exceptions and limitations are contained in the treaty, they may be

nullified by technological “anti-circumvention” provisions.

- **How long should protection last?** Some countries want protection to last for 50 years, the term already granted to performers and producers

of sound recordings (and broadcasters in the European Union). Others have argued for no more than a 20-year term (as in the Rome Convention and the World Trade Organization’s [Agreement on Trade-Related Aspects of Intellectual Property](#)).

However, concerns that any rebroadcast would trigger a new term of protection, leading to perpetual protection, appear to be unfounded, since rights on the first broadcast would expire at the end of the term, regardless of any rebroadcast.