

PROTECTION OF BROADCASTING ORGANIZATIONS

Chair's Non Paper

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Preamble

[...]

Article 1¹

Relation to Other Conventions and Treaties

- (1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under any copyright or related rights international, regional or bilateral treaties.
- (2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in subject matter carried by broadcast signals. Consequently, no provision of this Treaty shall be interpreted as prejudicing such protection.²
- (3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

Article 2

Definitions

For the purposes of this Treaty:

- (a) "signal"³ means an electronically generated carrier consisting of sounds or images, or sounds and images, or representations thereof, whether encrypted or not.
- (b) "broadcast"^{4 5} means the transmission of a signal by, or on behalf of, a broadcasting organization for reception by the public.

¹ Nothing in this Draft Treaty shall derogate from the obligations that Contracting Parties have to each other under any other treaties addressing copyright or related rights. (Senegal).

² Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts. (Japan).

³ "Signal" means an electronically generated carrier capable of transmitting a broadcast or cablecast (India); "signal" means the conveyance of broadcast programs via electronic means. (Senegal).

⁴ "Broadcast" means the transmission of a set of electronically generated signals by wireless and carrying a specific program for reception by the general public. "Broadcast" shall not be understood as including transmission of such a set of signals over computer networks. (India).

⁵ The process whereby the output signal of a broadcasting organization is taken from its point of origin, this being the point where such a signal is made available in its content format, and is conveyed to any broadcast target area by means of electronic communications. (Senegal).

(c) "broadcasting organization"^{6 7 8} means the legal entity that takes the initiative for packaging, assembling and scheduling program content for which it has, where necessary, been authorized by rights holders, and takes the legal and editorial responsibility for the communication to the public of everything which is included in its broadcast signal.

(d) "retransmission"^{9 10 11} means the transmission by any means by any person other than the original broadcasting organization for reception by the public, whether simultaneous or delayed.

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

[Footnote continued from previous page]

⁶ "Broadcasting organization" and "cablecasting organization" mean the legal entity that takes the initiative and has the responsibility for the transmission to the public of sounds or images, sounds and images, or the representations thereof, and the assembly and scheduling of the content of the transmission. (Japan).

⁷ "Broadcasting organization": the legal entity that takes the responsibility and initiative for assembling programs, and arranges the transmission of programs (in encrypted or unencrypted format) in accordance with a broadcasting schedule, and which takes on editing responsibilities. All content protection is excluded. (Senegal).

⁸ Reference to "audiovisual media services and content editors" to be added. (Monaco).

⁹ "Rebroadcast" means the simultaneous transmission for the reception by the public of a broadcast or a cablecast by any other person than the original broadcasting organization; simultaneous transmission of a rebroadcast shall be understood as well to be a rebroadcast. (India).

¹⁰ "Retransmission" means simultaneous transmission for the reception by the public, via any method, of a wireless transmission of sound or images, or images and sounds, or representations thereof, for reception by the public. (Senegal).

¹¹ "Retransmission" means the simultaneous transmission for reception by the public by any means of a transmission referred to in provisions (a) or (b) of this Article 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. (Japan).

(f) "communication to the public"¹² means any transmission or retransmission to the public of a broadcast signal, or a fixation thereof, by any medium or platform.

(g) "pre-broadcast signal"¹³ means a transmission prior to broadcast that a broadcasting organization intends to include in its program schedule, which is not intended for direct reception by the public.

(h) "rights management information" means information that identifies the broadcasting organization, the broadcast, the owner of any right in the broadcast, or information about the terms and conditions of use of the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast or the pre-broadcast signal or its use in accordance with Article 6.

(i) "transmission" means the sending, for reception by the public, of visual images, sounds or representations thereof by way of an electronic carrier.

(j) [other]^{14 15}

"Broadcasting" means the transmission by wireless means for reception by the public of sounds or images, or sounds and images, or representations thereof; such transmission by satellite is also "broadcasting". Wireless transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent. "Broadcasting" shall not be understood as including transmissions over computer networks.

