Comments on the Second Revised Draft Text
for the WIPO Broadcasting Organizations Treaty (SCCR/43/3)

MEMBER STATES

- CANADA
- COLOMBIA
- JAPAN
- SWITZERLAND
- UNITED STATES OF AMERICA

and also

- EUROPEAN UNION

Submission of Canada Concerning the Draft Treaty for the Protection of Broadcasting Organizations Being Developed by the World Intellectual Property Organization's Standing Committee on Copyright and Related Rights

Submitted on June 15, 2023

Overview

Canada is grateful for the opportunity to provide these comments concerning the latest draft text of the treaty for the protection of broadcasting organizations (SCCR/43/3). As a general comment, Canada believes that an eventual treaty should be flexible enough to encompass the many diverse but effective ways by which Member States provide protection for broadcasting organizations according to Member States' unique cultural and practical concerns and legal traditions. To explain our own circumstances, we have also included a summary of Canada's relevant laws and how they would align with key conceptual elements of the draft text.

Specific Comments

- Canada supports the inclusion of Art. 3(1)(b) to allow Contracting Parties flexibility to exclude from protection programme-carrying signals transmitted by broadcasting organizations by means of computer networks. Given the apparent requirements of Art. 10, Canada is concerned that removing or limiting this provision could require Contracting Parties to provide rights-based protection for such signals. Canadian law provides broadcasting organizations with various protections that could apply to signals transmitted by computer network, though not through explicit broadcasting rights. If the draft text were modified so as to clarify Contracting Parties' flexibility to comply with the treaty through non-rights-based means (see below), however, Canada believes there may be less need for such a provision.

- Canada would appreciate clarification as to why the right in respect of pre-broadcast signals under Art. 8 includes, by reference to Art. 6, a right to prohibit the simultaneous retransmission to the public of pre-broadcast signals if such signals are, by definition under Art. 2(g), not intended for direct reception to the public.

- Canada appreciates that explanatory note 10.04 explicitly acknowledges that protection through copyright for the purposes of Art. 10 may include protection in respect of broadcasting organizations' broadcast flows and programming embodied in signals insofar as broadcasting organizations are authorized to enforce the rights in such programming. Canada proposes incorporating these principles into the draft text itself so they are not lost in subsequent interpretations of Member State consensus.

- To enhance or clarify the draft treaty's flexible approach to protection, Canada supports a suggestion made during the previous Committee session to make a clearer distinction between the models of protection of Arts. 6-9 and 10, respectively, by:

(a) removing the requirement in Art. 10(1) that adequate and effective protection be provided "through a combination of *the rights provided for in Articles 6 to 9 and* copyright or other rights or other legal means" (emphasis added);

(b) removing Art. 10(3) insofar as it would require Contracting Parties to adopt the specific forms of protection set out in Arts. 6-9; and

(c) clarifying that Contracting Parties could choose not to enact the rights of Arts. 6-9 at all, following the example of Art. 15(3) of the WPPT.

- Canada welcomes discussion of the draft treaty's limitations and exceptions under Art. 11 insofar as such matters are key elements of any treaty's scope of protection. To provide additional clarity and flexibility here, Canada has two proposals:

    - Canada proposes modifying the list of permitted limitations and exceptions under Art. 11(1) so it would also allow Contracting Parties to exempt from protection the simultaneous retransmission of free, unencrypted, wireless broadcast signals subject to certain conditions, namely: compensation for rights holders of the content underlying such retransmissions, consistent with Art. 11*bis* of the Berne Convention; that the retransmissions not be made to other countries, including back to the original signals' countries of origin; and that such retransmissions be lawfully permitted by a Contracting Party's government communications authority and any entity engaging in such retransmissions complies with the relevant rules, orders or regulations of that authority.

    - Canada proposes removing the requirement under Art. 11(3) that Contracting Parties' limitations and exceptions be subject to a "three-step test". As precedent, there are several copyright-related treaties that do not stipulate a three-step test for permitted limitations and exceptions: see *e.g.* Art. 15 of the Rome Convention, Art. 8 of the Brussels Convention and Art. 14:6 of the TRIPS Agreement. At minimum, Canada would propose that Contracting Parties' permitted limitations and exceptions identified in Art. 11(1), including the one proposed above, be deemed compliant with the three-step test.

- In light of explanatory note 12.02, Canada would appreciate confirmation or clarification as to whether a Contracting Party could satisfy Art. 12 by relying on the Contracting Party's implementation of Art. 18 of the WPPT.

- In light of explanatory note 13.01, Canada would appreciate confirmation or clarification as to whether a Contracting Party could satisfy Art. 13 by relying on the Contracting Party's implementation of Art. 19 of the WPPT.

- Canada would appreciate confirmation or clarification that a Contracting Party's enforcement obligations under Art. 17 would be limited to those specific protections that the Contracting Party chooses to adopt under the treaty (*e.g.*, in light of a declaration under Art. 3(1)(b) or a notification under Art. 10) rather than all of the rights or protections under the treaty that might be included by default.

Annex: Summary of Canada's Laws Relevant to the Draft Treaty for the Protection of Broadcasting Organizations Being Developed by the World Intellectual Property Organization's Standing Committee on Copyright and Related Rights

Overview

Canadian law protects broadcasters and combats signal piracy in numerous ways. This model of protection includes several explicitly signal-based rights for broadcasters complemented by a wide array of other protections based in copyright and other laws. No doubt like other Member States' systems, this structure has developed in response to unique domestic circumstances and priorities. It facilitates the wide distribution of certain broadcasts, including important information, across our large territory and many remote areas. In doing so, it also helps our country to maintain its national identity and diverse cultural and linguistic heritage.

To demonstrate Canada's commitment to this issue and facilitate Member States' mutual understanding, we have prepared the summary below of our laws relevant to key conceptual elements of the latest draft treaty text (SCCR/43/3).

Canadian Model of Protection

- Canadian law protects broadcasters' signals in multiple ways across multiple statutory frameworks, including:

    (a) exclusive rights to do certain acts and to authorize such acts pursuant to the Rome Convention and TRIPS (see s. 21 of Canada's *Copyright Act*);

    (b) numerous anti-piracy prohibitions, including prohibitions against activities relating to the unauthorized decryption of encrypted satellite signals (see ss. 9-10 of Canada's *Radiocommunication Act* and ss. 342.1-342.2 of Canada's *Criminal Code*) as well as the unauthorized circumvention of technological protection measures and alteration of rights management information that could be used to protect signals (see ss. 41-41.22 of Canada's *Copyright Act*); and

    (c) a system by which retransmitters are required to operate under the oversight of an independent, quasi-judicial regulator (*i.e.*, the Canadian Radio-television and Telecommunications Commission – see Canada's *Broadcasting Act*, generally).

- Canadian copyright law also grants broadcasters protection in respect of the programming embodied in their signals, including the usual suite of rights for:

    (a) pre-recorded programming embodying copyright-protected works, performances or sound recordings that broadcasters own or license; and

    (b) compilations of broadcasters' "broadcast flows" or "broadcast days/weeks/etc.", including broadcast productions of live events such as sporting events (see *e.g.* *Tariff for the Retransmission of Distant Radio and Television Signals, 1995-1997 and Variance to the 1994 Tariff*).

These protections include an exclusive right to authorize the telecommunication to the public/"making available" of such programming and compilations (see ss. 3(1)(f) & 2.4(1.1) of Canada's *Copyright Act*) as well as a right to remuneration for the retransmission of such programming and compilations by certain broadcast signals and an accompanying regulatory scheme (see s. 31 of Canada's *Copyright Act*).

- In connection with this legislative framework, Canadian courts have affirmed the availability of injunctions forcing online intermediaries to disable access to potentially copyright-infringing streams of programming at the request of broadcasters that own or exclusively license the rights to broadcast the programming (see *TekSavvy Solutions v Bell Media*, *Rogers Media v John Doe 1*; see also *Google v Equustek Solutions*).

- Broadcasters' signals are further protected through private licensing agreements and, as a result, Canadian contract law.

COLOMBIA

A continuación algunas preguntas que han surgido en el análisis de la propuesta -.

1. Podrían suministrar algunos ejemplos de fijación.Diferencia entre fijación y reproducción
2. Cuál es la cobertura del instrumento internacional.Cubre a Netflix y en general las plataformas ?
3. Cuál sería el tratamiento de las transmisiones de radios comunitarias que tienen finalidades de apoyo a la comunidad ?
4- Estarían cubiertas ceremonias en las que participen pueblos indígenas o comunidades locales y que se refieran a alg´ún conocimiento o tradición cultural
5. Qué salvaguardias en materia de competencia se podrían aplicar ?
6. Cuál sería el papel de temas de competencia y específicamente cómo se puede equilibrar los poderes profundamente desiguales en la estructura de negocios ?

Japan

Comments on the second revised draft text for the WIPO Broadcasting Organizations Treaty (SCCR/43/3)

June 16th, 2023

1. Scope of Application

(1) Scope of Reservation in Article 3 (1) (b)

During the 43rd session of the SCCR, some Member States expressed the opinion that catch-up TV should be excluded from the scope of the reservation.

