Comments on SCCR/48/3 March 18, 2026 WIPO Broadcast Treaty Text

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Introduction

The World Intellectual Property Organization (WIPO) has published SCCR/48/3, a draft WIPO Broadcasting Organization Treaty dated March 18, 2026. The document is 47 pages long with 17 Articles and a large number of explanatory notes.

The explanatory notes are not always helpful and sometimes make assertions that are in conflict with reasonable if not likely interpretations of the proposed text in the articles.

The WIPO negotiations on this broadcasting treaty began more than 25 years ago, and the world has since seen dramatic changes in technology and business models. This is even more true if one considers the broadcasting treaty an update of the 1962 Rome Convention provisions on broadcasting.

In 1962, nearly all, if not all, broadcasting would be described as one-to-many over the air transmissions of programs, some live and some recorded, available to the public for free, without encryption or passwords, and often using licenses with public service obligations.

Today, in some countries, nearly all one-to-many transmissions of audiovisual content (what we have traditionally called television) are provided over digital platforms that permit and often use encryption, passwords and subscriptions. Free, ad-supported services still co-exist, but many of the most valuable programs, recorded or live, are on subscription services.

Not only do broadcasting organizations have the ability to use encryption, passwords, and paid subscriptions for services, but the delivery of programs is no longer a strictly linear feed to a mass audience. One-to-one streams have replaced one-to-many broadcasts for much content, with the leading exceptions being sporting events and some (but not all) news reporting.

Does it make sense for the WIPO SCCR to spend its time on broadcasting, and if so, what problem is WIPO trying to solve?

Piracy

The argument that the Treaty is about piracy is weak. Broadcasters that use encryption (technical protection measures or TPM) and passwords (digital rights management or DRM) already benefit from protection in WIPO treaties on the rights of authors, producers and performers: the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) articles 18 and 19, and the Beijing Treaty (BTAP) article 15 and 16. Subscription services are also governed by terms of service agreements, and many countries sanction theft of cable or satellite services through other legal regimes.

The WCT, WPPT and BTAP provisions on TPMs and DRM are limited to the exercise of the specific rights in each treaty, but in practice, they have broader effects, as broadcasters don't switch encryption off for public domain materials, and many national laws, including those modeled after the US Digital Millennium Copyright Act (DMCA), prohibit circumventing access controls, even if the ultimate goal is to access public domain material, as long as the material is part of a protected system.

Some broadcast treaty advocates have argued that they lack standing to bring timely enforcement actions in courts in some jurisdictions, for material for which they do not hold documented rights over the content. Proponents argue they need an independent related right they can assert without having to produce a contractual right to enforce a copyright held by another entity. If this is a problem in practice, it can be addressed through a model law or a far simpler treaty.

Live Events

It is sometimes argued that live events, particularly live sports, lack copyright protection. This is offered without actual examples of countries where sporting event broadcasts are in the public domain; the significant fees being paid for rights to broadcast live sporting events paint a different picture. If there is an actual problem of piracy for live sporting events that cannot be addressed with existing laws, someone should explain what it is and propose a narrow remedy.

Some of the piracy-related issues for live sporting events are related to the uneven rollout of realistically priced subscription options for streaming services, and the frustrations faced by fans

dealing with various geoblocking schemes. These are business model issues, and not intellectual property concerns.

Who is a Broadcaster? What is a Programme?

The Treaty definitions have evolved over time. In the SCCR/48/3, March 18, 2026 draft, the definitions of broadcasting organization and program read:

> "broadcasting organization" means the legal entity that takes the initiative and has the **editorial responsibility** for the transmission, **by any means**, of a programme-carrying signal for reception **by the public**, including **assembling and scheduling** the programmes carried on the signal; the programmes of a broadcasting organization form a **linear programme-flow**; this definition does not affect in any way the definition of broadcasting organizations in the domestic legislation of the Contracting Parties applicable for such purposes that are not regulated by this Treaty;
>
> "programme" means a body of live or recorded material consisting of images, sounds or both, or of representations thereof;

Being a legal entity is not a high bar.

