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REVISED CONSOLIDATED TEXT ON DEFINITIONS, OBJECT OF PROTECTION, RIGHTS TO BE GRANTED AND OTHER ISSUES

[adopted ~~prepared~~ by the Chair Committee]

REVISED CONSOLIDATED TEXT ON DEFINITIONS, OBJECT OF PROTECTION, RIGHTS TO BE GRANTED AND OTHER ISSUES

I. DEFINITIONS

For the purposes of this Treaty:

(a) "broadcasting"

Alternative A

(a) (1) "broadcasting" means the transmission of a programme-carrying signal by wireless means for reception by the public; 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. Transmissions over computer networks shall not constitute "broadcasting".

(2) "cablecasting" means the transmission of a programme-carrying signal by wire for reception by the public. 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. Transmissions over computer networks shall not constitute "cablecasting".

Alternative B

(a) "broadcasting" means the transmission either 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. Transmissions over computer networks shall not constitute "broadcasting".¹

Alternative C

(a) "broadcasting" means the transmission **by wireless means [FN2]** 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. Transmissions over computer networks shall not constitute "broadcasting".²

FN2: Agreed Statement concerning the definition of "broadcasting": Provisions related to broadcasting **are applicable to cablecasters that transmit by wireless means the programme-carrying signal.**

¹ **Agreed Statement concerning the definition of "broadcasting"**: Provisions related to broadcasting are applicable to cablecasting to those Contracting Parties that include transmission by wired means in the definition of broadcasting.

² **Agreed Statement concerning the definition of "broadcasting"**: Provisions related to broadcasting are applicable to cablecasting to those Contracting Parties that include transmission by wired means in the definition of broadcasting.

Alternative D

“Broadcasting” means any transmission of a programme-carrying signal produced by a traditional broadcasting organization, whether by wire or wireless means for reception by the public. For the purposes of this treaty, transmission over computer networks or any other means shall not constitute broadcasting unless they are carried out by a traditional broadcasting organization.

“Traditional Broadcasting Organization” means the legal entity that takes the initiative and assumes the editorial responsibility for the broadcasting, which includes scheduling and programming the programme-carrying signal. The non-traditional broadcasting organization that transmit by computer networks or any other means but that does not take the initiative or the editorial responsibility of its transmissions shall not be considered broadcasting organization for the purposes of this treaty.

(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) “broadcasting organization” [and “cablecasting organization”] means the legal entity that takes the initiative and has the editorial responsibility for broadcasting [or cablecasting], including assembling and scheduling the programmes carried on the signal. [Entities that deliver their programme-carrying signal exclusively by means of a computer network do not fall under the definition of a “broadcasting organization” [or a “cablecasting organization”].]³

(e) “retransmission” means the transmission for the reception by the public by any means of a programme-carrying signal broadcast by any other entity than the original broadcasting [/cablecasting] organization or someone acting on its behalf, whether simultaneous, near-simultaneous [or deferred].

(f) “near simultaneous transmission” means a transmission **[for the reception by the public by any means of a programme-carrying signal broadcast]** that is delayed only to the extent necessary to accommodate time differences or to facilitate the technical transmission of the programme-carrying signal.

[(g) “deferred transmission” means a transmission **[for the reception by the public by any means of a programme-carrying signal broadcast]** delayed in time, other than a near simultaneous transmission, including transmissions made in such a way that members of the public may access them from a place and a time individually chosen by them.]

³ **Agreed Statement regarding the definition of “broadcasting organization”:** For the purpose of this Treaty, the definition of broadcasting organization does not affect the Contracting Parties’ national regulatory framework for broadcasting activities.

[(h) "pre-broadcast signal" means a programme-carrying signal transmitted to a broadcasting [cablecasting] organization, or to an entity acting on its behalf, for the purpose of subsequent transmission to the public.]

NEW SECTION X

Article 1: 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.**
- (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.

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.

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II. OBJECT OF PROTECTION

Alternative A

(1) The protection granted under this Treaty extends only to programme-carrying signals as broadcast [including pre-broadcast signals] transmitted by, or on behalf of, a broadcasting [or cablecasting] organization, but not to programmes contained therein.

Alternative B

(1) The protection granted under this Treaty extends only to programme-carrying signals as broadcast [including pre-broadcast signals] whenever transmitted by, or on behalf of, a broadcasting [or cablecasting] organization within the term of protection, but not to programmes contained therein.