However, transmissions over computer networks including catch-up TV should be retained in the scope of the reservation in Article 3 (1) (b), as proposed in the second revised draft text (SCCR/43/3), when considering the different positions among the Member States.

Then, it will be able for each Member State to decide the types of transmissions over computer networks applied by this Article.

(2) Suggestion for further narrowing a gap among Member States in Article 3 (1)

During the 43rd session of the SCCR, some Member States expressed the opinion that it would be difficult to accept the inclusion of transmissions over computer networks in the object of protection of this Treaty. Other Member States shared their concern about the impact on society if the definition of "broadcasting" and "broadcasting organizations" were to be technologically neutral.

Though "internet transmissions" are included in the definition of "broadcasting" in the national legislation of some countries, at present, there are also many countries where "internet transmissions" are not a part of "broadcasting". In addition, broadcasting systems vary from country to country and are often complex.

Therefore, it might be extremely difficult for some Member States to change their national legislations or systems to protect "internet transmissions" as "broadcasting". If such assessment of impacts on the society by the inclusion of "internet transmissions" into "broadcasting" were to be conducted by Member States from now, it would further delay the finalization of this Treaty.

If an opt-in framework would be more acceptable than an opt-out framework for some Member States, this might be one of the solutions for the sake of an early finalization of this Treaty.

A practical solution to make it an opt-in framework could be, for example, to keep the definition of broadcasting in Article 2 (a) technologically neutral, and to amend the Article 3 (1) (a) and (b) as follows:

Article 3 (1)

(a) The protection granted under this Treaty extends only to programme-carrying signals, except by means of a computer network, used for the transmissions by the broadcasting organizations who are the beneficiaries of the protection of this Treaty.

(b) Contracting Parties may, in a declaration deposited with the Director General of WIPO, declare that they include programme-carrying signals transmitted by broadcasting organizations by means of a computer network in the scope of the application of this Treaty.

2. VOD deferred transmission to be protected in Article 3 (2)

Article 3 (2) stipulates that "the provisions of this Treaty shall apply as well to the protection of programme-carrying signals of the broadcasting organizations used in their transmissions when providing access to the public to the stored programmes of the broadcasting organizations".

This provision might intend to make catch-up TV the object of protection. However, catch-up TV is considered to be a VOD deferred transmission available for a limited period of time whereas this provision does not limit the period of time the VOD deferred transmission is to be protected. As a result, the VOD deferred transmissions to be protected include not only catch-up TV but also other VOD deferred transmissions which are available for an unlimited period.

During the 43rd session of the SCCR, many Member States expressed concern that the period of protection of stored programmes would be perpetual in fact. This is because, in the second revised draft text, the object of protection covers not only catch-up TV but also all VOD deferred transmissions that are available even for an unlimited period. As a result, the right of fixation occurs each time a signal is transmitted, as if the stored programmes were permanently protected.

A VOD deferred transmission available for an unlimited period is too far from the original linear broadcasting, and it cannot be regarded any longer to be an integral part of the linear broadcasting. As such, it should not be the object of protection under this Treaty, just as a VOD deferred transmission, which is "content" rather than linear broadcasting.

Concern about "permanent protection" would be resolved, if the protection of a VOD deferred transmission would be limited to catch-up TV, which is available for a limited period of time such as one week or one month.

For this reason, we believe it is necessary to clearly stipulate in Article 3 (2) that the provision of this Treaty applies to the protection of programme-carrying signals transmitted "within a certain period of time from the original linear broadcasting", in order to clarify that the signals of broadcasting organizations protected under this Treaty are limited to the signals used for catch-up TV.

Specifically, we suggest that Article 3 (2) should be amended as follows.

The provisions of this Treaty shall apply as well to the protection of programme-carrying signals of the broadcasting organizations used in their transmissions, when providing access to the public to the stored programmes of the broadcasting organizations for a certain period of time from the original linear broadcasting, to be determined by the domestic legislation of each contracting party.

3. Deletion of the phrase "a combination of" in Article 10 (1)

Japan supports the suggestion from the delegation of Singapore to delete the phrase, "a combination of" in Article 10 (1), as it provides flexibility to Member States and allows them to take measures in accordance with their domestic circumstances.

In that case, we suggest amending the article as follows.

Any Contracting Party may apply the provisions of Articles 6, 7, 8 or 9, or all of them, only to certain retransmissions or transmissions, or limit their application in some other way, provided that the Contracting Party affords other adequate and effective protection to broadcasting organizations, through ~~a combination of~~ the rights provided for in Articles 6 to 9, ~~and~~ copyright or other rights or other legal means.

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Swiss comments on the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty (document SCCR/43/3)

Berne, 10.07.2023/ple

Switzerland thanks the President and the facilitators for their work and the opportunity to submit comments and suggestions in view of the Chair's Third Revised Draft Text, which will be used as a basis for discussion at the next SCCR session.

Taking this opportunity, Switzerland submits hereby some comments on the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty (document SCCR/43/3), as well as a proposal concerning the issue of the pre-broadcast signal.

We look forward to interesting discussions on this important topic during next SCCR session.

Protection of stored programmes, Articles 2(h), 3(2) and 8:

We see no need to introduce a protection for programme-carrying signals used for providing access to stored programmes (Art. 3(2)). How could the said protection be considered as a protection against signal piracy? As highlighted in note 3.08, the protection of the signal and the content carried by the signal are separate matters. Considering that broadcasting organizations shall enjoy a right of fixation (Art. 7) and that the storage of a programme transmitted by a programme-carrying signal presupposes its fixation, we do not see any gap in the protection that would need to be filled by Article 3(2).

To our knowledge, online piracy of live content constitutes the main problem for BCO. Live content - especially sport content - has a high value, which decreases rapidly once broadcast. For this reason, EBU favours specific measures against illegal transmission of live content. In that context, a protection for signals used for providing access to stored programmes seems to be irrelevant and useless.

Furthermore, we do not see any justification for including in the scope of protection VoD services of BCO, but not VoD services of webcasters like Netflix. In our view, VoD services should not fall under the activities protected by a treaty against signal piracy. In any case, a privileged treatment of BCO compared to webcasters would require a sufficient justification. Explanatory note 2.13 indicates that the essential difference between the VoD services of BCO compared to other commercial VoD services is that the programme must have earlier been included in a broadcast by the original broadcasting organization: not sure whether this criterion does indeed represent a sufficient justification.

The protection granted by Article 8 is not clear to us. In our understanding, this provision introduces a right to prohibit the unauthorized retransmission and fixation of programme-carrying signals used by broadcasting organizations to provide access to the public to their stored programmes. We are not sure to understand what is meant with "the deferred transmission to the public" of this kind of signal? In our understanding, the transmission providing access to stored programmes constitutes a new transmission (of a new signal), not a deferred transmission. Our first thought is that this provision introduces a "making available" right related to stored programmes – such a protection would relate to the content carried by the signal, which is not intended to be the subject matter of this treaty. Please clarify what is meant by "deferred transmission" in the context of this provision.

In our understanding, the WIPO Broadcasting Treaty is meant to be a treaty against signal piracy, and the protection granted under this treaty shall not extend to the content carried by the signal. Based on this understanding, **Switzerland proposes to delete both the definition of "stored programmes" in Article 2(h) and the related Articles 3(2) and 8 as these provisions relate to the protection of the content carried by the signal.**

Protection of pre-broadcast signals, Articles 2(g), 3(3), 9 and 10:

We continue to have concerns with the proposed definition of "pre-broadcast signal" and the protection related to such signals. On one side, the definition seems to exclude signal transmissions between

cameras and the next and subsequent nodes in the communications systems locals in the sites of events – even if the drafters intended to include them (see explanatory note 2.12). On the other side, we consider that in cases where the pre-broadcast signal is a product of the sports organization, delivered to the broadcaster under a contractual agreement, the receiving broadcasting organization should not be granted an exclusive right on the pre-broadcast signal. This is also problematic from an enforcement standpoint, as it might mean that an infringer might face numerous cases in court of different rights owners regarding the same infringement.

In our view, pre-broadcast signals generated by other entities than broadcasting organizations (and transmitted to broadcasting organizations under a license) should also be covered by the treaty in order to avoid protection gaps. However, the protection should be granted to the providers of the pre-broadcast signal (not to the receiving broadcasting organization).

Consequently, we would submit the following **proposal**:

Article 2 (g), Definitions

„Pre-broadcast signal“ means a programme-carrying signal transmitted ~~to or by a broadcasting organization~~, for the purpose of subsequent transmission to the public.

Article 3(3), Scope of Application

(3) The provisions of this Treaty shall furthermore apply to the protection of pre-broadcast signals ~~of the broadcasting organizations~~.

Article 9, Use of Pre-broadcast Signals

Providers of pre-broadcast signals ~~Broadcasting organizations~~ shall enjoy mutatis mutandis the right to prohibit the unauthorized acts referred to in Articles 6 and 7 in respect of their pre-broadcast signals by any means.

