

ANNEX 1: Excerpts of Selected Statements on the Broadcast Treaty from SCCR 11

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1. Introduction

The World Intellectual Property Organization (WIPO) held the 11th meeting of the Standing Committee on Copyright and Related Rights (SCCR) from June 7 to 9, 2004. The report of that meeting ([SCCR/11/4](#)) includes the NGO statements from creative communities, broadcasters, webcasters, consumer and digital rights groups on the proposed WIPO broadcasting treaty. The following are excerpts from those interventions as summarized in the meeting report.

2. Creative Communities

Actors, Interpreting Artists Committee (CSAI)

The protection of broadcasters should not be modeled on the protection that creators enjoyed. It was necessary to define a restrictive scope of protection, justifying each of the rights accorded. Appropriate studies should be commissioned on the economic impact of that protection.

International Federation of Actors (FIA)

. . . it understood the needs of traditional broadcasters and cablecasters as far as cable originated programs were concerned, to fight against the illegal use of signals. It believed that the Consolidated Text had streamlined some of the most significant proposals put forward by the Member States. However the Consolidated Text did not make any attempt to define either broadcast or content-carrying signals. Such definitions were indispensable to clarify the scope of the new treaty. An important number of the economic rights claimed by broadcasters related to the commercial exploitation of content rather than protection of signals against piracy. The representative stressed the need to carefully separate the protection of signal and content and to grant only the rights that broadcasters needed to fight against signal piracy and to keep a strict balance between different rightholders. It was important to avoid a situation where broadcasters would collect and benefit from revenues generated from exploitation of the work of performers that were key content contributors. It would compromise the already unfair balance between related right owners.

International Federation of Film Producers (FIAPF)

The objective of an instrument to protect broadcasters' rights should have the sole objective of a fight against signal piracy, and the scope of the instrument and the process of preparation of the Text depended upon a clear focus on that objective. It should not be used as an opportunity to extend the scope of activities of broadcasters and permit them to develop new services to the detriment of other rightholders. Audiovisual producers recouped their investment by sales to various economic partners including broadcasters, cable operators, satellite platforms, or through video on demand services. The scope and beneficiaries of the new treaty had to be clearly defined to avoid any destabilization of existing business models that enable film producers to market their works. Any protection for broadcasting organizations was based on investment in the production of an immaterial signal. It questioned the appropriateness of granting broadcasting organizations a right of distribution as provided in Article 10 of the Consolidated Text. Such right exceeded signal protection.

International Federation of Journalists (IFJ)

. . . any protection granted to broadcasting organizations should be balanced with and not negatively affect the position of copyright and related rights holders. Any protection should be granted only to public service broadcasters or full service broadcasters. Webcasting had to be excluded from the scope of the new instrument. Broadcasters should only be granted the rights necessary for the fight against piracy, and such rights should not hamper rights granted to authors or performers. It would be inappropriate to grant broadcasting organizations protection that was not provided to authors.

International Affiliation of Writers Guilds (IAWG)

The representative welcomed the intention to address piracy which threatened not only broadcasting organizations, but also writers who were entitled to royalties and residual payments, based on the use of their material in broadcast services. Broadcasting organizations required protection against piracy, not against authors or society at large. It was vital not to create rights for broadcasters that would conflict or override the pre-existing rights of writers, authors and others. This had been recognized by the delegations of many countries. The broadcasting treaty had to be carefully drafted to specifically address the needs of broadcasting organizations. There was no need to grant rights for non-simultaneous retransmissions, nor making available since they referred to the commercial exploitation and did not prohibit piracy.

International Federation of Producers of Phonograms (IFPI)

Many ideas that had been expressed during the discussions had not found a proper place in the Consolidated Text. This was the case for the position expressed by many governments that the treaty should explore alternative ways to protect against signal piracy, rather than to provide an extended catalogue of exclusive rights. The catalogue of rights could not go beyond the rights enjoyed by holders of rights in the content. The Consolidated Text was not yet comprehensive in reflecting the state of debates. The rights of making available and the right of distribution were not required for the fight against signal piracy and would only be used by broadcasters to broaden their existing range of activities and to claim additional rights over the content contained in the broadcast. The consolidated text did not safeguard the interest of other rightholders. It was also important to maintain the balance between broadcasting organizations and the owners of content, but this was not reflected in the proposed scope nor in the rights proposed for broadcasting organizations. It was in favor of limiting the rights accorded to broadcasting organizations to cases where those same rights were also granted to content owners.

