

Standing Committee on Copyright and Related Rights

Thirty-~~Sixth~~~~Fifth~~ Session

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

prepared by the Chair

PART A - 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"~~

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~~Alternative A~~

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~~(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".~~

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~~(2) "cablecasting" means the transmission of a programme-carrying signal by wire for reception by the public. Transmission 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".~~

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~~Alternative B~~

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~~(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".~~

(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"]. For the purpose of this Treaty, the definition of "broadcasting" does not affect the Contracting Parties' national regulatory frameworks.

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~~¹ Agreed Statement concerning the definition of "broadcasting": Provisions related to broadcasting are applicable to cablecasting.~~

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- (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”~~.*²
- (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 ~~or 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.*
- (h) “pre-broadcast signal” means a programme-carrying signal transmitted to a broadcasting ~~or cablecasting~~ organization, or to an entity acting on its behalf, for the purpose of subsequent transmission to the public.



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² **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.

II. OBJECT OF PROTECTION

(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.

(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.]

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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.*

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

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(2) Broadcasting organizations shall also enjoy the right to prohibit the unauthorized retransmission of their ~~own~~ pre-broadcast signal by any means.

[(3) A Contracting Party may fulfil Article III(2) by providing other adequate and effective pre-broadcast signal protection for broadcasting organizations.]

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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 ~~or 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.

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.

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

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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 ~~for 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 ~~for cablecasting~~ organizations under this Treaty shall last, at least until the end of a period of [50] [20] [x] years computed from the end of the year in which the programme-carrying signal was transmitted.

PART B – PROPOSALS SUBMITTED DURING INFORMAL SESSIONS

I. DEFINITIONS

~~“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 For the purpose of this Treaty, the definition of broadcasting does not affect the Contracting Parties’ national regulatory frameworks.~~

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~~**Agreed Statement concerning the definition of “broadcasting”:** Provisions related to broadcasting are applicable to cablecasting.~~

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

h) “equivalent deferred transmission” means the deferred transmission that corresponds to the live linear broadcasts of the broadcasting organization and is available for up to a limited number of weeks or months after such linear broadcasts, such as online repeats, on-demand catch-up services and highlights of sport events.

i) “closely-related deferred transmission” means the deferred transmission that is broadcast only online, ancillary to the live linear broadcasts of the broadcasting organization and available for up to a limited number of weeks or months, such as parallel sport events, extra footage on news or programs, previews, additional interviews and behind-the-scenes programs.

j) “unrelated deferred transmission” means a deferred transmission that is broadcast only online, but which is not ancillary to the live linear broadcasts of the broadcasting organization, such as pure on-demand streaming channels, or which may be accessed by members of the public without limitation as to time, such as on-demand catalogues that are available after the expiration of the term for online repeats and on-demand catch-up services.

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II. OBJECT OF PROTECTION

Alternative A

Proposal on Paragraph (1)

(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.

Proposal on Paragraphs (2) and (3)

(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.]

Alternative B

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

(2) Broadcasting organizations shall also enjoy protection for:

- (i) a simultaneous transmission;
- (ii) a near simultaneous transmission; and,
- (iii) an equivalent deferred transmission.

(3) Contracting Parties shall provide adequate and effective protection for closely-related deferred transmissions.

(4) (i) Broadcasting organizations may enjoy protection for an unrelated deferred transmission.

(ii) A Contracting Party may provide that a broadcasting organization of another Contracting Party shall enjoy the right referred to in subparagraph (i) above only if the legislation of that other Contracting Party provides comparable protection.

~~III. RIGHTS TO BE GRANTED~~

~~Proposal on Paragraph (2) and new paragraph (3)~~

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

~~(3) A Contracting Party may fulfill Article X(2) by providing other adequate and effective pre-broadcast signal protection ¶~~

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IV. OTHER ISSUES

Proposal on "Beneficiaries of Protection"

(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.

Proposal on Limitations and Exceptions³

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~~(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.¶~~

Proposal on Obligations Concerning Technological Protection Measures

(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 that is unprotected or no longer protected, as well as the limitations and exceptions provided for in this Treaty.

³ ~~The proponents of this proposal wish to indicate that this proposal will subsequently be replaced by a new proposal laid out in document SCCR/35/10.¶~~

~~Proposal on Term of Protection~~¶

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~~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 years computed from the end of the year in which the programme-carrying signal was transmitted.~~¶

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