Taking "editorial responsibility for the transmission" means something, and it's a bit more restrictive than some earlier definitions, which referred to "responsibility for the transmission."[1] But what does this mean in practice?

- Does a cable television system that has hundreds of channels, nearly all of which are provided by third parties, qualify as a broadcasting organization? Is packing many channels together involve taking "editorial responsibility for the transmission"? Is CNN the broadcaster, or is Vodafone or Tata Play?

- CNN assembles and schedules the programs on its channel. Vodafone, as a distributor of third-party channels, generally does not take editorial responsibility for the internal flow of the CNN channel, however, the platform does take editorial responsibility for the "multiplex" or the "package", choosing which channels to include and how they are bundled.

- At the SCCR, cable and satellite providers seem to assume they are "Broadcasting Organizations."

- If the treaty grants "Broadcasting Organizations" an exclusive right to authorize retransmission, and both CNN and Tata Play claim to be "Broadcasting Organizations," who owns the right? If both are broadcasting organizations, do both have to grant authorizations?

[1] In SCCR/12/2 Rev.2; May 2, 2005, the definition was: "broadcasting organization" and "cablecasting organization" mean the legal entity that takes the initiative and has the responsibility for the transmission to the public of sounds or of images or of images and sounds or of the representations thereof, and the assembly and scheduling of the content of the transmission.

Linear-Programme Flow

This requirement can be read to exclude on-demand services (although the Treaty tries to include them elsewhere). There is no requirement that the linear flow is 24/7, or even every day. A podcaster that announces a schedule for its content, even once a week (common for many popular television shows and podcasts) or once a month, would seem to qualify. If a streaming service for live sporting events qualifies, why not a podcaster with a schedule, or a government body that webcasts its meetings? Is WIPO a broadcasting organization? It webcasts the SCCR and other meetings. Does any Internet content that is associated with a schedule qualify?

Twitch, YouTube Gaming, Kick, etc

Twitch, a service owned by Amazon, is perhaps the largest live-streaming platform in the world, with 240 million monthly active users in 2025. On Twitch, the individual streamer (the "content creator") decides what to play or say, and chooses when to go live. These streams can be seen as linear program flow, in the sense that they are scheduled.

If a multichannel service like Vodafone, Tata Play, O'Global, or YouTube TV qualifies as a broadcasting organization, because the "editorial" act is selecting which channels to include in its base package, a high-level curation of "the flow," then Twitch does the same thing, on a more granular level. Twitch strikes "Partner" and "Affiliate" agreements with creators. It actively curates its homepage, promotes specific "Categories" and enforces "Community Guidelines" (editorial standards) that are often stricter than cable TV. If choosing to carry CNN is an editorial act for YouTube TV, then choosing to promote and host Ninja or Critical Role is an editorial act for Twitch. Twitch also runs "Twitch Presents" channels that air marathons of old TV shows (e.g., Power Rangers or Joy of Painting) in a strictly scheduled, 24/7 linear format. In these instances, Twitch is indistinguishable from a traditional cable channel.

Social Media More Generally

Facebook, Instagram, YouTube, X, Reddit, TikTok, Telegram, Linkedin, Threads, Bluesky, WChat, Weibo, LINE, Naver, Zalo, and other social media apps all provide linear fees. Like the Twitch example above, they provide various degrees to curation of the content, providing rules for acceptable content, and featuring or promoting content through algorithms and other measures. In many markets, a handful of US based media companies (Meta, Alphabet, Microsoft, or X Corp) have the dominant market share.

The issue of who qualifies as a broadcaster in social media platforms is important. For user uploaded and streamed content, on platforms like Twitch, YouTube, Facebook, Instagram, or X, do the platforms qualify, in the same way a multichannel cable or satellite system does, or the entities streaming the content, or do both qualify as broadcasters?

Under the definitions in SCCR/48/3, the distinction between a social media platform and an individual content creator is legally blurred, as both may technically meet the criteria of a "broadcasting organization." This creates a scenario where multiple layers of new property rights overlap on a single stream.