Article 10, Other Adequate and Effective Protection

(1) Any Contracting Party may apply the provisions of Articles 6, 7, 8 or 9, or all of them, only to certain retransmissions or transmissions, or limit their application in some other way, provided that the Contracting Party affords other adequate and effective protection to the beneficiaries ~~broadcasting organizations~~, through a combination of the rights provided for in Articles 6 to 9 and copyright or other rights or other legal means.

(2) ... [unchanged]

(3) Such means shall provide for the beneficiaries ~~broadcasting organizations~~ effective legal means enabling them to prevent the unauthorized or unlawful uses of their signal under Articles 6 to 9 of this Treaty.

We plan to submit our proposal during the discussions at the upcoming SCCR session and stand ready to further clarify it.

Obligations Concerning Technological Measures, Article 12:

Article 12(2) seems to provide for a very broad protection for encrypted programme-carrying signals. In our understanding, encryption is a typical technological measure that already falls in the scope of protection of Article 12(1) and we do not see the need for Article 12(2).

Furthermore, we would like to know what are the reasons for not applying the same limitations as under Article 12(1) (i.e. only applicable to “broadcasts that are not authorized by the broadcasting organizations concerned or are not permitted by law.”).

Consequently, we would welcome a clarification that the limitations mentioned in Article 12(1) apply to all kind of TPM.

Comments and Edits Prepared by the United States of America on the Proposed Broadcast Treaty Text (SCCR/43/3) of January 11, 2023

June 16, 2023

The United States delegation to the SCCR appreciates the opportunity to submit to the SCCR Chair, Vice-Chairs, and Facilitators written comments on the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty (document SCCR/43/3). The United States supports updating protection for broadcasting organizations under the terms of the 2006/2007 WIPO GA mandate, which calls for a "signal-based" approach to provide protection for the activities of broadcasting organizations "in the traditional sense." Consistent with that mandate, such protection should be narrowly focused on protecting retransmission of programme-carrying signals of broadcasting organizations. To this end, the United States believes that a single-right treaty would achieve an important objective without introducing new challenges around additional exclusive rights. Regarding the Second Revised Draft Text, we continue to have questions and concerns, especially regarding the right of fixation (Art. 7) and deferred transmission of stored programs (Art. 8).

What follows are specific questions, comments, and suggested edits prepared by the United States (presented in highlighted, *italicized* sentences preceded by bullet points) regarding the newest chair's text. Suggested additions to the current text of the articles are provided in highlighted, **bolded**, underlined, *italicized* text, and deletions are indicated with ~~strikeouts~~. We would like to emphasize that our edits, observations, and questions do not indicate or imply our endorsement of the particular provisions or language at issue.

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WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

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Standing Committee on Copyright and Related Rights

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SECOND REVISED DRAFT TEXT FOR THE WIPO BROADCASTING ORGANIZATIONS TREATY

prepared by the SCCR Chair in cooperation with the SCCR Vice-Chairs and facilitators

REVISED DRAFT TEXT

Introductory Note

The issue of an enhanced and updated protection for broadcasting organizations concerning their programme-carrying signals has been on the agenda of the World Intellectual Property Organization since 1998, when the Standing Committee on Copyright and Related Rights (SCCR) was established. The preparatory process was initiated at the WIPO Worldwide Symposium on Broadcasters' Rights which was held in Manila in 1997 which preceded the establishing of the SCCR.

The matter has regularly been on the agenda of the WIPO General Assembly since 1998. The General Assembly has taken note of the substantial work done in the SCCR and has on a number of occasions requested the SCCR to accelerate its work with the aim of agreeing on and finalizing a treaty on a signal-based approach, the objectives, specific scope, and object of the protection with a view to convening a diplomatic conference.

In the SCCR, the Chair started in 2015 to maintain a consolidated text on definitions, object of protection, rights to be granted and other issues. This document was processed in both the plenary sessions of the Committee, as well as on the basis of discussions in the informal consultations involving all regional groups of WIPO.

The revised consolidated text on definitions, object of protection, rights to be granted and other issues, prepared by the Chair (SCCR/39/7) was taken as the basis of the preparation of the Revised Draft Text for a WIPO Broadcasting Organizations Treaty (SCCR/42/3).

The second revised text now presented is just a draft text, a next step from the previous document (SCCR/42/3) forward. The discussions in the SCCR 42, as well as the comments received on the previous draft text by July 13, 2022, have been considered in its preparation.

There is no agreement between the Member States on any elements in the content of this draft text, and they are open for changes based on the discussions in the Committee.

The ambition in the new Chair's text is that the number of alternative provisions in the text would be kept as limited as possible.

Similarly, the ambition is to keep the number of suggested agreed statements in a minimum. This means that there is a maximum effort to draft the text of the articles in a most clear and succinct manner. The instrument of agreed statements would in this way be saved for the negotiations in a Diplomatic Conference.

Finally, it should be stressed that once, when the Committee decides about the preparation of a basic proposal to be presented to the Diplomatic Conference, also that text will be a draft, subject to change in the conference itself.

The Explanatory Notes are not part of the Draft Treaty but merely explanations for the understanding and interpretation of the provisions of the Draft Treaty.

[Second Revised Draft Text follows]

Second Revised Draft Text for the
WIPO Broadcasting Organizations Treaty

Contents

Explanatory Notes on the Preamble

0.01 The *Preamble* sets forth the objective of the Treaty and the main arguments and considerations relating thereto.

0.02 The *first paragraph* of the Preamble follows *mutatis mutandis* the first paragraph of the WPPT which took its inspiration from the first paragraph of the preamble of the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention).

0.03 The *second paragraph* follows *mutatis mutandis* the third paragraph of the preamble of the WPPT. The reference to "unauthorized use of programme-carrying signals of broadcasting organizations" emphasizes the anti-piracy function of the Treaty. Unauthorized use of programme-carrying signals is a phenomenon that appears in Contracting Parties both on the domestic level and cross-border between the Contracting Parties.

0.04 The *third paragraph* emphasizes the fact that the Treaty focuses on the intellectual property type protection of the programme-carrying signals of the broadcasting organizations. Thus, neither the definitions nor the substantive provisions of the Treaty do interfere in or affect the Contracting Parties' national regulatory framework of broadcasting activities. Such regulation is normally based on public law.

0.05 The *fourth paragraph* sets the high objective not to compromise but to recognize the rights of the owners of the content carried by broadcasts.

0.06 The *fifth paragraph* stresses the benefits of the effective protection of broadcasting organizations against illegal use of programme-carrying signals to rights holders of the programmes carried by the signals.

[End of Explanatory Notes on the Preamble]

Preamble

The Contracting Parties,

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

Recognizing the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities for unauthorized use of the programme-carrying signals of broadcasting organizations both within and across borders,

Emphasizing that this instrument focuses on the legal protection of the programme-carrying signals of the broadcasting organizations, and that its provisions do not otherwise affect the Contracting Parties' national regulatory framework for broadcasting activities,

Recognizing the objective to enhance the international system of protection of broadcasting organizations without compromising copyright in works and related rights in other protected subject matter incorporated in the programme-carrying signals, as well as the need for broadcasting organizations to acknowledge these rights,

Stressing the benefits to authors, performers and producers of phonograms of effective protection by the broadcasting organizations against illegal use of programme-carrying signals,

Have agreed as follows:

[End of Preamble]

Explanatory Notes on Article 1

1.01 The provisions of *Article 1* concern the nature of the Treaty and defines its relation to copyright in the literary and artistic works as well as related rights in other protected subject matter under existing conventions and treaties. Such works and other subject matter may be incorporated in the programmes carried by the signals of broadcasting organizations.

1.02 *Paragraph (1) of Article 1* contains a "non-prejudice clause" concerning the protection of copyright and related rights following the model of Article 1 of the Rome Convention, Article 1(2) of the WPPT, as well as Article 1(2) of the BTAP. The protection under this Treaty shall leave intact and shall in no way affect, limit or prejudice the protection of copyright or related rights under the Berne Convention, WPPT, or BTAP. A reference is also made to the so-called Brussels Satellite Convention, as certain signals covered by the protection of this Treaty are signals for point-to-point (or fixed-service) transportation of programme material.

1.03 The provisions of this Article, as well as the provisions in Article 3(1) and 3(5) clarify the relationship between rights in programme-carrying signals under this Treaty and rights in the content embodied in such signals. In cases where authorization is needed from both the rights holder of content embodied in such a signal and a broadcasting organization, the need for the authorization of the right holder does not cease to exist because the authorization from the broadcasting organization is also required, and vice-versa.

1.04 *Paragraph (2)* of *Article 1* contains a "Rome safeguard clause" following the model of Article 1(1) of the WPPT, and Article 1(1) of the BTAP. It should be understood that this provision, when making reference only to the Rome Convention, does not advocate that this new Treaty would derogate from existing obligations under any other treaty.

1.05 *Paragraph (3)* makes a reference to Article 22 of the Rome Convention. Under Article 22 of the Rome Convention the Contracting States of that Convention reserve the right to enter into special agreements to grant, *inter alia*, to broadcasting organizations, "more extensive rights that those granted by this Convention or contain other provisions not contrary to this Convention". The rights granted in this new Treaty are partly overlapping, partly more extensive, and partly less extensive than those granted in the Rome Convention. The provisions of this Treaty are definitely neither contrary to the provisions of the Rome Convention. The purpose of the provision of Paragraph (3) is to make clear that this new Treaty is a free-standing new Treaty and not linked to the Rome Convention.

