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EXISTING INTERNATIONAL, REGIONAL AND NATIONAL LEGISLATION CONCERNING THE PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

Memorandum prepared by the International Bureau

I. INTRODUCTION

1. The WIPO Performances and Phonograms Treaty (WPPT) harmonizes and updates international norms on the protection of performers (except for their “audiovisual performances”) and producers of phonograms, but it does not cover the third traditional category of related rights beneficiaries, namely broadcasting organizations. During the preparatory work that led to the adoption of the WPPT and the WIPO Copyright Treaty (WCT), and at the September-October 1997 sessions of the Governing Bodies of WIPO, several delegations proposed that WIPO include in its program the issue of harmonization of the rights of broadcasting organizations. The WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property, held in Manila in April 1997, and the WIPO Symposium for Latin American and Caribbean Countries on Broadcasting, New Communication Technologies and Intellectual Property, held in Cancun, Mexico, in February 1998, identified several areas where international harmonization and updating of existing norms is necessary and indicated that this activity may have to extend to the rights of distributors of cable-originated programs.

2. WIPO's Program and Budget for the 1998-1999 biennium provides, *inter alia*, for the holding of two or three meetings of representatives of WIPO Member States and of the European Community, to take the form, depending on the progress and requirements of the preparatory work, of information meetings, of sessions of a committee of experts (involving also interested inter-governmental and non-governmental organizations), sessions of the Standing Committee on Copyright and Related Rights, and/or informal consultations and negotiations. The expected results thereof is progress towards the adoption, probably in the 2000-2001 biennium, of recommendations, guiding principles or other similar forms of guidance, to harmonize regional and national legislation on these issues, or a Treaty on the Protection of the Rights of Broadcasting Organizations and of Distributors of Cable-originated Programs.

3. The present memorandum examines various aspects of national and regional legislation on the protection of broadcasting organizations in the Member States of WIPO, the European Community, the Council of Europe and the countries party to the Cartagena Agreement. It also refers to the North American Free-Trade Agreement. Excepted from the examination is a few countries where the laws, or recent amendments, were not available at the International Bureau in English, French or Spanish at the time when the memorandum was prepared. It has not been possible to include in the examination such provisions on the protection of broadcasting organizations which are not included in copyright legislation, but, for example, in national legislation on broadcasting or telecommunication. Since the existing norms at the international level may—and in many cases do—have direct or indirect relevance for national and regional legislation, those norms are also reviewed briefly. The memorandum also summarizes the main points raised during the two WIPO symposia, mentioned in paragraph 1, above.

4. The aim of the present memorandum is to enable the Standing Committee on Copyright and Related Rights to decide on the following: (i) whether continued work should be undertaken as regards the protection of broadcasting organizations; (ii) under which forms such work should proceed; and (iii) what further information and preparations would be required for such continued work.

II. INTERNATIONAL PROTECTION OF BROADCASTING ORGANIZATIONS

A. The Rome Convention

5. The 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) contains a number of norms concerning the protection of broadcasting organizations. It is binding on the 57 states party to that Convention (as of August 10, 1998).

6. The Rome Convention provides for *national treatment*, subject to the protection specifically guaranteed, and the limitations specifically provided for, in that Convention (Article 2(2)). In this respect, national treatment means the treatment accorded by the domestic law of the Contracting State in which protection is claimed to broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted

from transmitters situated on its territory (Article 2(1)). According to the Convention, national treatment shall be granted to broadcasting organizations of other Contracting States if, either the headquarters of the broadcasting organization is situated in another Contracting State, or the broadcast was transmitted from a transmitter situated in another Contracting State (Article 6(1)). The Convention allows, however, Contracting States to declare that they will protect broadcasts from other Contracting States only if both the above-mentioned criteria are fulfilled (Article 6(2)).