¹² "Communication to the public" means making the transmissions referred to in provisions (a), (b) or (d) of this Article audible or visible, or audible and visible, in places accessible to the public. (Japan).

¹³ "Pre-broadcast signal" means a private transmission of content to a broadcasting organization which that broadcasting organization intends to include in its program schedule. (South Africa).

¹⁴ "Program" means a discreet package of one or more works protected by copyright or related rights, in the form of live or recorded material consisting of images, sounds or both. (India).

¹⁵ "Cablecast" means the same as "broadcast" when the transmission is by wire and excluding transmission by satellite or over computer networks. (India).

"Cablecasting" means the transmission by wire for reception by the public of sounds or images, or sounds and images, or representations thereof. Transmission by wire of encrypted signals is "cablecasting" where the means for decrypting are provided to the public by the cablecasting organization or with its consent. "Cablecasting" shall not be understood as including transmissions over computer networks.

Article 3

Scope of Application

- (1) The protection granted under this Treaty extends only to broadcasts signals used for transmission by a broadcasting organization, and not to works or other protected subject matter carried by such signals.¹⁶
- (2) The provisions of this Treaty shall not provide any protection in respect of mere retransmissions by any means.
- (3) [no provision]¹⁷
- (4) Any Contracting Party may deposit with the Director General of WIPO a declaration that it will limit the protection provided under this Treaty in respect of broadcasts over computer networks to the [simultaneous and unchanged] transmission by a broadcasting organization of its own broadcasts transmitted by other means, provided that such reservation shall only have effect for a period not exceeding three years from the date of entry into force of this Treaty.
- (5) To the extent that a Contracting Party to this Treaty makes use of the reservation permitted under the preceding paragraph, the obligation of other Contracting Parties provided for in Article 5 does not apply.

¹⁶ The provisions of this Treaty shall provide protection to the broadcasting organizations for their broadcasts on traditional broadcasting and cablecasting media to enable them to enjoy the rights to the extent owned or acquired by them from the owners of copyrights or related rights. (India).

¹⁷ The provisions of this Treaty shall not provide any protection in respect of any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public. (Japan-India).

Article 4

Beneficiaries of Protection

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

(2) Nationals of other Contracting Parties¹⁸ 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 broadcast signal was transmitted from a transmitter situated in another Contracting Party.

Alternative A

(3) In the case of a broadcast signal by satellite the transmitter shall be understood to be situated in the Contracting Party from which the uplink to the satellite is sent in an uninterrupted chain of communication leading to the satellite and down towards the earth.

Alternative B

(3) 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.

¹⁸ Broadcasting organizations whose headquarters are situated in a Contracting Party, or Broadcasting organizations whose broadcasts are transmitted by a device located in the territory of another Contracting Party; Broadcasting organizations broadcasting via satellite from the place 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. (Senegal).

Article 5

National Treatment

Each Contracting Party shall accord to the broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights recognized expressly under this Treaty.^{19 20}

Article 6

Protection for Broadcasting Organizations

Alternative A

- (1) Broadcasting organizations shall enjoy the exclusive right to authorize:
 - i. the retransmission of their broadcast signals to the public, by any means;
 - ii. performance of their broadcast signal in places accessible to the public, for commercial advantage or using very large screens;
 - iii. the use of a pre-broadcast signal intended for them.
- (2) With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised, provided that such protection is adequate and effective.

¹⁹ Each Contracting Party shall accord to broadcasting organizations that are nationals of other Contracting Parties the protection of 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, as well as the rights specifically recognized in this Draft Treaty. (Senegal).

²⁰ Delete "no less favorable than" and insert "the" before "treatment". (India).