1.06 *Paragraph (4*) contains a clarification according to which the Contracting Parties that are also Contracting States of the Rome Convention continue to apply between themselves the provisions of that Convention in cases where its obligations are more extensive than the obligations of this Treaty.

1.07 *Paragraph (5)* recognizes that the protection based on copyright or related right in certain provisions of the Treaty is internationally governed by the Berne Convention, the WCT, the WPPT or the BTAP.

[End of Explanatory Notes on Article 1]

Article 1
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 in literary or artistic works under the Berne Convention for the Protection of Literary and Artistic Works, revised at Paris on July 24, 1971 (hereinafter the Berne Convention), WIPO Copyright Treaty, done in Geneva on December 20, 1996 (hereinafter the WCT), or related rights in other protected subject matter under the WIPO Performances and Phonograms Treaty, done in Geneva on December 20, 1996 (hereinafter the WPPT), and Beijing Treaty on Audiovisual Performances, done in Beijing on June 24, 2012 (hereinafter the BTAP), or the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, done at Brussels on May 21, 1974. 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 the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the Rome Convention).

(3) This Treaty is not a special agreement under Article 22 of the Rome Convention.

(4) Contracting Parties, who are Contracting States of the Rome Convention, will apply the provisions of the Rome Convention between themselves when that Convention provides for an obligation which is more extensive than the obligations of this Treaty.

(5) The Berne Convention, the WCT, the WPPT, and the BTAP are, when relevant, applicable to protection based on copyright or related rights under this Treaty, including the provisions of Articles 10(1), 10(2), and 17.

[End of Article 1]

Explanatory Notes on Article 2

2.01 *Article 2* contains definitions of the key terms used in the Treaty. This follows the tradition of the treaties in the field of related rights, the Rome Convention, the WPPT, and the BTAP. The explanatory notes concerning the definitions are elementary and minimalist.

2.02 The definition of "broadcasting" in *item (a)* contains a definition which is specifically designed for this Treaty. It should be made clear that the definition is, according to the text, applicable only "for the purposes of this Treaty". The definition deviates from the corresponding definitions of the other existing WIPO Treaties by including in "broadcasting" not only wireless transmissions but also transmission "by wire". The definition thus covers all transmissions, including by cable, satellite, computer networks and by any other means. The concept of "broadcasting" is thus completely technologically neutral in this Treaty.

2.03 The classical definition of "broadcasting", in the Rome Convention, WPPT, and BTAP attaches itself to the tradition of copyright and related rights treaties in which the notion of "broadcasting" is explicitly confined exclusively to transmissions by wireless means (by radio waves propagating freely in space, *i.e.,* radio waves or Herzian waves). This should be emphasized, in order to avoid any uncertainty or interference concerning the interpretations the notion "broadcasting" in the existing treaties. Article 11*bis* of the Berne Convention on rights of authors operates with the same narrower concept of broadcasting.

2.04 It is suggested that "transmissions over computer networks" are not excluded from the definition of "broadcasting" in order to make clear that transmissions by means of information and communications technology (ICT) may be granted the same legal treatment as to broadcasting. Transmissions of programme-carrying signals over ICT paths lead to the same result as broadcasting. If a Contracting Party wishes to exclude transmissions over computer networks from the scope of application of this Treaty, it may do so by making a reservation to the Treaty under Article 3(1)(b) ("Scope of the Treaty").

2.05 In the Draft Text, there is no definition of the term "broadcast". The object of protection of the Treaty is the transmission of program-carrying signal, which constitutes the broadcast. The broadcast represents the output of the activity in which a broadcasting organization is engaged, namely "broadcasting", which is already defined in item (a). Furthermore, the term "broadcast" is not employed in the Draft Text.

2.06 *Item (b)* contains a definition of a "programme-carrying signal". The first half of it follows the definition in the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels on May 21, 1974) according to which "signal" is "an electronically-generated carrier capable of transmitting programmes". The second half of the definition is intended to make clear that the technical transformation, *e.g.* re-formatting or remodulation of the signal in an uninterrupted chain of the transmission has no impact; the signal remains the same, in legal terms, for the purposes of this Treaty.

2.07 *Item (c)* contains a definition of "programme". Its first half also follows the definition of "programme" in the Brussels Convention of 1974, according to which "programme" "is a body of live or recorded material consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution". The reference to "representations thereof" has been added for consistency with the definitions in the WPPT and BTAP.

2.08 *Item (d)* contains a definition of the term "fixation". When a programme-carrying signal is fixed, it is the programme material carried by the signal that remains fixed, and the signal

[Explanatory Notes on Article 2 continue, page 10]

Article 2
Definitions

For the purposes of this Treaty,

(a) "broadcasting" means the transmission by any means, including by wire or wireless means, for reception by the public of a programme-carrying signal; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

- *The current definition of "broadcasting organization" relies on the definition of "broadcasting," which is technologically neutral. The United States believes one or the other definition should be modified to limit the beneficiaries of the Treaty to entities that do at least some "broadcasting" in the traditional sense.*

(b) "programme-carrying signal" means an electronically generated carrier, as originally transmitted and in any subsequent technical format, carrying a programme;

(c) "programme" means live or recorded material consisting of images, sounds or both, or representations thereof;

(d) "fixation" means the embodiment of images, sounds or both or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

[Article 2 continues, page 11]

disappears. It should be emphasized that during the moment of fixation, the programme-carrying signal is still a live signal. The Treaty thus remains a treaty providing "a signal-based" protection.

- *Further discussion/clarification is needed regarding the above conclusory statement that this definition of "fixation" means that the Treaty is solely signal-based and that (as described in the Facilitators' presentation of this Draft text) there are no post-fixation rights in this Treaty. As the United States discusses below at Article 7, we oppose including a fixation right.*

2.09 *Item (e)* contains a definition of "broadcasting organization". This definition sets the limits concerning the persons benefiting from the protection of the Treaty. Not everybody transmitting program-carrying signals shall be regarded as a "broadcasting organization". The definition proposed in item (e) consists of four main elements: (1) the person shall be a "legal entity", (2) taking "the initiative" and having "the responsibility", (3) for "the transmission", and (4) for "the assembly and scheduling of the the programmes carried on the signal". The definition of a broadcasting organization is completely technologically neutral, in concordance with the definition of "broadcasting" in *item (a)*.

2.10 *Item (f)* contains a definition of "retransmission". The notion of "retransmission", in the defined form, embraces all forms of simultaneous retransmission by any means, *i.e.* by wire or wireless means, including combined means. It covers rebroadcasting, retransmission by wire or cable, and retransmission over computer networks. Retransmission is relevant only when it is done by another entity than the original transmitting organization and done for the reception by the public.

2.11 The definition of "retransmission" is confined to simultaneous retransmissions only. It follows the definition of "rebroadcasting" of the Rome Convention which is confined only to simultaneous broadcasting of the broadcast of another broadcasting organization. The Berne Convention operates in a similar manner: Article 11bis(1)(ii) sets forth the rights of authors in respect of their broadcast works, based on the concept of simultaneous retransmission ("communication to the public by wire or by rebroadcasting of the broadcast…").

2.12 *Item (g)* contains a definition of "pre-broadcast signal". Pre-broadcast signals are signals that are not intended for direct reception by the public. Such signals are used by broadcasting organizations to transport program material from a studio or *e.g.,* from the site of an event to the place where a transmitter is situated. Also, the signals between cameras and the next and subsequent nodes in the communications systems locally in the sites of events are intended to be covered. Pre-broadcast signals may also be used for transport of program material between broadcasting organizations, and the material may be used for subsequent broadcasting simultaneously, after a delay or after some editing of the material.

2.13 *Item (h)* contains a definition of a "stored programmes". It is intended to be used to cover the programme-carrying signals in the context making available to the public of the online services, such as the video on-demand and catch-up services of the broadcasting organizations. These are nowadays an integral part of the activities of the broadcasting organizations. The definition of "stored programmes" is applicable to the deferred transmissions from the retrieval system of the original broadcasting organization. The transmissions of such signals are initiated by the recipients. The language of the definition makes clear that the programme must have earlier been included in a broadcast by the original broadcasting organization. This implies the essential difference of the (catch-up) video on-demand services of the broadcasting organizations, compared to other commercial video on-demand services, and involves a heavy investment in the programming of the broadcasting organizations of their programme flow.

[End of explanatory Notes on Article 2]

(e) "broadcasting organization" means the legal entity that takes the initiative and has the editorial responsibility for broadcasting, including assembling and scheduling the programmes carried on the signal;

(f) "retransmission **to the public**" means the simultaneous transmission for the reception by the public by any means of a programme-carrying signal by any other third party than the original broadcasting organization;

- *The United States proposes adding the words "to the public" as part of the defined term itself, to emphasize that the term applies only to transmissions for reception by the public.*

(g) "pre-broadcast signal" means a programme-carrying signal transmitted to or by a broadcasting organization, for the purpose of subsequent transmission to the public;

(h) "stored programmes" means programmes, as originally transmitted by a broadcasting organization, which are kept by the original broadcasting organization in a retrieval system, from which they can be transmitted for the reception by the public, including providing access to the stored programmes in such a way that members of the public may access them from a place and at a time individually chosen by them.

