

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

General Principles

Nothing in this Treaty shall limit the freedom of a Contracting Party to promote access to knowledge and information and national educational and scientific objectives, to curb anti-competitive practices or to take any action it deems necessary to promote the public interest in sectors of vital importance to its socio-economic, scientific and technological development.

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).

Article 3

The Protection and Promotion of Cultural Diversity

Nothing in this Treaty shall limit or constrain the freedom of a Contracting Party to protect and promote cultural diversity. To this effect:

- (a) In modifying their domestic laws and regulations, Contracting Parties will ensure that any measures adopted pursuant to this Treaty are fully consistent with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
- (b) Contracting Parties also undertake to cooperate so as to ensure that any new exclusive rights conferred by this Treaty are applied in a manner supportive of and that does not run counter to the promotion and protection of cultural diversity.

Article 4

Defense of Competition

- (1) The Contracting Parties shall take adequate measures, especially when formulating or amending their laws and regulations, to prevent the abuse of intellectual property rights or the recourse to practices which unreasonably restrain trade or adversely affect the international transfer and dissemination of technology.
- (2) Nothing in this Treaty shall prevent the Contracting Parties from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market.
- (3) Each Contracting Party may take appropriate measures consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights to prevent or control such practices

Article 5 Definitions

Alternative A

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.
- (c) "broadcasting organization"^{6 7} 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"^{8 9} means the transmission by any means by any person other than the original broadcasting organization for reception by the public, whether simultaneous or delayed.

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).

⁶ "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).

⁷ Reference to "audiovisual media services and content editors" to be added. (Monaco).

⁸ "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).

⁹ "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).

- (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.
- (f) "communication to the public" 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"¹⁰ 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]^{11 12}

Alternative B

For the purposes of this Treaty,

- (a) "broadcasting" means the transmission by wireless means for the reception by the public of sounds or of images or of images and sounds or of the 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

¹⁰ "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).

¹¹ "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).

¹² "Cablecast" means the same as "broadcast" when the transmission is by wire and excluding transmission by satellite or over computer networks. (India).

public by the broadcasting organization or with its consent. Broadcasting shall not be understood as including transmissions over computer networks.

(b) "cablecasting" means the transmission by wire for the reception by the public of sounds or of images or of images and sounds or of the 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.

(c) "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 of images or of images and sounds or of the representations thereof, and the assembly and scheduling of the content of the transmission.

(d) "retransmission" means the simultaneous transmission for the 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.

(e) "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.

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

Article 6

Scope of Application

Alternative A

(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.¹³

(2) The provisions of this Treaty shall not provide any protection in respect of mere retransmissions by any means.

(3) 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.

(4) 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 8 does not apply.

Alternative B

(1) The protection granted under this Treaty extends only to signals used for the transmissions by the beneficiaries of the protection of this Treaty, and not to works and other protected subject matter carried by such signals.

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

(3) The provisions of this Treaty shall apply mutatis mutandis to the protection of cablecasting organizations in respect of their cablecasts.

¹³ 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).

- (4) The provisions of this Treaty shall not provide any protection in respect of
- (i) mere retransmissions by any means of transmissions referred to in Article 2(a), (b) and (d);
 - (ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public.

Article 7

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 Parties¹⁴ 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-

¹⁴ 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).

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.

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

Article 8

National Treatment

(1) Each Contracting Party shall accord to the [national] 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.^{15 16}

(2) The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the provisions in Article 7(3), Article 9(2), Article 10(3), Article 11(2), and Article 12 (2) of this Treaty.

Article 9

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;

¹⁵ 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).

¹⁶ Delete "no less favorable than" and insert "the" before "treatment" (India).

- 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.

Alternative B

- (1) Broadcasting organizations shall enjoy the exclusive right to authorize:
- i. the right of fixation of their broadcasts;
 - ii. the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts;
 - iii. the retransmission of their broadcasts by any means, including rebroadcasting, retransmission by wire, and retransmission over computer networks;
 - iv. the communication to the public of their broadcasts;
 - v. the making available to the public of the original and copies of fixations of their broadcasts;
 - vi. the transmission by any means for the reception by the public of their broadcasts following fixation of such broadcasts. 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 the transmission, without the consent of the broadcasting organizations, of their broadcasts from unauthorized fixations of their broadcasts shall be prohibited;
 - vii. the making available to the public of the original and copies of fixations of their broadcasts, through sale or other transfer of ownership.

(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.

(4) Contracting Parties shall provide adequate and effective legal protection in relation to their signals prior to broadcasting. The means of the protection granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 10

Limitations and Exceptions

Alternative A

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

- (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.¹⁷

(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)¹⁸

¹⁷ 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).

¹⁸ 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).

Alternative B

(1) 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 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 rights 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.

Alternative C

(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations and exceptions with regard to the 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 may, in their domestic laws and regulations, provide, inter alia, the exceptions listed below to the protection guaranteed by this Convention. It is presumed that these uses constitute special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder:

(a) Private use;

(b) The use of excerpts in connection with the reporting of current events;

(c) Ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;

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

(e) The use of works specifically to promote access by persons with impaired sight or hearing, learning disabilities, or other special needs;

