

LIBRARY CONCERNS WITH THE WIPO BROADCAST TREATY May 2007

The U.S. libraries' position is that there is no compelling public policy reason for the broadcast treaty, given the existence of the Rome Convention and the absence of any evidence of harm suffered by broadcasters. The U.S. should not support adoption of this treaty by WIPO until a compelling case is made for its existence. In any event, a treaty should not be one focused on infringement of an intellectual property right. A better approach - if a treaty does go forward - is to focus on signal piracy by prohibiting particular actions, done for particular purposes, by identifiable actors (i.e., the "theft" model).

What would be the impact on U.S. libraries? U.S. libraries make limited but not insignificant uses of broadcast materials, consistent with exceptions and limitations in the Copyright Act. If the U.S. joined the treaty and Congress implemented its provisions without appropriate exceptions, then these uses might become unlawful. Libraries, therefore, would have to fight for exceptions in the domestic implementation.

Libraries would be especially concerned about the impact upon:

- Classroom instruction by a non-profit educational institution, including some limited performance or display for distance education. Congress amended the Copyright Act several years ago to allow educational institutions to take advantage of technology to teach through distance learning classes, yet the retransmission of broadcast content over the Internet even by qualified institutions for mediated instruction could be hampered by the treaty. For example, in a distance education health class, the instructor might want to transmit a short news segment concerning avian flu or a recently approved AIDS drug.
- Educational and research uses permitted by the Copyright Act. For example, research concerning media depiction of the war in Iraq would include the study not only of news broadcasts, but also late night monologues, talk shows, and dramas that reference the war. Scholarly research on entertainment programming is an important component of research on the evolving culture and customs of our society. In addition, research integrity requires the ability to transmit content to media scholars in multiple locations for parallel and independent analysis.
- Public discourse involving news, public affairs programs, and public domain materials.



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