[End of Article 2]

Explanatory Notes on Article 3

3.01 The provisions of *Article 3* are formulated and organized in such a way that the scope of application (the object of protection) is explicit and unambiguous.

3.02 In *paragraph (1)* it is provided that the object of protection of the Treaty is the program-carrying signal.

3.03 *Paragraph (2)* stipulates that the programme-carrying signals used in transmitting stored programmes, as defined in Article 2(h), to the public fall within the protection of this treaty. Such signals are protected when the broadcasting organization makes available on an on-demand basis to the public programmes that it has itself transmitted earlier in its broadcasts.

3.04 *Paragraph (3)* is the provision by which Contracting Parties will extend protection to pre-broadcast signals, as defined in Article 2(g). Pre-broadcast signals are not intended for the reception by the public, and in this respect they are not broadcasting. Pre-broadcast signals are in any case programme-carrying signals, and they are indispensable for the broadcasting activities.

3.05 The provisions of *paragraph (4)* exclude from protection all mere retransmission activities. This refers to rebroadcasting, retransmission by wire or wireless means, including by cable, over the computer networks and to retransmission by any other means.

3.06 This maybe illustrated by using the case of rebroadcasting. Rebroadcasting is, technically, also broadcasting. What is broadcast by a rebroadcaster is a broadcast of another broadcasting organization. According to the definition in Article 2(e), a rebroadcaster would never qualify as a broadcasting organization. It does not have the initiative and the responsibility for the transmission to the public, nor the assembly and the scheduling of the content of the transmission. Consequently, based on the definition of “broadcasting organization”, “rebroadcasting” is outside of the sphere of protection of the Treaty. It is thus most logical to exclude from the sphere of the object of protection the whole concept of mere retransmission.

3.07 It is the initial broadcasting organization who still enjoys the protection concerning its original transmission being retransmitted by the entity engaged in retransmission activities.

3.08 In *paragraph (5)* it is provided that the protection provided by this Treaty does not extend to the works and other protected subject matter carried by the signals. *Paragraph (5)* manifests the distinction between the carrier and the content. The protection of the signal and the content carried by the signal are completely separate matters.

[End of explanatory Notes on Article 3]

Article 3
Scope of Application

(1)(a) The protection granted under this Treaty extends only to programme-carrying signals used for the transmissions by the broadcasting organizations who are the beneficiaries of the protection of this Treaty.

(b) Contracting Parties may, in a ~~declaration~~ **notification** deposited with the Director General of WIPO, declare that they exclude programme-carrying signals transmitted by broadcasting organizations by means of a computer network from the scope of application of this Treaty.

- *Article 15 treats this as a reservation, but in this Draft it functions more as a notification. The United States suggests treating this as a notification rather than a reservation both here and in Article 15, as is done in the case of Article 10.*

- *In past meetings, there was agreement that the purpose of extending application of the Treaty to transmissions by means of a computer network was to protect broadcasters against pirates' (unauthorized) internet transmissions, not to give the broadcasters rights in their own transmissions over the internet. The United States continues to believe that the goal of the Treaty should be to protect broadcasters in the traditional sense from unauthorized transmissions, including over the internet, not to protect any organization that happens to transmit content over the internet.*

(2) The provisions of this Treaty shall apply as well to the protection of programme-carrying signals of the broadcasting organizations used in their transmissions when providing access to the public to the stored programmes of the broadcasting organizations.

(3) The provisions of this Treaty shall furthermore apply to the protection of pre-broadcast signals of the broadcasting organizations.

(4) The provisions of this Treaty shall not provide any protection in respect of distributors that merely retransmit for the reception by the public programme-carrying signals of broadcasting organizations.

- *The United States suggests defining the term "distributors."*

(5) The protection granted under this Treaty does not extend to works and other protected subject matter carried by the programme-carrying signals.

[End of Article 3]

Explanatory Notes on Article 4

4.01 *Article 4* establishes the points of attachment for granting national treatment to broadcasting organizations under this Treaty.

4.02 *Paragraph (1)* fixes the nationality of the broadcasting organizations of another Contracting Party as the point of attachment, and condition for granting the protection.

4.03 *Paragraph (2)* contains a definition of "nationality". The provisions follow the style of Article 6 of the Rome Convention; they list the two conditions which may trigger the obligation of national treatment. Fulfilling the requirement of either condition establishes the obligation of national treatment under the Treaty.

4.04 In p*aragraph (3)* a clause complementing the provision of *paragraph (2)(ii)* for application in the satellite environment has been added. It defines, in the case of satellite broadcasting, the relevant point of attachment, and adds to the criteria the origin of the signal, using the doctrine of the "uninterrupted chain of communication". The provisions of this paragraph are by nature a rule on "the country of origin". Compared to the earlier text by the Chair, the provisions have been complemented with some additional details ("under the control…", "chain of transmission", and "for the reception by the public").

4.05 The Rome Convention contains in Article 6.2. a possibility for a Contracting Party, by notification to the Secretary General of the United Nations, to set as a condition for protection that the headquarters of the broadcaster and the transmitter be situated in the same country. Such a provision has not been included in this Draft Text. The reason is that the Treaty is, by nature, an anti-piracy instrument. It is in the interest of all Contracting Parties that the threshold of application of the rights and protection against signal theft is not high.

[End of Explanatory Notes on Article 4]

Article 4
Beneficiaries of Protection

(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations who are nationals of other Contracting Parties.

(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet either of the following conditions:

(i) the headquarters of the broadcasting organization is situated in another Contracting Party, or

(ii) the programme-carrying signal was transmitted from a transmitter situated in another Contracting Party.

(3) In the case of a programme-carrying signal by satellite the transmitter shall be understood to be situated in the Contracting Party from which, under the control and responsibility of the broadcasting organization, the uplink to the satellite is sent in an uninterrupted chain of transmission leading to the satellite and down towards the earth for the reception by the public.

[End of Article 4]

Explanatory Notes on Article 5

5.01 *Article 5* contains the provisions concerning the obligation of national treatment.

5.02 There are various possible variants on the obligation of national treatment of broadcasting organizations that may be considered, ranging from a very broad obligation to a model limited to the granting of national treatment only as to the exclusive right and other protection specifically granted in the proposed Draft Text. On the basis of the nature of the proposed Treaty – an anti-piracy Treaty – and consistently with the philosophy under the Article 4 on the beneficiaries of protection (narrow threshold for receiving the protection), it is suggested that the approach on national treatment would, at the outset, be that of a broad or global obligation.

5.03 In *paragraph (1)* a formula of a broad obligation of national treatment is suggested. The open and unspecified clause would provide for a global national treatment for the protection of broadcasting organizations. The obligation of national treatment would thus extend to the rights and protections specifically granted in the proposed Draft Text as well as to any additional rights and protections that a Contracting Party may accord its own nationals. The protection of the Treaty would hence cover any rights and/or protection that Contracting Parties do now or may later grant to their nationals.

5.04 The extent of the obligation corresponds materially to the provisions of Article 5(1) of the Berne Convention. This tradition was, in the area of copyright, carried forward in the WCT. In the field of related rights, there is a tradition of somewhat more limited national treatment, which takes its origin from Article 2.2 of the Rome Convention, and was also adopted in the WPPT in a virtually same manner.

5.05 The negotiating history of the Treaty at-hand tend to indicate that, in order to be acceptable for all Member States of WIPO, the Treaty shall eventually allow rights and/or protection to be accorded based on different approaches. These would embrace, at one end, an exclusive right of authorizing, or “a right to prohibit”, and at the other end other kinds of solutions, the minimum being an “adequate and effective protection”. The content of “adequate and effective protection” is to be clarified later in the Draft Text, in Article 10(3).

5.06 The principle of allowing at least a two-tier level protection under the Treaty, makes it necessary to open a possibility for the Contracting Parties to base the protection accorded to nationals of other Contracting Parties on the principle of reciprocity. This is dictated by fairness and balance. Provisions of *paragraph (2)* allows reciprocity instead of national treatment in all areas of rights and protection. The drafting formula in the suggested text corresponds *i.a.* the model of Article 4(2) of the Beijing Treaty (BTAP).

[End of Explanatory Notes on Article 5]

Article 5
National Treatment

(1) ***Each*** Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the rights and the protection ***specifically granted in this Treaty*** ~~provided for in their domestic legislation~~.

(2) A Contracting Party shall be entitled, in respect of nationals of any other Contracting Party, to limit obligation under paragraph (1), on the rights and the protection of broadcasting organizations, to the extent to which the latter Contracting Party grants such rights and protection to the nationals of the former Contracting Party.

- *The United States proposes adding language clarifying that this Article is a statement of national treatment respecting the provisions of this Treaty, not any issue whatsoever.*

[End of Article 5]

Explanatory Notes on Article 6

6.01 *Article 6* contains the provisions on the right of broadcasting organizations concerning the retransmission to the public of their broadcasts.