Spotify and Other Music Streaming Services

Spotify and other music streaming services provide playlists that engage linear streaming, sometimes branded as radio stations. Does this meet the definition of “**assembling and scheduling**”? Certainly for assembling. The platform curates and bundles specific tracks together, Does the linear nature of the playlist qualify for scheduling? Because these playlists are "linear" (the user doesn't choose the next song; the platform does), they have features of a schedule. If a user hits "Play" and a pre-set sequence follows, this may be seen as a type of scheduling, even if the "start time" is unique to that user. Is the stream “available to the public”? Many Spotify created playlists are available to anyone. Negotiations should answer the question, in the text, does a scheduled flow of programs, created by an algorithm, everyone or for an individual subscriber, qualify as a broadcast?

To the Public

Remarkably, "the public" is used throughout the treaty as a load-bearing term but is never defined.[2] It appears in:

- **Article 2(a)** — the definition of "broadcasting organization" requires transmission "for reception **by the public**"
- **Article 2(e)** — "retransmission to the public" means simultaneous transmission "for the reception **by the public**"
- **Article 2(f)** — "pre-broadcast signal" is defined precisely by *not* being intended for reception by the public
- **Article 3(2)** and **(4)** — scope of application provisions also turn on reception by the public

Does a broadcast have to be available to anyone, or can it be only available to a set of identified recipients? A treaty that defines a broadcasting organization partly by the fact that it transmits for reception by the public suggests that an organization that transmits exclusively to a closed or subscription group may fall outside the definition. That said, in practice, most of the broadcasters pressing hardest for this treaty operate precisely on conditional access / subscription models and geoblocking.

One assumes that a WhatsApp chat, a closed Zoom call, or a listserve may be excluded, although even that is not clear.

Some dioceses and religious orders run private streaming portals exclusively for members, clergy, or formation students. Some contemplative orders (Benedictine, Cistercian) have streamed liturgies or formation content accessible only to oblates or retreat participants.

The Church of Jesus Christ of Latter-day Saints operates channels and streaming content restricted to temple-recommend holders or members logged into their accounts, and certain instructional and leadership content is not available to the general public. Some Jewish community organizations (JCCs, synagogue networks) have streamed educational and cultural programming behind membership walls.

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[2] The absence of a definition is a drafting choice consistent with the broader tradition of WIPO related rights treaties. The WPPT and BTAP also use "the public" without defining it.

Various political parties run member-only video platforms or gated webinar series; the UK Labour Party and Conservative Party have both done this for internal conferences.

Trade unions often stream bargaining updates, internal votes, and member education behind login walls restricted to dues-paying members. The ABA, AMA, and similar professional associations restrict much of their CLE/CME video content to members.

Email Listservs, Forums, Group Chats

KEI operates several listservs. Our ip-health listserv has 2,536 members. We receive email messages, and after they are cleared by a moderator (to avoid spam or off-topic posts and discourage personal attacks) the message is broadcast to the list membership.

The SCCR/48/3 text defines a program as “a body of live or recorded material consisting of images, sounds or both, or of representations thereof,” and messages to a listserve seem to qualify.

There are countless listservs, forums and group chats, many of them public, that broadcast content to its members and are a body of content distributed in a linear flow.

Adult Content

The significance of adult content on the internet is immense, both in terms of technical infrastructure and economic impact. While often discussed in hushed tones, it has historically been a primary driver of web innovation. Some estimates suggest that adult content accounts for 10% to 15% of all internet traffic. The industry was an early adopter of high-quality, low-latency video streaming and optimization long before mainstream media transitioned to digital. The industry is currently a major investor in VR (Virtual Reality) and 8K video, pushing the limits of hardware and high-speed data transmission. There has been a massive shift toward direct-to-consumer platforms (like OnlyFans or Fansly). Services like OnlyFans primarily function as a one-to-many broadcast system. When a creator "goes live," they are typically broadcasting a single video stream to their entire subscriber base (or anyone who paid the "entry fee" for that specific stream). All subscribers see the same live video simultaneously. The adult industry's reliance on "one-to-many" live streaming means it would be one of the largest sectors impacted by a treaty that grants legal power to those who "assemble and schedule" internet transmissions.