International Music Managers Forum (IMMF)

. . . a signal protection-based instrument was the right approach, and suggested that the best way to protect signals was via signal protection language such as that contained in the Satellites Convention, not by granting related rights to broadcasters since copyright and related rights were designed for the protection of creativity and originality, not signals. Ample reasons had been demonstrated in that direction. It would provide broader protection in a simpler way that would stand the test of time. Its organization, together with other organizations, had drafted an alternative proposal to the Consolidated Text on the basis of Article 2 of the Satellites Convention. Broad signal protection could amount to higher protection than what could be granted on the basis of the Rome Convention or any related rights approach. The IMMF did not

believe that a broadcast signal continued to exist upon fixation; a fixed broadcast was simply the program materials being broadcast. It expected delegations to look more closely at the Satellites Convention approach.

International Organization for Performing Artists (GIART)

. . . protection should be limited to fighting piracy. It would be necessary to exclude webcasting from the scope of protection. The rights granted should not go beyond the Rome Convention, but simply update it. Furthermore they should not be formulated as exclusive rights but as rights to prohibit. Special attention should be given to the avoidance of conflicting effects on the rights of other right owners. Conditions to being party to the new Instrument should include membership of the Rome Convention.

International Federation of Associations of Film Distributors (FIAD)

. . . endorsed the statement made by the coalition of rightsowner organizations, in particular in relation to Articles 6, 9, 10, 11, 12, and 24, and stated that the protection of signals should not disadvantage other protected rightsholders.

International Confederation of Societies of Authors and Composers (CISAC) speaking also on behalf of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM),

. . . three issues of concern. First, what was at the stake was the appropriate means by which broadcasting organizations could protect their legitimate interests. Second, great care had to be taken when delineating the rights to be granted to broadcasting organizations. It would have an impact on those who are involved in the creative process. The lack of creativity with regard to broadcasts should have a restrictive effect on the extent of protection granted by this instrument to broadcasters. A high level of protection should not be granted to broadcasters. Third, with respect to the beneficiaries of protection of any new instrument, he noted widespread concern among the creative community and delegations in regard to the position of the United States of America with respect to webcasting, and stated that the extension of protection to webcasters was premature and undesirable. Webcasters should be excluded from the discussions. In relation to the preamble, he noted that the reference to the benefits of the possible new treaty for authors and the creative community should be deleted. Alternative A to Article 1 should not be limited to international conventions protecting performers and phonogram producers. Further clarity was required. In relation to Article 1 (2), further clarification was required on how the new treaty would not affect underlying rights. One of the possible ways of doing this would be to provide that the need for authorization of the underlying rightholders would not cease to exist simply because the broadcaster had been required to give his authorization. Protection had to be limited to broadcast signals while respecting longstanding principles of intellectual property protection.

American Film Marketing Association (AFMA)

. . the object of protection in these discussions should be the signal rather than the contents of broadcasters' transmissions. Rightsowners existed long before a broadcast was created, and contracted with an intended transmitter based on specific rights. It supported the statement

submitted by the coalition of rightsholders. The Consolidated Text demonstrated that wide misinterpretation existed as regards substantive issues including definitions. There was a lack of understanding of the operators' practices, whether on cable or satellite, in respect of simultaneous retransmissions which differed widely from one country to another. Most European and North American audiovisual producers had mandated collective management of their retransmission rights to AGICOA, representing content producers that negotiate with simultaneous retransmission organizations. There was a missing reference to primary broadcasters in the debate, the only organizations that contracted and applied specific rights, those that allowed or prohibited retransmission of their signals by others. When broadcasters were themselves producers they already enjoyed protection in the area of retransmission. They did not want to grant equal rights to retransmitters that did not originate scheduled transmissions but merely carried another broadcaster's signal. This category of operators should not be included in the category of broadcasters. Simultaneous retransmission needed to be properly defined.

Associação Paulista de Propriedade Intelectual (ASPI)

. . . recognized the need to enhance protection of broadcasting organizations to fight against piracy. However, the implementation of a broad definition of broadcasting and cablecasting was a matter of concern. Webcasters and cablecasting organizations could not be classified as broadcasters when they did not produce content nor have other social value

3. Consumer and Digital Rights Groups

Electronic Frontier Foundation (EFF)

Article 16 would harm the dissemination of information in the public domain, as broadcasters would be able to restrict the distribution of content that was not copyrightable, was not in the public domain or was made available for distribution by its creator.

IP Justice

. . . questioned Articles 8 to 12, which established rights for broadcasters that were based upon the fixation of a broadcast signal. However, a broadcast signal existed only in the air and disappeared upon reaching receiving devices, so it was impossible to "fix" a broadcast signal. Moreover by including Internet transmissions in its scope, the treaty went beyond its stated objective and proposed to regulate an enormous breadth of ordinary consumer activity, endangering freedom of expression on the Internet.