6.02 The right in respect of retransmission provides protection against all retransmissions, by any means, including rebroadcasting and retransmission by wire or wireless means, by cable or over computer networks, when done by any another entity than the original broadcasting organization for the reception by the public. The expression “exclusive right of authorizing” has been used, for the sake of consistency with the language of *i.a.* the WPPT and the WCT.

6.03 Article 6 is based on the concept of retransmission, which on the international level is traditionally confined to simultaneous retransmission only. The definition of “retransmission” in Article 2(f) of the Treaty corresponds this tradition.

6.04 Provisions of Article 10 provide for the Contracting Parties a possibility to accord to broadcasting organizations other kind of adequate and effective protection instead of an exclusive right of retransmission.

[End of Explanatory Notes on Article 6]

Article 6
Right of Retransmission *to the Public*

Broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission ***to the public*** of their programme-carrying signals by any means.

- *While retransmission is a defined term, simply using the word retransmission without also including the words "to the public" risks obscuring a key element of this Article. The United States proposes treating "retransmission to the public" as the defined term.*

[End of Article 6]

Explanatory Notes on Article 7

7.01 *Article 7* lays down the exclusive right of broadcasting organizations with respect to the fixation of their programme-carrying signals. The provision follows *mutatis mutandis* the corresponding provision of Article 6 of the WPPT concerning the fixation of unfixed performances.

7.02 The value of the signal rests in the programme material carried by the signal, which is a result of programming and assembling the programme flow by the broadcasting organization. Fixation may be a most relevant step in the unauthorized exploitation by a third party of the value represented by the signal.

7.03 The right of fixation concerns only the very act of fixation. During the moment of fixation, the programme-carrying signal is still a live signal. The Treaty thus remains a treaty providing "a signal-based" protection.

7.04 The right of fixation does not extend to other acts done by any third party.

[End of Explanatory Notes on Article 7]

Article 7

Right of Fixation

Broadcasting organizations shall enjoy the exclusive right of authorizing the fixation of their programme-carrying signals.

- *The United States believes that a fixation right is inconsistent with a single-right, signal-based treaty. The United States proposes eliminating the fixation right.*

[End of Article 7]

Explanatory Notes Article 8

8.01 *Article 8* contains the provisions on the rights of broadcasting organizations concerning certain deferred transmissions of their stored programmes by any means.

8.02 Under the provisions of this Article, the broadcasting organizations enjoy a right to prohibit the unauthorized acts referred to in Articles 6 and 7 in respect of the programme-carrying signals used in the context of making available to the public of their own online services, such as the video on-demand and catch-up services of the broadcasting organizations. These services must, as provided in Article 2(h) on definitions, consist of programmes that the broadcasting organization has earlier transmitted in its broadcasts. The broadcasting organizations enjoy thus protection concerning the programme-carrying signals instigated by the recipients. The broadcasting organization may prohibit the interception by third parties of such signals.

8.03 Provisions of Article 10 provide for the Contracting Parties a possibility to accord to broadcasting organizations other kind of adequate and effective protection in respect of their stored programmes.

[End of Explanatory Notes on Article 8]

Article 8
Deferred Transmission of Stored Programmes

Broadcasting organizations shall enjoy a right to prohibit the unauthorized acts referred to in Articles 6 and 7 in respect of the deferred transmission to the public by any means of the programme-carrying signal used when they provide access to the public to their stored programmes, including providing access to the stored programmes in such a way that members of the public may access them from a place and at a time individually chosen by them.

- *The United States proposes eliminating Article 8. Article 6's exclusive right of retransmission to the public provides sufficient protection for programme-carrying signals. The combination of additional rights (e.g., fixation) and extension to deferred transmissions creates difficulties around term of protection and exceptions and limitations. These can be avoided through a single-right approach.*

- *To the extent that the text does apply to deferred transmissions, some explicit time limit will be necessary. The United States recommends that such a time limit be at most two weeks from the original broadcast.*

[End of Article 8]

Explanatory Notes Article 9

9.01 *Article 9* contains the provisions on the protection of broadcasting organizations in relation to their signals prior to broadcasting, abbreviated as “pre-broadcast signals”. The pre-broadcast signals are also programme-carrying signals.

9.02 The Contracting Parties shall provide a right to prohibit uses corresponding to the relevant uses in Articles 6 and 7 concerning the rights of broadcasting organizations in respect of their programme-carrying signals.

9.03 Pre-broadcast signals are signals that are not intended for direct reception by the public. Such signals are used by broadcasting organizations to transport program material from a studio or *e.g.,* from the site of an event to the place where a transmitter is situated. Such signals may also be used for transport of program material between broadcasting organizations, as may be used for broadcast after a delay or after some editing of the material.

9.04 The protection under this Article is applicable to both pre-broadcast signals of the receiving broadcasting organization and of the broadcasting organization that transmits a pre-broadcast signal.

9.05 Provisions of Article 10 provide for the Contracting Parties a possibility to accord to broadcasting organizations other kind of adequate and effective protection concerning the use of pre-broadcast signals.

[End of Explanatory Notes on Article 9]

Article 9
Use of Pre-broadcast Signals

Broadcasting organizations shall enjoy the right to prohibit the unauthorized acts referred to in Articles 6 and 7 in respect of their pre-broadcast signals by any means.

[End of Article 9]

Explanatory Notes on Article 10

10.01 *Article 10* provides to Contracting Parties a possibility to provide another kind of adequate and effective protection to broadcasting organizations instead of the exclusive rights of authorization and protection under Articles 6 to 9, or under all these Articles of the Treaty.

10.02 Provisions of *paragraph 1* provide that any Contracting Party may apply the provisions of Articles 6, 7, 8 or 9, or all of them, only to certain retransmissions or transmissions, or that it will limit their application in some other way. This choice allowed under this Treaty is subject the condition that the Contracting Party affords another kind of adequate and effective protection to broadcasting organizations, through a combination of the rights provided for in Articles 6, 7, 8 or 9, or in all of them, and copyright or other rights, or other legal means of protection.

10.03 This choice by a Contracting Party may be made by a Contracting Party subject to a notification to his effect deposited with the Director General of WIPO. The notification is required for transparency purposes for the practical application of the provisions of the Treaty.

10.04 The term “copyright” in *paragraph 1* refers to copyright of works embodied in the programme-carrying signals, such as the works or productions produced by the broadcasting organizations themselves. A work may also consist of the programme-material included in the programme-flow of the broadcasting organization that may constitute a protected collection under Article 2(5) of the Berne Convention, such as *e.g*. a broadcast day or a week. The term also refers to the copyright in the works included in the programme-material, acquired by the broadcasting organizations for their transmission activities. In the latter case, the broadcasting organizations may rely on the acquired rights to the extent they have been authorized by the owners to enforce the rights as permitted by the Contracting Party’s domestic law. The terms "other rights or other legal means” refer to any other rights or legal means that fulfil the condition under *paragraph (3)*.

10.05 Provisions of *paragraph 2* contain an open-ended enumeration of the legal means that are available for the Contracting Parties in order to fulfil the obligations of Articles 6 and 7 without providing exclusive rights of authorization, or Articles 8 and 9 without providing rights to prohibit. The clause is formulated following the design of the provisions of Article 3 of the Geneva Phonograms Convention (Means of Implementation by Contracting States), enumerating the legal regimes to be employed under the domestic legislation.

10.06 Provisions of *paragraph 3* contain, as an operative clause, the minimum protection that must be accorded by those Contracting States that make the choice, under *paragraph (1)*, not to provide to broadcasting organizations an exclusive right of authorization (under Articles 6 and 7) or an individual subjective right to prohibit (under Articles 8 and 9), but another allowed kind of protection according to *paragraph (2)*. *Paragraph (3)* contains the minimum requirements for the protection for this case.

[End of Explanatory Notes on Article 10]

Article 10
Other Adequate and Effective Protection

(1) Any Contracting Party may***, in a notification deposited with the Director General of WIPO, indicate that it will,*** apply the provisions of Articles 6, 7, 8 or 9, or all of them, only to certain retransmissions or transmissions, or limit their application in some other way, provided that the Contracting Party affords other adequate and effective protection to broadcasting organizations, through a combination of the rights provided for in Articles 6 to 9 and copyright or other rights or other legal means.

(2) For the Contracting Parties that avail themselves of the choice under paragraph (1), the means by which Contracting Parties provide other adequate and effective protection shall be a matter of the legislation of each Contracting Party, and shall include protection by means of one or more of the following:

(i) the grant of a copyright or other specific right;

(ii) the law relating to unfair competition or misappropriation;

(iii) telecommunications law and regulations~~;~~

~~(iv) other effective legal provisions or legislation on administrative means.~~

~~Contracting Parties availing themselves of this choice shall deposit a notification thereon with the Director General of WIPO~~.

- *The United States recommends returning the notification provision to subsection (1). Parties should inform the DG that they will be meeting their Treaty obligations via other adequate and effective protection, but they should not need to identify in that notification the precise domestic legislation or other methods by which they provide adequate and effective protection.*

- *The "other effective legal provisions or legislation…" language should be struck from paragraph two because it is inconsistent with the mandatory language, "shall include protection by means of one or more of the following." If "one or more of the following" can include any other unlisted effective legal provision or legislation, then the "shall" does not serve a substantive purpose.*

(3) Such means shall provide for the broadcasting organizations effective legal means enabling them to prevent the unauthorized or unlawful uses of their signal under Articles 6 to 9 of this Treaty.