7. The *minimum rights* granted to broadcasting organizations under the Rome Convention are rights to authorize or prohibit: (a) the rebroadcasting of their broadcasts; (b) the fixation of their broadcasts; (c) the reproduction of fixations of their broadcasts; and (d) the communication to the public of television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. The right of reproduction, however, applies only to reproduction of fixations that are either made without their consent or made in accordance with the provisions of Article 15 (that is, the exceptions and limitations permitted under the Convention), if the reproduction is made for purposes different from those referred to in those provisions. As regards the right of communication to the public, the Convention states that it shall be a matter for the domestic law of the State where protection of that right is claimed to determine the conditions under which it may be exercised (Article 13). Article 16(1)(b) of the Convention further allows a Contracting State to declare that it will not apply Article 13(d) on the communication to the public. In that case, the other Contracting States are not obliged to grant that right to broadcasting organizations whose headquarters are in that State.

8. The Rome Convention allows for *exceptions and limitations* in respect of: (a) private use; (b) use of short 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; and (d) use solely for the purposes of teaching or scientific research. In addition, Contracting States may apply the same kind of limitations as they provide for in connection with the protection of copyright in literary and artistic works, however with the reservation that compulsory licenses may be provided for only to the extent to which they are compatible with the Convention. (Article 15).

9. The *term of protection* for broadcasting organizations under the Rome Convention is 20 years from the end of the year in which the broadcast took place (Article 14). The protection is *not retroactive*; it only covers broadcasts that took place after the country in question became party to the convention.

B. The TRIPS Agreement

10. The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) is one of the agreements to which the (as of August 10, 1998) 132 Member States of the World Trade Organization (WTO) are party. Under the TRIPS Agreement, Members of the WTO must grant *national treatment* to nationals of other Members, subject to the exceptions already provided in the Rome Convention (Article 3.1). This applies also in respect of broadcasting organizations, in which context “nationals” mean those natural or

legal persons that would meet the criteria for eligibility for protection provided for in the Rome Convention (Article 1.3).

11. The TRIPS Agreement also provides for *most-favored-nation treatment* for broadcasting organizations, but exempted from this is any advantage, favor, privilege or immunity accorded by a Member in accordance with the provisions of the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country (Article 4).

12. Under the *minimum rights* granted by Article 14.3 of the TRIPS Agreement, broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Article 14.3 further states the following: “Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).” This provision seems to imply that only those Members may deny specific rights to broadcasting organizations in the copyright laws of which the concept of works is sufficiently broad to grant efficient protection to broadcasting organizations in respect of their broadcast programs (see “Implications of the TRIPS Agreement on Treaties Administered by WIPO,” WIPO publication No. 464(E), 1996, paragraph 67).

13. Members may provide for *conditions, limitations, exceptions and reservations* to the extent permitted by the Rome Convention (Article 14.6). The provisions of Article 18 of the Berne Convention on so-called *retroactive protection* are extended under the TRIPS Agreement to the right of performers and producers of phonograms, but not to the rights of broadcasting organizations (Article 14.6).

14. The *term of protection* for broadcasting organizations under the TRIPS Agreement is at least 20 years from the end of the calendar year in which the broadcast took place (Article 14.5).

C. The Satellite Convention

15. The 1974 Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (the Brussels Convention) deals with the protection of satellite signals by which programs are transmitted between broadcasting organizations or between such organizations and cable distributors. As of August 10, 1998, 22 countries were party to that Convention. The Convention does not apply to signals which are intended for direct reception from the satellite by the general public (Article 3), nor does it apply to derived signals taken from signals which have already been distributed by a distributor for whom the emitted signals were intended (Article 2(3)).

16. Under the Brussels Convention, Contracting States undertake to take adequate measures to prevent the distribution on or from their territories of any program-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended. This obligation applies where the originating organization is a national of another Contracting

State and where the signal distributed is a derived signal (Article 2(1)). Exceptions and limitations are permitted with regard to: the use of short excerpts from reports of current events, to the extent justified by the informatory purpose of such excerpts; quotations compatible with fair practice and justified by the informatory purpose of such quotations; and, for developing countries, distribution solely for the purpose of teaching, including teaching in the framework of adult education, or scientific research (Article 4).