Civil Society Coalition (CSC)

The real objective of the treaty was to allow broadcasters to benefit economically from exploitation of the public domain and the rights of other right owners. The Text did not distinguish between copyright material and the public domain, risking harm to the free flow of information. If that were not the purpose, it would suffice to make clear that technological protection measures and the term of protection did not apply to broadcasts containing public domain material.

Union for Public Domain (UPD)

The treaty could be combined with the use of material that by nature should be accessible to the public, after the period of protection had expired. Broadcasting did not necessarily require creativity as criteria for protection and this entailed the risk that protection could be granted without limits. Article 18 relating to formalities was also of concern.

Public Knowledge

. . . supported the statement made by the IMMF. He referred to the statements of the Delegations of India and Chile, that highlighted that any rights granted to broadcasting organization should not diminish the rights of content owners and public access to information.

European Digital Rights (EDRI)

. . . treaty should be signal-centric and should not introduce a new layer of rights, as these would conflict with existing copyright protection. This would damage the interests of copyright holders and the public. Broadcast rights should not restrict the public domain. Transmitted works currently without copyright protection, due to expiry of the term of protection or lack of originality, would become subject to a new broadcast right. This could effectively remove them from the public domain and make them inaccessible to users, even if this was not the intention. If necessary, protection for webcasters should be provided in a separate instrument that could be tailored to the specific characteristics of this medium.

4. Broadcasters

Association of Commercial Television in Europe (ACT)

There was probably wide consensus that the signals transmitting that event should be protected against unauthorized retransmission. Those willing to limit the ongoing process to an anti-piracy agenda should explain why the skills and investment which a broadcaster had put into its transmitted schedule would be less worthy of protection than the similar skills and investment which a record company had put in the production of a successful session. Many arguments had been advanced. It had never been a requirement under the Rome Convention that protection would be granted to original broadcasts.

Asia-Pacific Broadcasting Union (ABU)

Protection under the proposed treaty should be granted only to traditional broadcasters who had adequately justified their need for protection and whose rights required immediate updating. The updating of broadcasters' rights was for the protection of the broadcast signal, to enable the broadcasters to continue their mandate of public service which included providing education and access to information. Unlike the new forms of broadcasting, traditional broadcasting continued to provide services to the public free of charge. Traditional broadcasters believed there was enough consensus to schedule a diplomatic conference in 2005.

European Broadcasting Union (EBU)

The purpose of the proposed treaty was the updating of the existing signal protection under the Rome Convention. That protection would not have the effect of putting a limitation on public domain material. Such interpretation was based on confusion between signal and content. A right to prohibit, being less than an exclusive right to authorize, was also based on confusion between the use of the signal and the content.

International Association of Broadcasting (IAB)

It was necessary to take a decision on the exclusion of webcasters in order to promote a solution for the minor pending differences in other areas. It was not possible to establish a relationship between the protection of audiovisual performers and that of broadcasters. The first were expressly excluded from protection in the Rome Convention. Moreover they had enjoyed a lengthy process of discussion that failed to achieve an agreement in the 2000 Diplomatic Conference. The protection accorded by the Rome Convention, and that proposed in the Consolidated Text, did not give broadcasters rights over content belonging to other right owners, nor over public domain material. It was necessary to speedily proceed to exclusion of webcasting from the scope of protection, solve the minor pending differences and recommend that the General Assembly convene a diplomatic conference.

National Association of Broadcasters (NAB) so expressing the views of the North American Broadcasters Association (NABA)

If content owners did not want to be part of the broadcasting process, they could choose to distribute their works in other ways. If they chose to become part of the process and to use the signals to exploit their works, they should then be willing to be subject to protections for broadcasters against the exploitation of the signal. Anyone wanting to exploit content that was broadcast would still have to secure rights to do so under existing licensing schemes. On the issue as to whether the treaty should be based on an just antipiracy approach, he noted that the treaty should do more by affording broadcasters with exclusive rights in their signal. Most broadcasters operated on a single channel, had one revenue stream, and were available most of the time free over the air. They competed with multichannel delivery channels with multiple revenue streams. The broadcasting systems provided multiple benefits to society in terms of political dialogue and cultural enrichment. If broadcasters were to continue delivering these services, they must have the flexibility for alternative business models that might increasingly include the reproduction, making available, and distribution of broadcasts.

5. Webcasters

Digital Media Association (DIMA)

. . . webcasting was important, and had to be included in the scope of the new instrument
There was no basis to exclude large webcasters from the scope of the instrument while including small broadcasters. . . . Exclusion of webcasting from the scope of the new treaty would amount to an outdated treaty. There was no technological basis for denying protection.