Alternative B

- (1) Broadcasting organizations shall enjoy the exclusive right to authorize²¹
- i. the right of fixation of their broadcast signal;
 - ii. the direct or indirect reproduction, in any manner or form, of fixations of their broadcast signal;
 - iii. the retransmission of their broadcast signal;²²
 - iv. the communication to the public of their broadcast signal;
 - v. the making available to the public of the original and copies of fixations of their broadcast signal;
 - vi. the transmission by any means for the reception by the public of their broadcast signals following fixation of such broadcasts signals;
 - vii. the use of a pre-broadcast signal.
- (2) With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised, provided that such protection is adequate and effective.
- (3) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraphs (ii), (iv), and (vi) by providing a right to prohibit.

Article 7

Limitations and Exceptions

- (1) Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Treaty as regards:

²¹ Contracting parties are to apply a right of prohibition for rights of reproduction, transmission, making available, instead of an exclusive right. (Japan).

²² Broadcasting organizations shall enjoy the exclusive right of authorizing the transmission by broadcasting or cablecasting, excluding over computer networks, for the reception by the public of their broadcasts following fixation of such broadcasts. (2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), by providing that broadcasting or cablecasting, without the consent of the broadcasting organizations, of their broadcasts from unauthorized fixations of their broadcasts, shall be prohibited. (Japan).

- (i) private use;
- (ii) use of short excerpts in connection with the reporting of current events;
- (iii) use solely for the purposes of education and scientific research; and
- (iv) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts.²³

(2) Notwithstanding the contents of paragraph (1) of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same or other limitations or exceptions as are applied in connection with works protected by copyright to the extent such exceptions and limitations are confined to special cases that do not conflict with the normal exploitation of the broadcast signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

(3)²⁴

Article 8

Term of Protection

Alternative A

The term of protection to be granted to Broadcasting Organizations under this Treaty shall last for a minimum period of 20 years computed from the end of the year in which the broadcast signal was broadcast.²⁵

Alternative B

No such provision.

²³ Provision must be made for limitations and exceptions that respond to the legitimate needs of visually impaired persons, as well as to the needs of archive services and libraries, provided that these limitations and exceptions do not conflict with the normal exploitation of broadcasts, or unjustifiably prejudice the legitimate interests of broadcasting organizations. To the same end, the need to protect the interests of content owners must be taken into account. (Senegal).

²⁴ Canada recommends that Contracting Parties which did not give broadcasters a right to authorize simultaneous retransmission of unencrypted wireless transmissions immediately prior to joining the treaty be allowed to opt out of the simultaneous retransmission right with respect to unencrypted broadcasts. (Canada).

²⁵ If a Contracting Party provides a term longer than that required under this treaty either in general or for a particular type of broadcast or cablecast, it shall be entitled to grant a shorter term to a broadcast or cablecast originating in another Contracting Party with a shorter term. Such term shall be no less than the term for that type of broadcast or cablecast in that Contracting Party in which the broadcast or cablecast originated. (Canada).

Article 9

Alternative A: Protection of Encryption and Rights Management Information

Contracting Parties shall provide adequate and effective legal protection against unauthorized:

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

Alternative B: 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.²⁶
- (2) Without limiting the foregoing, Contracting Parties shall provide adequate and effective legal protection against:

- (i) unauthorized decryption of an encrypted broadcast signal;
- (ii) removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.

²⁶ Replace by: (1) unauthorized decryption of an encrypted broadcast; (2) removal or alternation of any electronic information relevant for the application of the protection of broadcasting organizations. (India).

(3) Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of 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 broadcast signals, which are not authorized by the broadcasting organizations concerned or permitted by law.

Article 10 (related to 9B; delete if 9A retained)

Obligations Concerning Rights Management Information

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 remove or alter any electronic rights management information without authority;
- (ii) to distribute or import broadcast signals for retransmission or communication to the public, broadcasting, or copies of fixations of their broadcast signals, without authorization, knowing that electronic rights management information has been removed from or altered in the broadcast signals or pre-broadcast signals without authorization.

Article 11

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

FINAL PROVISIONS

[...]

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