III. REGIONAL LEGISLATION ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

A. The European Community

17. The protection of broadcasting organizations is dealt with in several Directives of the European Community, namely: Council Directive No. 92/100/EEC of November 19, 1992, on rental right and lending right and on certain rights related to copyright in the field of intellectual property (the Rental Directive); Council Directive (EEC) No. 93/83/EEC of September 27, 1993, on the Coordination of Certain Rules Concerning Copyright and Rights Related to Copyright Applicable to Satellite Broadcasting and Cable Retransmission (the Cable and Satellite Directive); and Council Directive No. 93/98/EEC of October 29, 1993, harmonizing the term of protection of copyright and certain related rights (the Term Directive). These Directives entered into force on July 1, 1994, January 1, 1995, and July 1, 1995, respectively. They are binding for the 15 countries of the European Union, that is, *Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and United Kingdom*. The provisions of the Directives also apply as regards the countries of the European Economic Area which comprise, in addition to the countries of the European Union, *Iceland, Liechtenstein and Norway*.

18. The protection of related rights under the Rental Directive, in addition to the rights of broadcasting organizations (and other categories of owners of rights), also covers the rights of cable distributors. The *rights granted* include the exclusive right to authorize or prohibit the fixation of the broadcasts, whether these are transmitted by wire or over the air, including by cable or satellite (Article 6(2)). A cable distributor, however, shall not have that right where it merely retransmits by cable the broadcasts of broadcasting organizations (Article 6(3)). Under Article 7(1), Member States shall provide broadcasting organizations the exclusive right to authorize or prohibit the direct or indirect reproduction of fixations of their broadcasts, as set out in Article 6(2). The rights also include the exclusive right to authorize or prohibit the rebroadcasting of the broadcasts by wireless means, as well as the communication to the public of the broadcasts if such communication is made in places accessible to the public against payment of an entrance fee (Article 8(3)).

19. Concerning communication to the public by satellite, Article 4 of the Cable and Satellite Directive provides that the rights of broadcasting organizations shall be protected in accordance with the provisions of Articles 6, 7, 8 and 10 of the Rental Directive (regarding the latter Article, see paragraph 22, below). In this context, the term "broadcasting by wireless means" in the Rental Directive shall be understood as including communication to the public by satellite. As regards cable retransmission, Article 8 of the Cable and Satellite Directive

provides that Member States shall ensure that, when programs from other Member States are retransmitted by cable in their territory, the applicable copyright and related rights are observed and that such retransmission takes place on the basis of individual or collective contractual agreements between copyright owners, holders of related rights and cable operators. Article 9 of that Directive contains certain special provisions concerning the exercise of the cable retransmission right, notably that such rights may be exercised only through a collecting society, but according to Article 10 these provisions do not apply to the rights exercised by a broadcasting organization in respect of its own transmission, irrespective of whether the rights concerned are its own or have been transferred to it by other copyright owners and/or holders of related rights. In the case that agreements are not made, Articles 11 and 12 contain provisions on mediation and prevention of the abuse of negotiating positions.

20. As regards the right of communication to the public by satellite, Article 1(2)(d) of the Cable and Satellite Directive provides that, where such an act occurs in a non-Community State which does not provide the level of protection concerning satellite broadcasting provided for in that Directive, (i) if the program-carrying signals are transmitted to the satellite from an uplink station situated in a Member State, that act of communication to the public by satellite shall be deemed to have occurred in that Member State and the rights provided for in the Directive shall be exercisable against the person operating the uplink station; or (ii) if there is no use of an uplink station situated in a Member State but a broadcasting organization established in a Member State has commissioned the act of communication to the public by satellite, that act shall be deemed to have occurred in the Member State in which the broadcasting organization has its principal establishment in the Community and the rights provided for under the Directive shall be exercisable against the broadcasting organization.

21. Article 9(1) of the Rental Directive states that Member States shall provide for broadcasting organizations, in respect of fixations of their broadcast as set out in Article 6(2), the exclusive right to make available these objects, including copies thereof, to the public by sale or otherwise. This distribution right shall not be exhausted within the Community in respect of such an object, except where its first sale in the Community is made by the rightholder or with his consent (Article 9(2)). The rental and lending rights under Article 1 of the Directive do not apply to broadcasts.