[End of Article 10]

Explanatory Notes on Article 11

11.01 *Article 11* sets forth the permitted limitations of and exceptions to the rights and protection of broadcasting organizations provided for in the Treaty.

11.02 The first paragraph of the preamble declares that the international protection of the broadcasting organizations shall be as balanced and effective as possible. The effectiveness of the instrument is achieved through the provisions on rights, protections and enforcement. The balance is established by introducing a possibility to establish, in the national provisions of Contracting Parties, necessary and appropriate provisions on limitations and exceptions to the rights and protection.

11.03 In p*aragraph (1)* there is a short exemplification of some of most relevant societally important types of allowed limitations or exceptions to the protection of broadcasting organizations. Three of the examples correspond the same provisions laid down in Article 15.1. of the Rome Convention (private use, use of short excerpts and use for teaching or scientific research). The exemplification has been amplified by adding three other possible limitations relevant for the protection of programme-carrying signals (quotation, preservation of programme materials in archives and "access to cable of certain programme-carrying signals", the last of these referring to the case where a Contracting Party's national regulatory framework for broadcasting activities establishes an obligation to cable operators to distribute certain signals ("must carry obligation")).

11.04 *Paragraph (2)* of this Article follows closely, *mutatis mutandis*, the corresponding provisions in the WPPT. It reproduces the main principle of Article 15.2 of the Rome Convention, and it corresponds to Article 16(1) of the WPPT, and Article 13(1) of the BTAP

11.05 *Paragraph (3)* contains the provisions of the three-step test originally established in Article 9(2) of the Berne Convention. Corresponding provisions were used in Article 13 of the TRIPS Agreement, Article 16(2) of the WPPT, Article 10(2) of the WCT, and Article 13(2) of the BTAP. Interpretation of the proposed Article, as well as of this whole family of provisions, follows the established interpretation of Article 9(2) of the Berne Convention.

11.06 Subject to the provisions of paragraphs (2) and (3) of Article 11, Contracting Parties may consider limitations or exceptions exemplified in paragraph (1) or other necessary ones.

[End of Explanatory Notes on Article 11]

Article 11
Limitations and Exceptions

(1) Contracting Parties may, in their domestic legislation, provide for specific limitations or exceptions to the rights and protection guaranteed in this Treaty, as regards:

(a) private use;

(b) quotation;

(c) use of short excerpts in connection with the reporting of current events;

(d) use for the purposes of teaching or scientific research;

(e) preservation in archives of the programme material carried by the programme-carrying signal;

(f) access to cable of certain programme-carying signals.

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

(3) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the programme-carrying signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

- *The United States notes that a single-right, signal-based treaty would reduce the need for many specific exceptions.*

[End of Article 11]

Explanatory Notes on Article 12

12.01 *Article 12* contains provisions on obligations concerning technological measures.

12.02 The provisions of *paragraph (1)* reproduce *mutatis mutandis* the corresponding provisions in Article 18 of the WPPT.

12.03 The interpretation of paragraph (1) follows the interpretation of the corresponding provisions of the WPPT. The provisions of this Article do not contain any obligation or mandate for the broadcasters to use technological measures. They apply only in cases where technological measures *de facto* are used.

12.04 *Paragraph (2)* extends the protection of technological measures to the encryption of programme-carrying signals. Under this provision, Contracting Parties shall provide adequate and effective legal protection against the unauthorized decryption of an encrypted programme-carrying signal, when done for the purpose of retransmission or deferred transmission to the public.

[End of Explanatory Notes on Article 12]

Article 12
Obligations Concerning Technological Measures

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

(2) Without limiting the foregoing, Contracting Parties shall provide adequate and effective legal protection against the unauthorized decryption of an encrypted programme-carrying signal for the purpose of retransmission or deferred transmission to the public.

[End of Article 12]

Explanatory Notes on Article 13

13.01 *Article 13* contains provisions on obligations with regard to rights management information. It follows *mutatis mutandis* the corresponding provisions of Article 19 of the WPPT.

13.02 The operative parts of the provisions in *paragraph (1)* and *paragraph (2)* are intended to be in line with the corresponding provisions of the WPPT. The wording of paragraph (1)(ii) has been amended in order to adapt it to the context of the protection of broadcasting organizations.

13.03 The clauses at the end of *paragraph (2)* ("when any of these items of information is attached to or associated with…") have been, compared to the provisions of the WPPT, clarified in order to cover all relevant uses of broadcasts.

13.04 It is clear that the provisions of paragraph (2) of this Article on rights management information are applicable to data embedded in a programme-carrying signal by a broadcasting organization, among other things, in order to identify and monitor its broadcasts, such means as a watermark.

13.05 The interpretation of the proposed Article 13 follows the interpretation of the corresponding provisions of the WPPT.

[End of Explanatory Notes on Article 13]

Article 13
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 knowing, 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:

(i) to ~~knowingly~~ remove or alter any electronic rights management information without authority;

(ii) to ~~knowingly~~ retransmit the programme-carrying signal ***to the public*** knowing that electronic rights management information has been without authority removed or altered.

- *The United States recommends reversing style edits that we previously suggested. The previous version of the text matched WCT/WPPT. It is essential to maintain drafting consistency among all WIPO treaties on the RMI issue.*

- *The United States also suggests small clarifying corrections/changes in both subsections (1) above and (2) below).*

(2) As used in this Article, "rights management information" means ~~the~~ information which identifies the broadcasting organization, the broadcasting, the owner of any right in the programme, or information about the terms and conditions of use of the programme-carrying signal, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the programme-carrying signal.

[End of Article 13]

Explanatory Notes on Article 14

14.01 The provisions of *paragraph (1)* are intended to provide flexibility for the Contracting Parties and allow them to require the broadcasting organizations to equip their programme-carrying signals with information that makes it possible to identify the respective broadcasting organization. To require such signal-marking would promote legal certainty and facilitate the application of the rights and protection under this Treaty. It is suggested that issuing more detailed provisions on such information would be left to Contracting Parties.

14.02 *Paragraph (2)* states the principle of formality-free protection which is suggested to prevail subject to the provisions of *paragraph (1)*.

[End of Explanatory Notes on Article 14]

Article 14
Formalities

The enjoyment and exercise of the rights and protection provided for in this Treaty shall not be subject to any formality, except that Contracting Parties may~~, as a condition of protecting the broadcasting organizations under this Treaty,~~ require in their domestic law that the programme-carrying signal carries information ~~that enables~~ to identify the broadcasting organization. ~~To determine more detailed requirements on such information shall be a matter for the domestic law of the Contracting Parties.~~

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

- *The United States proposes starting with the general statement prohibiting formalities and then introducing the specific exception permitted.*
- *The United States also recommends striking the second sentence regarding more detailed requirements, as implementation is assumed as part of the Treaty language.*
- *Alternatively, the language could be reframed as an Agreed Statement, such as the following: "**Agreed Statement: It is understood that Contracting Parties may require in their domestic law that the programme-carrying signal carry information that identifies the broadcasting organization."***

[End of Article 14]

Explanatory Notes on Article 15

15.01 *Article 15* lays down the explicit rule on reservations in relation to the Treaty. Only one reservation is permitted under the provisions of the Treaty (Article 3(1)(b)), allowing Contracting Parties to exclude transmission of programme-carrying signals by means of computer networks from the scope of application of the Treaty. A Contracting Party may at any time deposit a notification with the Director General of WIPO on the reservation under this provision, when adhering to the Treaty, or later. Such reservation made by a Contracting Party may also be withdrawn at any time.

15.02 Thus, subject to the provisions of Article 3(1)(b) no reservations shall be permitted.

15.03 This principle will be subject to negotiations on the overall design of protection of the Treaty.

[End of Explanatory Notes on Article 15]

Article 15
Reservations

~~Subject to the provision of Article 3(1)(b)~~ n***N***o reservations to this Treaty shall be permitted.

- *The United States recommends treating Article 3(1)(b) as a notification instead of a reservation. If this proposal were adopted, there would be no need for a reservation.*

[End of Article 15]

Explanatory Notes on Article 16

16.01 Article 16 contains the provisions that govern application of the Draft Treaty in respect of transmissions that occurred before or after the Treaty comes into force. The expression “transmissions” refer to both retransmission and deferred transmission. The design of the proposed Article 16 is tailor-made for the protection of broadcasting organizations under this Draft Treaty. It follows the model of paragraphs 1, 3, and 4 of Article 19 of the BTAP.

16.02 Under paragraph (1) Contracting Parties would be obligated to accord protection to transmissions that take place at the moment of the coming into force of the Treaty and to all transmissions that occur after its entry into force. This principle, and the application of it by as many Contracting Parties as possible, would provide a foundation for uniform introduction of this new form of protection. The protection would extend to all transmissions from the moment of the entry into force of the Treaty.

