

THE OBJECTIVES, SPECIFIC SCOPE AND OBJECT OF THE PROPOSED WIPO BROADCASTERS' TREATY

Signatory broadcasting unions:

ABERT, ABU, ACT, AER, ASBU, AUB, CBU, EBU, IAB, NAB (USA), NABA, OTI

THE OBJECT AND BENEFICIARIES OF THE TREATY ARE CLEARLY DEFINED

- What explains the need for a rights-based Treaty for broadcasters? Technical means have evolved, but it is still broadcasters that take the initiative for assembling, scheduling and arranging for the **transmission of programme output**, for which they take full legal and editorial responsibility. These are the defining and decisive elements.
- The object of protection is therefore wholly **independent of the ownership of any underlying rights** in the content which is being transmitted.
- In meeting the growing **demand for time- and place-convenient access** to broadcasters' signals, broadcasters must be able to use all technological means and media platforms that exist today and will be developed in years to come, so as to deliver their signals in the way that best suits their viewers and listeners.
- A Treaty to update the broadcasters' neighbouring right with these objectives is in **conformity with the WIPO process and the 2007 General Assembly mandate**. In 1997, a WIPO Conference in Manila (the Philippines) confirmed that the broadcasters' issue should be developed in the form of a Treaty. The 2007 GA mandate states that the SCCR should aim to finalize, on a signal-based approach, the objectives, specific scope and object of protection with a view to submitting to the Diplomatic Conference a revised basic proposal. A draft for such a single text is now on the SCCR's table.
- The Treaty does **not create new rights for mere webcasters**. Via its definitions and scope of application, the Treaty clarifies that the protection extends only to signals used for transmissions by a broadcasting organization.
- The Treaty is **of interest to all countries in the world**. In the half century since the Rome Convention the reach of broadcasting has extended hugely: there are in 2014 many more broadcasters, serving many more viewers and listeners in every corner of the world; the growth of broadcasting capacity is in fact an index of development.
- In both developed and developing countries, a healthy broadcasting system will continue to provide **societal benefits** of free and independent journalism, in addition to social and economic development and employment opportunities. Broadcasters' ability to invest in sports, informational, educational and cultural programming, and to enable access thereto on any platform will be adversely affected if broadcasters cannot fully exploit and protect their signals. This applies worldwide.

THE SCOPE OF THE PROTECTION IS LIMITED TO WHAT IS NECESSARY

- The Treaty will **modernise** the international protection of broadcasting organisations. Its adoption will ensure that there is a generally accepted world-wide norm that provides protection against the unauthorized use of the broadcast signals in countries other than the country in which they originate. These rights are not “unprecedented”. On the contrary, the European Union has provided a high level of protection for broadcasters for more than a dozen years without any suggestion from other stakeholders that such rights have operated to their disadvantage.
- The Treaty **must be relevant**. What this means is that it cannot turn its back on twenty-first century technology; in other words it must provide rights that fit with the way broadcasters actually work today. Without effective rights to combat free-riding, broadcasters will lose the incentive to invest, to seek out and distribute high quality content, and to foster new distribution streams, such as secondary digital channels. A Treaty based on twentieth-century technology would be a futile and time-wasting exercise.
- **The Brussels Convention is not an appropriate model**, either structurally or substantively, to provide the rights and protections that broadcasters require in the 21st century. It applies only to point-to-point satellite signals and therefore does not apply to signals intended for direct reception by the public, it provides no substantive rights, and it has no enforcement mechanisms for broadcasters.
- A **"right to prohibit"**, instead of an exclusive right, would be **ineffective**. As under the Rome Convention, broadcasters should have the **exclusive right** to authorize or prohibit use of their signals (other than in accordance with exceptions). Especially in sports and news programming, it is *vital for a broadcaster to be able to obtain an immediate remedy by way of an injunction*. Experience has shown that if the broadcaster has to rely on rights derived from third parties, the time taken to satisfy the court means that relief is in effect denied because the damage has already been done.
- The Treaty **embraces freedom of expression**. The idea that protection for broadcasters blocks public access to public domain material is ill-conceived: it confuses the question of use of the *signal* with use of the *content*. Anybody is free to use public domain material obtained from the same source as the broadcaster. So far as copyright protected content carried by the signal is concerned, nothing in the Treaty has any effect on the relevant exceptions and limitations.
- The Treaty **respects authors', performers' and producers' rights**. All the rightholders in the broadcast content automatically benefit from the broadcasters' ability to take effective action against pirates. At the same time, content rightholders are not refrained in exercising their own rights against third parties.
- Granting updated rights to broadcasters will **serve the public interest**. The Treaty will not prevent consumers from access to archives of sporting or news events. On the contrary, treaty protection ensures that consumers will be able to continue to enjoy the type of sports and news events which they expect.