

**Non-paper
on the
WIPO Treaty on the Protection of Broadcasting Organizations
(left margin)**

**Proposals made on June 20 and 21, 2007 (by 6.00 pm)
(inner margin)**

June 21, 2007

WIPO Treaty on the Protection of Broadcasting Organizations

Preamble

The Contracting Parties,

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

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

Recognizing the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across borders,

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

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

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

Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the need for broadcasting organizations to acknowledge and respect these rights,

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

Have agreed as follows:

GENERAL PROVISIONS

Article 1 *Objective*

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

Proposal from several Delegations on Article 1:

The objective of this Treaty is to provide adequate and effective (...) legal protection, on a signal-based approach, for broadcasting organizations in respect of their broadcast signals.

Proposal from Brazil on Article 1:

The objective of this Treaty is to provide effective (...) legal protection, on a signal-based approach, for broadcasting organizations (...) in respect of their broadcasts.

Article 2 *Definitions*

For the purposes of this Treaty:

Proposal from the Chair on Article 2 (new para):

- () “signal” means an electronically-generated carrier capable of transmitting programs;
- (a) “broadcast” means an electronically generated signal transmitted by wireless means and carrying assembled and scheduled programs for the reception by the public;
- such signals transmitted by satellite are also “broadcasts”;
 - such signals are also “broadcasts” when encrypted, if the means for decrypting are provided to the public by the broadcasting organization or with its consent;

Proposal from several Delegations on Article 2:

- (a) “broadcast” means (...) a signal transmitted by wireless means and carrying assembled and scheduled programs for public reception;
- such signals are “broadcasts” whether transmitted by terrestrial means or by satellite;
 - these signals are also “broadcasts” when encrypted, if the means for decrypting are provided to the public by the broadcasting organization or with its consent;

- “broadcast” shall not be understood as including transmissions over computer networks;

- (b) “program” means live or recorded material consisting of images, sounds or both;
- (c) “broadcasting organization” means the legal entity that takes the initiative and makes arrangements for the transmission of a broadcast for the reception by the public;

Proposal from Brazil on Article 2:

- (d) “broadcasting organization” means the legal entity that takes the initiative and makes arrangements for the transmission of a broadcast for public reception;

Proposal on Article 2:

- (c) “broadcasting organization” means the legal entity that takes the initiative, has the responsibility for assembling and scheduling of programs, and makes arrangements for the transmission of a broadcast for public reception;

Proposal from the Chair on Article 2 (new para):

- () “cablecasting organization” means the legal entity that takes the initiative, has the responsibility for assembling and scheduling of programs, and makes arrangements for the transmission of a cablecast for public reception;
- (d) “cablecast” means the same as “broadcast” but transmitted for the reception by the public by wire and excluding transmission by satellite;

Proposal from Brazil on Article 2:

- (b) “cablecast” means an electronically generated signal transmitted by wire means and carrying assembled and scheduled programs for the reception by the public;
- such signals are also “cablecasts” when encrypted, if the means for decrypting are provided to the public by the cablecasters organization or with its consent;

Proposal from several Delegations on Article 2:

- (d) “cablecast” means a signal transmitted by wire and carrying assembled and scheduled programs for public reception;
- these signals are also “cablecasts” when encrypted, if the means for decrypting are provided to the public by the cablecasting organization or with its consent;
- “cablecast” shall not be understood as including transmissions over computer networks;

(e) "retransmission" means the simultaneous transmission for the reception by the public by any means of a broadcast by any other person than the original broadcasting organization; simultaneous transmission of a retransmission shall be understood as well to be a retransmission;

Proposal from several Delegations on Article 2:

(f) "retransmission" means the simultaneous transmission for the reception by the public (...) of a broadcast or a cablecast by any other person than the original broadcasting or cablecasting organization; simultaneous transmission of a retransmission shall be understood as well to be a retransmission;

(f) "fixation" means the embodiment of a broadcast on a physical support from which the programs carried by the broadcast can be perceived, reproduced, communicated or transmitted through a device.

Proposal from Brazil on Article 2:

(g) "fixation" means the embodiment of a broadcast or a cablecast on a physical support from which the programs carried by the broadcast or by the cablecast can be perceived, reproduced, communicated or transmitted through a device.