Mixed Content

The draft treaty protects the transmission of programs. If an organization acts as a "broadcasting organization" for some of its activities (one-to-many linear broadcasting) but acts as a different type of service provider for others (e.g., on-demand streaming or hosting user-generated content), the broadcasting organization still qualifies as a beneficiary for the content that qualifies. The fact that the organization has mixed content does not exclude everything and nor does it include everything.

Infringing Content

The treaty focuses on the signal as the "object of protection," not the content. If a broadcaster transmits a film without a license (infringement) and then "fixes" (records) that broadcast, the treaty grants them a legal right over that recording. Even though the broadcaster is an infringer, they now possess a new, independent legal right to sue anyone else who copies that specific recording. Because the treaty does not mandate that the underlying content must be legally licensed for the signal protection to apply, the fixation right technically attaches to any signal the broadcaster puts out, regardless of the legality of the content within it.

Artificial Intelligence-Generated Content

In most if not all jurisdictions, works created entirely by generative AI are not protected by copyright. Because the treaty focuses on the signal as the "object of protection," not the content, it will provide a mechanism for these works to obtain protection. The entities (loosely) defined as broadcasting organizations will be able to obtain a layer of exclusive legal control over AI-generated material that would otherwise remain in the public domain.

What is a Signal?

When it was first proposed in the SCCR to have a signal-based treaty, it was an attempt by initial proponents to avoid creating a new layer of rights over the content. Their intention was to have temporary protection against piracy during the period of the transmission, with no post-fixation rights. The logic was that protection should be ephemeral.

Once the terminology was accepted, broadcasters wanted to redefine what this meant. The BBC described signal protection as a perpetual form of protection that survives the transmission itself, giving the broadcaster an exclusive right over a fixation of content, including public domain content, received from a BBC transmission.

The BBC’s argument was if you obtained the content from the BBC, regardless of ownership, if any, of a photo, a recording, or an audiovisual work itself, the BBC had an independent right associated with having provided the audience with the content. In this interpretation, the signal was indeed a layer of ownership. It only applied to the fixation received from the broadcaster, but it was exactly what many of the signal protection advocates were trying to avoid, post fixation rights that require clearing rights from companies, independent of the holders of copyright or performer rights, even when the broadcasters did not create, own, license or compensate the holders of copyright or performer rights, and even if the broadcaster is transmitting content the broadcaster is infringing.

In short, the BBC and other major broadcasting lobbies have pushed to redefine the signal as something that "survives" the transmission, and by granting rights over the fixation (the recording), the signal effectively becomes a permanent digital object that the broadcaster "owns," regardless of the content's status.

This is not a new issue; it was discussed during the negotiations on the 1974 Brussels Convention, the agreement that, for some, is the model for signal protection. During those negotiations, there was the exact same confusion regarding the effective duration of measures.

Excerpt from: Love, James, "The Trouble With the WIPO Broadcasting Treaty" (2023). Joint PIJIP/TLS Research Paper, Series. 85.
https://digitalcommons.wcl.american.edu/research/88

The duration of measures

Article 2 of the Brussels Convention required the duration of protection, if any, to be fixed in domestic law, without providing further guidance. For all of its flexibility, the Brussels Convention left ambiguity as to what it means to protect a "programme-carrying signal" separately from the underlying content being transported. The report of the General Rapporteur described the question of the duration of measures as "a very tough nut to crack" as well as concerns that works in the public domain would be protected.7

