

23 October 2019

**Re: Objections to the Proposed WIPO Broadcasting Treaty**

Dear delegates to SCCR 39,

We oppose the Chair's proposal for a broadcast treaty.

The proposal would give broadcasters effectively perpetual rights over content that they do not create, own or license, including works where there is no underlying copyright or where the copyright holders have not been paid and/or license their works for use by the public at no cost, such as under Creative Commons licenses.

The SCCR work on broadcasting is clearly deeply uninformed as to the dramatic rise of new Internet streaming technologies that feature encryption, require payments from users, and for which the most important are controlled by very large multinational technology companies, such as Google's YouTube TV platform, Netflix, Spotify, and Amazon Prime rather than locally owned broadcast entities.

In the agreed statement on equivalent deferred transmissions and other deferred transmissions (footnote 2), Chair Daren Tang's treaty text (SCCR/39/4)<sup>1</sup> proposes that the scope of application includes new beneficiaries such as on-demand and catch up services, parallel sport events, extra footage on news or programs, additional interviews, behind-the-scenes programs, pure on-demand streaming channels, and on-demand catalogues.

While some negotiators see the WIPO Broadcasting Treaty as a treaty that will benefit local broadcasters, that is likely to be true only in the short term. And even in the short term, the more ambitious versions of the treaty are also designed to create economic rights for large foreign corporations that "schedule the content" for cable and satellite channels, such as Disney, Vivendi, and AT&T.

In the longer run, the treaty would create a new legal regime that will establish rights for giant technology firms largely based in the United States or Europe, that are creating global platforms for video and sound recording content, including Amazon Prime, Netflix, Hulu, YouTube, Google/YouTube TV, Hulu TV, Yahoo, Twitter, Sling TV, Facebook, Spotify, Apple Music, Google Play Music, and Pandora, all companies that could qualify as broadcasters by owning a single broadcast station. The predictable outcome of any new intellectual property rights for broadcasting that includes transmissions, delivered at the time and choosing of the user, would be to give these companies intellectual property rights in someone else's creative works.

In relation to the term of protection, the October 2019 ([SCCR/39/4](#)) Tang text proposes options for a 50, 20, or "x" term of protection for the rights. Clearly, this implies the broadcasters will obtain post fixation rights in works they did not create nor license. A 50 year term of protection or even a 20 year term of protection makes a mockery of the notion that this is a signal based treaty or is only concerned with signal piracy, as it effectively extends the protection beyond the term of copyright. Furthermore, it seems to be a recipe for disaster as regards orphan works at a time

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<sup>1</sup> Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues, Prepared by the Chair, SCCR/39/4, 1 October 2019.

when individual countries are in the process of trying to solve the orphan works problem. To protect against signal piracy, a short term of 24 hours would make more sense than 5 decades from the date of every broadcast.

Under no circumstances should post fixation rights apply to every mere re-transmission of a broadcast signal -- a policy that would in practice result in perpetual protection of the signal, and give broadcasters more durable protection than copyright holders.

The proposals for exceptions in the Chair's text are narrow, give broadcasters more robust rights than copyright owners or performers themselves, and narrower exceptions to protect users than exist for copyrighted works. The draft text says countries "may" extend the same exceptions that exist for copyright, but, obviously, can chose not to, and even then, a three step test is placed on exceptions. This is more restrictive than the Berne Convention, which has mandatory exceptions for news of the day and quotations, and permissive exceptions for educational and other uses, not subject to a three step test.

If the broadcasters' right does not extend to post fixation rights, or has an extremely short term, the exceptions language may be less important. But since broadcasters are seeking rights that last for half a century, i.e. post fixation rights, the exceptions become extremely important and should include those in Berne (news of the day and quotation), as well as for education and training purposes, personal use and preservation and archiving. The agreement should also permit non-mandatory exceptions that address both specific uses and more general frameworks such as fair dealing or fair use. Compulsory licenses should not be prohibited.

Exceptions for broadcasting rights should not be less enabling for users than the exceptions to copyright and in the treaty should never give broadcasters post fixation rights in works in the public domain, or that are openly licensed.

Sincerely,

Center for Democracy & Technology (CDT)

Centre for Internet & Society (India) (CIS)

COMMUNIA

Consumer Association the Quality of Life( EKPIZO)

Corporación Innovarte

Creative Commons

European Bureau of Library, Documentation and Information Associations (EBLIDA)

Electronic Frontier Foundation (EFF)

Electronic Information for Libraries (EIFL)

ENCES (European Network for Copyright in Support of Education and Science)

Fundación Karisma

Global Expert Network on Copyright User Rights

International Federation of Library Associations and Institutions (IFLA)

Knowledge Ecology International (KEI)

Public Knowledge