Proposal from Australia on Article 2:

(f) "fixed", in relation to a broadcast, means embodied on a support from which the programs carried by the broadcast can be perceived, reproduced, communicated or transmitted through a device.

Article 3

Specific Scope and Object of Protection

(1) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.

(2) The provisions of this Treaty shall apply to the protection of cablecasting organizations in respect of their cablecasts in the same way as they apply to broadcasting organizations and broadcasts.

(3) The provisions of this Treaty do not give rise to any rights in the programs that are transmitted by broadcasting organizations.

Proposal from India on Article 3(3):

(3) The provisions of this Treaty do not give rise to any rights in the programs that are broadcast by broadcasting organizations.

Proposal from United States of America on Article 3 (new paragraph):

() The provisions of this Treaty do not give rise to any rights against the copyright owner of the program being transmitted or any entity acting with the permission of the copyright owner.

Proposal from India on Article 3 (new paragraph):

() The provisions of this Treaty do not afford protection to any broadcast or cablecast that contains any program for which the broadcasting organization has no authorization from the copyright or related rights holder.

(4) The provisions of this Treaty shall not provide any protection

- (i) to retransmitting third parties in respect of their mere retransmissions by any means of broadcasts by broadcasting organizations;
- (ii) to any person for transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or
- (iii) to any person for transmissions over computer networks.

Proposal from Chile on Article 3(4)(iii):

(iii) to any (...) transmission via networks using the Internet Protocol or successor protocols with similar functions; specially webcasting or netcasting.

Proposal from Brazil on Article 3(4):

(4) The provisions of this Treaty shall not provide any protection

- (i) to retransmitting third parties in respect of their mere retransmissions by any means of broadcasts by broadcasting organizations;
- (ii) to any (...) transmission via networks using the Internet Protocol or successor protocols with similar functions; specially webcasting or netcasting; or
- (iii) to any person for transmissions over computer networks.

Proposal from India on Article 3(4):

(4) The provisions of this Treaty shall provide protection to broadcasting organizations for their broadcast on the traditional broadcasting and cablecasting media to enable them to enjoy the rights owned or acquired from the owner of copyright or related rights but shall not provide any protection

- (i) to mere rebroadcasting of the broadcast by broadcasting organizations;
- (ii) to any person for transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or

(iii) to any person for transmissions including transmission of broadcast and cablecast through computer network consisting of using the internet protocol, webcasting or netcasting or any other technology designed for computer networks.

Proposal on Article 3 (4):

(4) The provisions of this Treaty shall not provide any protection

(i) to persons in respect of their mere retransmissions by any means of broadcasts by broadcasting organizations; or

(ii) to any person for transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions)

(...).

Article 4

Relation to Other Conventions and Treaties

(1) Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the protection of copyright or related rights in the programs incorporated in broadcasts. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

Proposal from Brazil on Article 4:

(1) Protection granted under this Treaty shall leave intact and shall in no way effect, limit or prejudice the protection of copyright or related rights in the programs incorporated in broadcasts, and the access to the public domain. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.

(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under any international treaties addressing copyright or related rights.

Article 5

Beneficiaries of Protection

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

Proposal from USA on Article 5(1):

(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations, their successors and assigns, that are nationals of other Contracting Parties.

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

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

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

Proposal from Canada on Article 5(2):

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

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

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

Article 6

National Treatment

Alternative J ("WPPT Model")

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

Alternative K ("Berne Model")

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

Proposal from Brazil on Article 6:

Delete Alternative J.

Proposal from Algeria/African Group on Article 6:

Delete Alternative K.

SUBSTANTIVE PROVISIONS

Article 7

Protection of Broadcasts

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

Proposal from Japan on Article 7:

Proposal to reintroduce Articles 10 to 15 of Document SCCR/15/2.

Proposal from several Delegations on Article 7:

Broadcasting organizations shall enjoy the (...) right of authorizing the retransmission of their broadcasts, and the deferred transmission (...) to the public of their fixed broadcasts.