22. The possible *limitations and exceptions* to the rights are dealt with in Article 10 of the Rental Directive, which allows for limitations in respect of: private use; use of short excerpts in connection with the reporting of current events; ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts; and use solely for the purposes of teaching or scientific research. Any Member State may provide for the same kinds of limitations with regard to the protection of broadcasting organizations as it provides for in connection with the protection of copyright in literary and artistic works. However, compulsory licenses may be provided for only to the extent to which they are compatible with the Rome Convention.

23. As regards *retroactivity*, the Rental Directive applies in respect of all broadcasts referred to in the Directive which were, on July 1, 1994, still protected by the legislation of the Member States in the field of copyright and related rights or met the criteria for protection under the provisions of the Directive on that date (Article 13(1)). By way of reference, this

provision is also applicable to the protection of broadcasters under the Cable and Satellite Directive.

24. The *term of protection* is dealt with in Article 3 of the Term Directive, according to which the rights of broadcasting organizations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

B. The Council of Europe

25. The *European Agreement on the Protection of Television Broadcasts*, as amended by a Protocol and two Additional Protocols, entered originally into force on July 1, 1961. It is, as of August 10, 1998, binding on six countries, *Denmark, France, Germany, Norway, Sweden and United Kingdom*. The minimum rights granted under Article 1(1) of the Agreement exceed the rights granted under the Rome Convention, notably in that they cover diffusion of television broadcasts by wire (Article 1(1)(b)), they grant a right of reproduction of fixations without limitation to fixations made without the consent of the broadcasting organization (Article 1(1)(d) and they grant rights of re-broadcasting, wire diffusion or public performance with the aid of the fixations or reproductions referred to in sub-paragraph (d), cited above, except where the organisation in which the right vests has authorised the sale of the said fixations or reproductions to the public (Article 1(1)(e).

26. Article 3 of the Agreement allows the countries party to the Agreement to make certain reservations, including, as regards Article 1(1)(b), to withhold the protection regarding wire diffusion provided for in that sub-paragraph as regards broadcasting organisations constituted in their territory or transmitting from such territory, and restrict the exercise of such protection, as regards broadcasts by broadcasting organisations constituted in the territory of another party to the Agreement or transmitting from such territory, to a percentage of the transmissions by such organisations, which shall not be less than 50% of the average weekly duration of the broadcasts of each of these organisations. According to Article 3(3) of the Agreement, countries party to it may, in respect of their own territory, provide for a body with jurisdiction over cases where, *inter alia*, the right of diffusion to the public by wire referred to in Article 1(1)(b) has been unreasonably refused or granted on unreasonable terms by the broadcasting organisation in which the said right vests.

27. The minimum term of protection under the agreement is 20 years from the end of the year in which the broadcast took place.

28. A further regional instrument, established under the auspices of the Council of Europe, the *European Convention Relating to Questions on Copyright Law and Neighboring Rights in the Framework of Transfrontier Broadcasting by Satellite*, of May 11, 1994, has not yet entered into force.

C. The Cartagena Agreement

29. The Decision No. 351 of the *Cartagena Agreement* containing “Common Provisions on Copyright and Neighboring Rights” was concluded on December 17, 1993, between *Bolivia, Colombia, Ecuador, Peru and Venezuela*, and it entered into force on December 21, 1993.

30. The Decision defines the term “broadcast” as including the production of program-carrying signals intended for a broadcasting or telecommunication satellite, as well as distribution to the public by a body that broadcasts or disseminates the transmissions of others received by means of such a satellite (Article 40). Broadcasting organizations are granted the right to authorize or prohibit the retransmission of their broadcasts by any means or process, the fixing of their broadcasts on a physical medium and the reproduction of a fixation of their broadcasts (Article 39). Article 3 of the Decision defines “retransmission” as a relaying of a signal or program received from another source, effected by the distribution of signs, sounds or images by wireless means or by wire, cable, optic fiber or other comparable medium.

31. The term of the protection may not be less than 50 years, counted from January 1 of the year following that in which the broadcast occurred (Article 41). It is left for domestic legislation of the Member Countries to set limits on the rights of broadcasting organizations in the cases allowed by the Rome Convention (Article 42).