/fn7./ Report of the General Rapporteur. "Paragraph (2): Duration of Measures 85. Throughout the preparatory work on the Convention, from its earliest beginnings in Lausanne, there had been a division of opinion as to whether a minimum limit should be attached to the length of time a Contracting State must take the measures required. At Nairobi, because of the fundamental change in philosophy, additional questions were raised as to whether a provision establishing a minimum term remained appropriate since the treaty was no longer based on private rights. The question finally had to be decided at Brussels, and it proved a very tough nut to crack. Formal proposals dealing with the matter were put forward in the following documents: UNESCO/WIPO/CONFSA/9 (Switzerland); 12 (Italy); 14 (Mexico); 15 (United Kingdom); 17 (Australia); 1-3 (France); 19 (Japan); 21 (Working Group); and 33 (Algeria, Brazil, Central African Republic, Czechoslovakia, Arab Republic of Egypt, Ghana, Guatemala, Hungary, Ivory Coast, Mexico, Morocco, Senegal, Tunisia, Union of Soviet Socialist Republics, Ukrainian Soviet Socialist Republic). 86. The debates on this question began with a series of general statements iterating the various points of view. Those favouring the retention of a minimum term took the position that, without a provision such as Article 3 or the Nairobi draft the Convention could be interpreted either as imposing a permanent obligation with respect to signals that have been recorded, or as presenting the opposite danger: that States might regard their obligation to take "adequate measures" as fulfilled shortly after the satellite emission. Some concern was also expressed as to whether countries party to the Rome Convention could adhere to a convention not requiring a minimum term or twenty years for broadcasts; however, this problem appeared to have lost much of its importance in the context of the Nairobi compromise. 87. Several delegations urged complete deletion of the article on the ground that a provision creating a minimum term would be inconsistent with a treaty carrying no obligation to protect private property rights and leaving States free to decide for themselves the most effective means for preventing distribution of satellite signals by unintended distributors. It was also argued that, although a specified minimum term may be relevant when it comes to the programme-content of a signal, it becomes difficult to apply logically if one is speaking only of the signal as such. Some delegates were also troubled by a legal situation in which new terms would start for particular signals upon each new emission, even though the programme contained in the signal might be old or even in the public domain."

The Fixation Right

The explanatory notes on the fixation right make all sorts of assertions, but these are not part of the treaty, unless elevated to agreed upon statements or otherwise included in the treaty text. This is the elephant in the room. If there is a fixation right, what are its consequences? Does this create a perpetual exclusive right in the fixation, a temporary right, or no post fixation right? Is this all left up to each contracting party? It is clearly what broadcasters like the BBC want. They want a perpetual right associated with any future use of the content contained in that fixation.

Instead of protecting only the "signal," whatever that means, the broadcasters want the fixation right to act as a legal bridge to extend a broadcaster's control long after the initial transmission has ended.

Limitations and Exceptions may be Narrower than for Copyright

In Article 11, “Contracting Parties may” provide for exceptions, but are not required to even provide the same types of exceptions they have for protection of copyright in literary and artistic works, and the protection of performer rights. In copyright, Berne Convention members are required to exclude from protection news of the day, and the quotation exception is mandatory. Neither limitation or exception is mandatory in the broadcasting text.

Concluding Comments

There are many issues with the draft text of the Broadcast Treaty, and this briefing note has only focused on a few. In general, the proposal does not solve any known problem, and creates new ones. It has the practical effect of concentrating ownership of rights for a handful of very large media and technology companies located in a small number of countries.

It cannot be emphasized enough that the broadcasters are seeking rights over content that they don’t create, own, license, or remunerate, and they want those rights even if they are infringing someone else's works, or the content is in the public domain.

What are the options for the Committee going forward?

1. Remove broadcasting as a permanent agenda item for the SCCR,
2. Draft a different instrument, to address the putative problems broadcasters face regarding piracy. For example, consider a model law or joint recommendation to address gaps that may exist in some countries regarding the protection of live broadcasts.
3. Narrow the treaty to live events, only, including sports.
4. Direct the WIPO Secretariat to provide technical assistance to members that want to strengthen signal piracy laws.

If there is an actual problem, use a scalpel, not a cleaver or a wrecking ball to fix it.

Resources

DRAFT WIPO BROADCASTING ORGANIZATIONS TREATY, prepared by the SCCR Chair in cooperation with the SCCR Vice-Chairs and facilitators, March 18, 2026, SCCR/48/3

2023. James Love, “Comments on the September 6, 2023 Draft of a WIPO Broadcasting Treaty, the Definitions, Scope of Application, National Treatment and Formalities” (2023). Joint PIJIP/TLS Research Paper Series. 110. https://digitalcommons.wcl.american.edu/research/110/

2023. James Love. “The Trouble With the WIPO Broadcasting Treaty.” Joint PIJIP/TLS Research Paper, Series. 85. March 2023. https://digitalcommons.wcl.american.edu/research/88/