Alternative A

(2) (i) Broadcasting [/cablecasting] organizations shall also enjoy protection for a simultaneous, near simultaneous [or deferred] transmission by any means [including for a transmission made in such a way that members of the public may access it from a place and at the time individually chosen by them.]

[(ii) Contracting Parties may limit protection of deferred transmissions including for a transmission made in such a way that members of the public may access it from a place and at the time individually chosen by them.]

[(iii) Contracting Parties may limit protection accorded to broadcasting [/cablecasting] organizations from another Contracting Party that chooses to apply subparagraph (ii), to those rights that its own broadcasting [/cablecasting] organizations enjoy in that other Contracting Party.]

Alternative B

(2) Broadcasting [/cablecasting] organizations shall also enjoy protection for a simultaneous, near simultaneous transmission.

(3)(i) Broadcasting organizations may also enjoy protection for a deferred transmission made in such a way that members of the public may access it from a place and at the time individually chosen by them.

(ii) A Contracting Party may provide that a broadcasting organization of another Contracting Party shall enjoy the right in paragraph [Option 1: only if and, to the extent, legislation in the country of the other broadcasting organization provides such a right.] [Option 2: only if the legislation in the country of a broadcasting organization provides comparable protection.]

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III. RIGHTS TO BE GRANTED

(1) (i) Broadcasting [and cablecasting] organizations shall have the exclusive right of authorizing the retransmission of their programme-carrying signal to the public [by any means.]

[(ii) Broadcasting [and cablecasting] organizations shall also enjoy the exclusive right of authorizing the retransmission of their programme-carrying signal in such a way that members of the public may access it from a place and at a time individually chosen by them.]

Alternative A

(2) Broadcasting [and cablecasting] organizations shall also enjoy the right to prohibit the unauthorized transmission of their own pre-broadcast signal by any means.

Alternative B

(2)(i) Broadcasting [and cablecasting] organizations shall enjoy the right to prohibit the unauthorized transmission by any means of their pre-broadcast signal.

(ii) In case a pre-broadcast signal is transmitted to a broadcasting [or cablecasting organization] under an exclusive license, the receiving broadcasting [/cablecasting] organization shall be entitled to injunctive relief in the licensed territory regarding the unauthorized transmission by any means of the pre-broadcast signal.

Alternative C

(2) Contracting Parties shall provide adequate and effective legal protection in relation to the pre-broadcast signals in accordance to the legislation in the country where the protection is claimed.

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IV. OTHER ISSUES

Beneficiaries of Protection

- (1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting [or cablecasting] organizations that are nationals of other Contracting Parties.
- (2) Nationals of other Contracting Parties shall be understood to be those broadcasting [or cablecasting] organizations that meet either of the following conditions:
 - (i) the headquarters of the broadcasting [/cablecasting] 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 the uplink to the satellite is sent in an uninterrupted chain of communication leading to the satellite and down towards the earth.
- (4) The provisions of this Treaty shall not provide any protection to an entity that merely retransmits programme-carrying signals.

[(5) 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.]

Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting [or cablecasting] 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.
- (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 programme-carrying signal and do not unreasonably prejudice the legitimate interests of the broadcasting [or cablecasting] organization.
- [(3) It is presumed that the following, inter alia, constitute special cases which do not conflict with the normal exploitation of the broadcast 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 to specifically allow access by persons with impaired sight or hearing, learning disabilities, or other special needs.;

(f) the use by libraries, archives or educational institutions, to make publicly accessible broadcast protected by any exclusive rights of the broadcasting organization, for purposes of preservation, education and/or research;

(g) any use of any kind in any manner or form of any part of a broadcast where the program, or any part of it, which is the subject of the transmission is not protected by copyright or any related right thereto.]

Obligations Concerning Technological Protection 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 [or cablecasting] 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 [or cablecasting] organizations concerned or are not permitted by law.

Alternative A

(2) Without limiting the foregoing, Contracting Parties shall provide adequate and effective legal protection against the [unauthorized decryption of an encrypted programme-carrying signal.]

Alternative B

(2) Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent third parties from enjoying content in the public domain, as well as the limitations and exceptions provided for in this Treaty.

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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 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 retransmit the programme-carrying signal knowing that electronic rights management information has been without authority removed or altered.

(2) As used in this Article, "rights management information" means the information which identifies the broadcasting [or cablecasting] 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.

Term of Protection

The term of protection to be granted to broadcasting [or cablecasting] organizations under this Treaty shall last, at least until the end of a period of **[20]** [50] years computed from the end of the year in which the programme-carrying signal was transmitted.

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