D. The North American Free-Trade Agreement

32. The *NAFTA Agreement* (“North American Free-Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America”) was concluded on December 8, 1993, and entered into force on January 1, 1994.

33. Regarding the protection of broadcasting organizations, the NAFTA Agreement aims at protecting television programming content transmitted via encrypted satellite signals. It requires each Party to impose criminal sanctions and civil liability for the illicit manufacturing, importing, sale, leasing and making available of a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal (Article 1707 (a)). It also makes it a civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor or to engage in any activity prohibited under the above-mentioned paragraph (Article 1707 (b)). Thus, any person who holds "an interest in the content of such signal[s]" has standing to sue.

IV. NATIONAL LEGISLATION ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

A. Protection under copyright or related rights

34. An examination of the national legislation on copyright and related rights in the Member States of WIPO shows that practically all laws contain provisions which protect, or may be interpreted to protect, broadcasting organizations. There are, however, major differences in the ways this protection has been granted. One approach in this respect is the granting of specific related rights for broadcasting organizations. Provisions of this category have been identified in the legislation of the following countries: *Argentina, Austria, Belgium, Brazil,*

Cameroon, Chile, China, Colombia, Costa Rica, Czech Republic, Democratic Republic of the Congo, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Guinea, Holy See, Honduras, Hungary, Iceland, India, Italy, Japan, Kazakstan, Latvia, Lesotho, Liechtenstein, Luxembourg, Madagascar, Mauritius, Mexico, Republic of Moldova, Mongolia, Netherlands, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, Slovakia, Slovenia, Spain, Sudan, Sweden, Switzerland, Togo, Trinidad and Tobago, Turkey, Ukraine, Uruguay and Venezuela.

35. Other countries, however, do not grant related rights for broadcasting organizations, but include broadcasts as a category of works, protected under copyright. Express provisions to this effect have been identified in the legislation of the following countries: *Angola, Australia, Bahrain, Bangladesh, Barbados, Botswana, Cuba, Cyprus, Fiji, Ghana, Guyana, Iraq, Ireland, Jamaica, Jordan, Kenya, Lithuania, Malawi, Malta, Namibia, New Zealand, Nigeria, Oman, Qatar, Saint Lucia, Sierra Leone, Singapore, South Africa, Thailand, Uganda, United Arab Emirates, United Kingdom, United Republic of Tanzania, Yemen, Zambia and Zimbabwe.*

36. The absence of specific provisions on copyright protection of broadcasting organizations does not necessarily mean that such protection does not exist. It may exist, for example, by way of interpretation of the general concept of a protected “work,” or broadcasts may be considered a compilation of works or data, which is protected as such. In the latter case, however, the protection would only appear to cover use of such a larger portion of the broadcasts which would entail an infringement of such a protected compilation. An example of the former case is the Copyright Law of the *United States of America*, where broadcasts are not included in the catalogue of works, but Section 101 of the Law provides that “[a] work consisting of sounds, images, or both, that are being transmitted, is ‘fixed’ for purposes of this title, if a fixation of the work is being made simultaneously with its transmission.” This means that broadcasters are able to obtain copyright protection of all copyrightable subject matter that they produce and transmit, even in live transmission, provided that they arrange a simultaneous recording of the live broadcast. Jurisprudence has stated that copyright subsists in a simultaneously recorded live transmission of a football game, even in a case where the unauthorized use did not relate to the broadcast (and recorded) signal, but to a practically simultaneous, unedited point-to-point link through which the game was transmitted from the playing field to the broadcasting organization (*National Football League v. McBee & Bruno’s, Inc.*, 792 F.2d 726 (8th Cir. 1986)).

37. The distinction between copyright protection and protection under related rights is, however, not always clear. Copyright may, for example, apply to broadcasts as a special category of works, for which the rights are separately granted. Where these rights are parallel to those typically granted under related rights, the distinction seems to rely more on terminology and drafting technique than on substantial differences in the practical effect of the legislation. An example in this respect seems to be the legislation of *Canada*, where the term used for the protection of broadcasters is “copyright” (“*droit d’auteur*” in the parallel French version of the Law) but the substantive provisions are disassociated from the general provisions of copyright in a separate section (Section 21) in the chapter on the protection of performances, sound recordings and communication signals.

