

Intervention of CCIA on the Question of a Treaty for the Protection of Broadcasting Organisations Delivered at the 28th Session of the Standing Committee of Copyright and Related Rights of the World Intellectual Property Organisation

Mr. Chairman, thank you for the opportunity to be heard, and our congratulations to you on your election.

For those not familiar with us, the Computer & Communications Industry Association represents for-profit global technology sector firms operating globally that collectively employ almost one million workers and generate turnover of \$300 billion annually. CCIA has been an active participant in the work of this committee for many years as its members have a significant stake in the outcome.

Mr. Chairman, it seems to us the discussions this week have illustrated the importance of looking closer at a few fundamental issues to facilitate progress.

Firstly, and most fundamentally, fixed signals are a fiction. One can come up with clever arguments to obscure this fact but none can alter reality. Upon reception, however and whatever the receiver is, there is only the programme, already protected by copyright proper. For the avoidance of doubt this includes deferred or near-simultaneous transmissions, as well as making available or on-demand applications.

Secondly, we don't need to torture the copyright system by creating rights for signals just to prevent piracy of them. The existing model in the Brussels Satellite Convention is eminently suited to that task. We are told by the proponents of a treaty that such an approach does not give them sufficient opportunity for action at law to protect their interests, however, they have yet to explain why. After all, if the treaty, to paraphrase Brussels, were to contain the following:

“Contracting Parties shall take adequate and effective measures to prevent the theft or intentional misappropriation of signals which are the object of protection of this Treaty, including any such act in relation to signals prior to transmission.”

the only reasonable interpretation is that parties must ensure the measures taken to implement it are effective, otherwise, why bother having one? And anyway it is easy to imagine a minor addition to make clear that the treaty intends civil or criminal measures being enacted, or both. We look forward to hearing from the proponents why such a regime will not effectively prevent piracy. If those aren't compelling enough reasons to avoid rights, Mr. Chairman, there is another: rights must be accompanied by limitations and exceptions, and since this treaty envisages covering many public broadcasting applications those limitations and exceptions would need to be extensive and mandatory. We're certain crafting those would involve long and difficult negotiations.

Third, Sir, it is an obligation of this institution to assess the real-world impacts of

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the treaties its mechanisms propose to create. Some analysis has been done, but addressing rights-based protection regimes; it is more than time for these efforts to be updated. We therefore join the call of so many member-states for the Secretariat to update key studies and in doing so to ensure equal treatment between rights and non-rights-based signal protection regimes. The *Study on the Social and Economic Effects of the Proposed Treaty on the Protection of Broadcasting Organizations (SCCR/21/2)*¹ should be one of them.

Finally, on the procedure whereby member-states may request technical advice from experts as needed. We believe our members will be happy to help and will ensure any expertise they offer is versed in the real world application of these technologies. In the interests of transparency, we request the Secretariat post all of the requests made this week publicly and collect input, which should include the background of respondents to evaluate their relative knowledge base and perspective, and to publish them *as they are received and in full*.

Thank you Mr. Chairman.

¹ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=144152