16.03 Paragraph (2) uses the well-established principle of non-retroactivity. It makes clear that the protection accorded by the proposed Instrument is not retroactive in the proper sense of the word. First, it specifies that the protection accorded by the Treaty is without prejudice to any acts performed before the entry into force of the Treaty. In this provision, the expression "acts committed" refers to acts of use or exploitation of a transmission which took place during the time when it was not protected under the Treaty. Second, it safeguards previously acquired rights and previously concluded agreements.

16.04 Paragraph (3) allows each Contracting Party to make transitional arrangements concerning the use of transmissions lawfully commenced before the entry into force of the Treaty. The purpose of this provision is to guarantee a smooth introduction of the protection without causing the need for new negotiations between the original broadcasting organization and the user of its transmission. Contracting Parties would be free to choose the design of the transitional provisions: they may provide for a limited duration for such arrangements.

16.05 It would be possible to consider as an alternative to employ the provisions of Article 18 of the Berne Convention mutatis mutandis as was done in the WPPT. In fact, the effect of the proposed Article 16(1) and (3) would largely correspond to the effect of Article 18 of the Berne Convention.

16.06 However, the approach of Article 18 of the Berne Convention is not well adapted for this Treaty. There are several reasons underlying this.

- First, Article 18 of the Berne Convention does not explicitly allow limiting the retrospective protection as allowed in Article 16(2) of the Draft Treaty;

- Furthermore, the provisions of Article 18(3) of the Berne Convention, concerning transitional provisions, have in certain cases caused doubts as to their proper interpretation;

- And, the need for legal certainty is the guiding principle of the whole Article 16;

- Finally, the Berne Convention does not contain clear provisions on acts undertaken, rights acquired, and contracts concluded prior to the entry into force of that Convention.

16.07 In fact, the inclusion, at least, of the proposed Article 16(1) and 16(2) should be considered by the Member States irrespective of the model for the rest of Article 16.

[End of Explanatory Notes on Article 16]

Article 16
Application in Time

(1) Contracting Parties shall accord the protection granted under this Treaty to transmissions that that take place at the moment of the entry into force of this Treaty and to all transmissions that occur after the entry into force of this Treaty for each Contracting Party.

(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.

(3) Contracting Parties may in their legislation establish transitional provisions under which any person who, prior to the entry into force of this Treaty, engaged in lawful acts with respect to a transmission, may undertake with respect to the same transmission acts within the scope of the rights provided for in Article 7 after the entry into force of this Treaty for the respective Contracting Parties.

[End of Article 16]

Explanatory Notes on Article 17

17.01 *Article 17* contains provisions on enforcement of rights. The provisions of *paragraphs 1 and 2* of this Article reproduce, with a minor adjustment and clarification, the corresponding provisions of Article 23 of the WPPT.

17.02 The general clause in *paragraph (1)* has been complemented by a provision according to which the respective measures shall be applicable to all rights and protection provided for the broadcasting organizations under this Treaty.

17.03 *Paragraph (2)* follows the provisions of Article 23(2) of the WPPT, and contains all essential elements of Article 41.1 of the TRIPS Agreement.

17.04 *Paragraph (3)* reproduces the provisions of Article 41.2 of the TRIPS Agreement.

[End of Explanatory Notes on Article 17]

Article 17
Provisions on Enforcement of Rights of Broadcasting Organizations

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty. ~~The respective measures shall be applicable to all rights and protection provided for the broadcasting organizations under this Treaty.~~

(2) Contracting Parties shall ensure that enforcement procedures are available to broadcasting organizations under their law so as to permit effective action against any act of infringement of rights or protection covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

(3) ~~Procedures concerning the enforcement of the rights and protection of the broadcasting organizations shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted time limits.~~ ***Contracting Parties that afford protection to broadcasting organizations through a combination of the rights provided for in Articles 6 to 9 and copyright or related rights as permitted by Article 10(1) shall provide that broadcasting organizations may enforce any copyright or related rights that exist in the programmes carried by the signal against the unauthorized retransmission, to the extent that they are authorized to do so by the owners of those copyright or related rights as permitted by the Contracting Party's domestic law***

A contracting party may comply with the obligation in paragraph (1) by providing in its domestic law either

(i) that a broadcasting organization that is the owner or exclusive licensee of any copyright or related rights that exist in the programmes carried by the signal is entitled to enforce those rights against the unauthorized retransmission, or

a presumption that in the absence of proof to the contrary the broadcasting organization is authorized to enforce those rights against the unauthorized retransmission when it provides a contract showing such an authorization.

- *The United States proposes deleting the second sentence of Article 17(1) to match Article 14 of the World Copyright Treaty:*

- *We propose deleting the language in 17(3), which is taken from Article 41 of the TRIPS Agreement, as it is not found in other WIPO treaties.*

- *The United States proposes restoring language deleted from SCCR/42/3 regarding the means by which a party may comply with the obligations in 17(1). We continue to believe such a measure is preferable to expanding the treaty's number of substantive rights.*

[End of Article 17 and of document]

Comments from the European Union and its Member States on document SCCR/43/3 – Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty

The Treaty for the Protection of Broadcasting Organisations remains a high priority and continues to be of great importance to the European Union and its Member States.

We are thankful for the work done by the SCCR Chair, the SCCR Vice-Chair and the facilitators in preparing the second revised text (document SCCR 43/3), which ensured a good basis to advance our discussions at the 43rd SCCR.

The Committee agreed that the document SCCR 43/3 will be revised on the basis of the comments, questions and suggestions made at the 43rd SCCR. The delegations were also invited to send any further comments on document SCCR/43/3 to WIPO by June 16, 2023, which would be published on the WIPO website. The European Union and its Member States welcome the opportunity and hereby submit the following comments.

On the scope of application (Article 3):

The European Union and its Member States reiterate the importance of covering, within the scope of the Treaty, the programme-carrying signals used for the transmissions of traditional broadcasting organisations by any means, including over computer networks. In this context, we suggest revising Article 3(1)b, by which Contracting Parties may decide to exclude from the scope of application the programme-carrying signals transmitted by broadcasting organisations by means of a computer network. In order to ensure a meaningful protection of broadcasting organisations, the reservation should, in our view, preferably be removed or, in the alternative, limited to allowing Contracting Parties to exclude broadcasting organisations that transmit exclusively via computer networks (webcasters).

On the beneficiaries of the protection (Article 4)

The European Union and its Member States welcome some clarification on how the "transmitter"-requirement in paragraph 2(ii) relates to transmissions over computer networks.

On the adequate and effective protection (Article 10):

In the context of the flexibility allowed by the draft Treaty, which takes account of the different systems of protection that may exist in Contracting Parties that do not grant exclusive rights, a particular attention should be given to ensuring that broadcasting organisations will enjoy effective legal means to prevent the unauthorised uses of their signals. In this context, we suggest improving legal certainty, by guaranteeing an adequate level of transparency as regards the rights and measures, as well as the means of enforcement, available to broadcasting organisations in Contracting Parties which provide protection by other means than exclusive rights. Such a transparency requirement could, for example, be ensured in the context of the notifications which Contracting Parties who offer protection by other means shall submit to the Director General of WIPO under Article 10(2). In view of this, we suggest the addition of a new transparency requirement, for example as a new paragraph 4 in Article 10:

New (4) *Contracting Parties availing themselves of the choice under paragraph (1) shall deposit a notification thereon with the Director General of WIPO. The notification shall contain information on the relevant means of protection listed under paragraph (2) i-iv (or the combination thereof) as well as the legal means referred to in paragraph (3). The notification shall be accompanied by a list of the relevant national laws and regulations and the titles and addresses of the appropriate authorities. Any changes in the relevant laws, regulations or procedures should be notified without undue delay.*

Furthermore, the European Union and its Member States would welcome clarification on the scope and necessity of the provision in Article 10(2) iv of the second revised draft, in order to make sure that this additional general provision does not create further uncertainty about the level of protection and effective legal means that can be provided through other means than exclusive rights.

On the term of protection (former Article 11)

In the second revised draft the provision on the term of protection has been removed. We welcome further clarification on how this would work in practice given the flexibility allowed by the draft treaty and the different legal systems that may exist in different contracting parties, to ensure that broadcasting organizations will enjoy predictable and effective legal means.

On limitations and exceptions (Article 11)

Article 11 provides for certain optional limitations or exceptions, including for access to cable of certain programme carrying signals. Must carry rules are traditionally not regulated by copyright limitations or exceptions, and we therefore suggest removing paragraph (1) f.

On formalities (Article 14)

Article 14 allows contracting parties, as a condition of protection under the treaty, to determine detailed requirements as regards the information carried by the signal for the identification of the broadcasting organization in question. We are concerned that, in practice, this provision could risk creating disproportionate technical or administrative burdens for broadcasting organizations. We are of the view that the provision should be revised to avoid such risks. In this sense, the last sentence of the first paragraph could preferably be removed and “appropriate” or a similar criterion could be inserted before “information”.

Article 14 would then read as follows:

Contracting Parties may, as a condition of protecting the broadcasting organizations under this Treaty, require in their domestic law that the programme-carrying signal carries *appropriate* information that enables to identify the broadcasting organization.

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