38. Among the countries that protect broadcasts as works, there are differences as regards the exact subject matter of the protection. Not all national legislation is completely clear in this respect, but, by way of example, countries such as *Cuba, Jordan, Lithuania, Oman, Qatar, United Arab Emirates* and *United States of America* protect, or appear to protect, the program content rather than the emitted signal. Other countries, such as *Jamaica, Kenya, Malta, New Zealand* and *United Kingdom*, appear to protect the signal, rather than the content. This difference may, depending on other provisions in the relevant legislation, have legal and practical implications. These may relate, for example, to the calculation of the term of protection in cases of repeated broadcasts of the same program, and to the broadcasting organization's standing to sue for infringements in cases where it has acquired only a non-exclusive license to broadcast, for example, an audiovisual work.

B. Protected broadcasters

39. When the concept of protection of broadcasting organizations through intellectual property rights was conceived, and also when the Rome Convention was adopted in 1961, technology only allowed for terrestrial broadcasts, that is, broadcasts transmitted from emitters situated on earth. This was also the situation in 1974 when the Brussels Convention was adopted. At that time, 'point-to-point,' or "communication" satellites were being used mainly for communications between broadcasting organizations, cable distributors and similar entities, although it was known that direct broadcasting via satellites would be technologically possible within some years. All the national laws examined and containing provisions on the protection of broadcasters cover such terrestrial broadcasts.

40. In the 1980s, technological progress led to the manufacture and marketing of equipment enabling members of the public to receive programs transmitted via "point-to-point," or "communication" satellites. This, in turn, led to a significant change in the use of such satellites, as their number grew and their transmissions assumed the character of regular programming, aiming at being received directly by the general public. Also, in the same period, high-power satellites were developed and deployed aiming at being used for direct satellite broadcasts ("direct broadcasting satellites").

41. This development has been reflected in numerous national laws which have been amended to state, or clarify, that the protection of broadcasting organizations covers terrestrial as well as satellite broadcasts. This has been achieved in various ways, such as the express inclusion of broadcasts via satellite in the definition of the term "broadcast," or related terms, or in the provisions providing for protection, as is the case in, for example, *Austria, Barbados, Belgium, Cyprus, Ecuador, France, Italy, Kazakstan, Latvia, Nigeria, Peru, Russian Federation, South Africa*, and *United Kingdom*. Some countries, among those that grant copyright protection of broadcasts, have introduced in their legislation "program carrying signals" as a separate category of works, like, for example, *Ghana, Kenya, Malawi, Namibia* and *South Africa*. In many countries, however, there is reason to assume that the general definitions of "broadcast" are sufficiently broad to cover both terrestrial and satellite broadcasts.

42. Another development is the increasing importance of cable distribution of broadcasts and cable-originated programming material. Particularly the latter phenomenon, sometimes

referred to as “cablecasting,” has been explicitly included under certain national legislation where the organizations making such distribution enjoy rights corresponding to the rights of broadcasting organizations. This appears, for example, to be the case in the laws of *Austria, Barbados, Belgium, Cyprus, Ecuador, Georgia, Hungary, Italy, Jamaica, Japan, Kazakstan, Latvia, Mexico, New Zealand, Nigeria, Peru, Republic of Moldova, Russian Federation, Saint Lucia, Singapore, Slovakia, United Kingdom* and *Zambia*.

C. Rights granted

43. As regards the scope of the rights granted, most of the legislation examined include the rights granted under Article 13(a) to (c) of the Rome Convention. In some countries, the rights granted correspond exactly, or with insignificant variations, to the minimum rights of those provisions. This appears to be the case in the following countries: *Argentina, Canada, Colombia, Cyprus, Estonia, Georgia, Ghana, Guinea, India, Malawi, Mauritius, Niger, Paraguay, Rwanda, Saint Vincent and the Grenadines, Sudan, Togo* and *Uruguay*.