Proposal from several Delegations on Article 7:

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

Proposal from Kenya on Article 7:

Broadcasting organizations shall have the (...) right to prohibit the retransmission of their broadcasts, and the deferred transmission (...) to the public of their (...) broadcasts.

Proposal from India on Article 7:

Broadcasting organizations shall enjoy the right to prohibit the rebroadcast of their broadcast or cablecast subject to conditions and the extent to which the broadcasting organizations have been so authorized by the owners of the works protected by copyright or related rights transmitted in the broadcasts.

Proposal from Chile on Article 7 (new paragraph):

(2) A Contracting Party may at any time, in a notification deposited with the Director General of WIPO, declare that it will not apply the provisions of paragraph 1 in respect of certain uses.

Proposal from United States of America on Article 7:

(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission of their broadcasts, (...) by any means, to the public (...); or

(2) Contracting Parties shall establish adequate and effective legal protection for the broadcasting organizations against unauthorized retransmission, by any means, to the public. Adequate and effective legal protection shall include a private right of action for the broadcasting organizations to prevent unauthorized retransmission of their broadcasts.

Proposal from Brazil on Article 7:

It is proposed to:

“Reformulate article 7, substituting the concept of an exclusive right by the TRIPS, article 14.3, and Rome, article 15, concepts of a “(...) right to prohibit the following acts when undertaken their authorization “:

- the retransmission of the broadcasts;
- the [deferred*] transmission [by any means**] to the public of their fixed broadcasts

OR

An alternative approach to the one adopted above would draw from article 11 of draft 1.0 of March, 2007 (Means of implementation of the Protection) and could include language on the right to equitable remuneration or to effective remedies.

* the term “deferred” is to be clarified in the treaty;

** “by any means” is conditional upon the nature of the rights conferred ”

Article 8

Protection of the Pre-broadcast Signal

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

Proposal from Australia on Article 8:

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

Article 9

Protection of Encryption and Rights Management Information

*Agreed on London
Washington & RM*

Contracting Parties shall provide adequate and effective legal protection against unauthorized

- (i) decryption of an encrypted broadcast, or circumvention of any technological protection measure having the same effect as encryption;
- (ii) manufacture, importation, sale or any other act that makes available a device or system [capable of decrypting] an encrypted broadcast; and
- (iii) removal or alteration of any electronic rights management information used for the application of the protection of the broadcasting organizations.

Proposal from Brazil on Article 9:

Delete Article 9.

Article 10
Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the rights and protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.
- (2) Contracting Parties shall confine any limitations of or exceptions to the rights and protection provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

Proposal from United States of America on Article 10(1):

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

Proposal from Chile on Article 10(1):

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

Proposal from Mexico on Article 10 (new paragraph):

- (3) The distribution by cable television networks of the non-encrypted broadcasts of a broadcasting organization shall not constitute retransmission, provided that this distribution is:
 - (a) within the coverage of the broadcasting organization,
 - (b) simultaneous and integral,
 - (c) without additional cost for subscribers to the pay television system.

Proposal from Brazil on Article 10:

“ The provision on exceptions and limitations, currently referred to in article 10 of the April non-paper, to be developed on the basis of the Canadian proposals, i.e. exceptions currently allowed for under the TRIPS/ Rome with the explicit addition of:

- disabled persons
- libraries and archives
- legal deposit requirements
- judicial purposes. ”

Article 11
Formalities

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

Article 12
Reservations

No reservations to this Treaty shall be permitted.

Article 13
Application in Time

(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights and the protection of broadcasting organizations provided for in this Treaty.

(2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.

Article 14
Provisions on Enforcement of Rights

(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

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

Proposal from Brazil on Article 14:

Delete Article 14.

ADMINISTRATIVE AND FINAL CLAUSES

Unchanged (SCCR/15/2):

Article 15 – Assembly

Article 16 – International Bureau

Article 17 – Eligibility for Becoming Party to the Treaty

Article 18 – Rights and Obligations Under the Treaty

Article 19 – Signature of the Treaty

Article 20 – Entry into Force of the Treaty

Article 21 – Effective Date of Becoming Party to the Treaty

Article 22 – Denunciation of the Treaty

Article 23 – Languages of the Treaty

Article 24 – Depositary

[End of non-paper]