44. Specifically as regards the right of reproduction, however, a number of countries, while otherwise following closely the rights granted under letters (a) and (b) of the above-mentioned Article, have chosen to grant the right of reproduction without the limitations permitted under Article 13(c)(i) and (ii) of the Rome Convention. This appears to be the case in the following countries: *Australia, Bangladesh, Barbados, Bolivia, Botswana, Brazil, Cameroon, Chile, China, Democratic Republic of the Congo, Ecuador, El Salvador, Fiji, Gabon, Guatemala, Guyana, Honduras, Mongolia, Panama, Philippines, Poland, Republic of Korea, Sierra Leone, Turkey, Venezuela, and Zimbabwe*. In addition, this might also be the case in the following five countries: *Cyprus, Kenya, Malta, Thailand* and *Tanzania*, but the Laws of those countries might also be read as covering the fixation only, and not the reproduction of the fixation.

45. Concerning the right of communication to the public under Article 13(d) of the Rome Convention, certain conditions for its exercise are permitted under that sub-paragraph, and a reservation concerning its application may be made under Article 16(1)(b) of the Convention. In the following countries such rights appears to be granted without the limitation regarding a paying audience: *Barbados, Brazil, Costa Rica, Cuba, Denmark, Jamaica, Japan, Jordan, Liberia, Lithuania, Mongolia, Netherlands, New Zealand, Nigeria, Saint Lucia, Switzerland, Trinidad and Tobago, Uganda, United States of America, Yemen* and *Zambia*.

46. Provisions corresponding to the condition in Article 13(d) of the Rome Convention, that the communication to the public is made in places accessible to the public against payment of an entrance fee, have been identified in the legislation of the following countries: *Argentina, Belgium, Botswana, Cameroon, Canada, Cyprus, Ecuador, El Salvador, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, Ireland, Italy, Kazakstan, Kenya, Latvia, Liechtenstein, Luxembourg, Madagascar, Malta, Republic of Moldova, Paraguay, Romania, Russian Federation, Sierra Leone, Singapore, Slovenia, Spain, Sweden, Turkey, Ukraine, United Kingdom, United Republic of Tanzania, Uruguay* and *Zimbabwe*. In *Chile* and *Democratic Republic of the Congo*, a right of equitable remuneration for broadcasting organizations is granted for communication to the public of broadcasts in places where there is free access. Certain countries, such as *Costa Rica, Iceland, Mexico,*

Norway and *Thailand*, have replaced the payment of an entrance fee with wider ranging conditions, for example, that the communication must be commercial or made for profit, while in *Japan* communication for non-profit making purposes is covered if it is made by means of a special instrument for enlarging images.

47. In the majority of the legislation examined granting the right of communication to the public of broadcasts in public places, this right has not been limited to television broadcasts, and the right granted thus covers both radio and television broadcasts. The said limitation has been noted in the legislation of the following countries: *Argentina, Botswana, Brazil, Canada, Cyprus, El Salvador, Fiji, Finland, Guyana, Honduras, Hungary, Iceland, Ireland, Japan, Malta, Nigeria, Paraguay, Sierra Leone, Singapore, United Republic of Tanzania, Uruguay* and *Zimbabwe*. It may also apply in the *United States of America*, depending on to which extent, and, if so, how, radio broadcasts are categorized as works.

48. The following countries appear not to grant the right established under Article 13(d) of the Rome Convention, as permitted under Article 16(1)(b) of that Convention, namely: *Australia, Bangladesh, Bolivia, China, Colombia, Czech Republic, Estonia, Gabon, Ghana, Guinea, Lesotho, Malawi, Mauritius, Namibia, Niger, Nigeria, Pakistan, Panama, Philippines, Poland, Qatar, Republic of Korea, Rwanda, Saint Vincent and the Grenadines, Slovakia, South Africa, Sudan, Togo* and *Venezuela*.

49. A protection which exceeds the level of the Rome Convention is granted in a number of countries, such as the countries of the European Economic Area, where the Directives, summarized in paragraphs 17 to 24, above, apply. This entails in particular the granting of rights in cable retransmission of broadcasts. Apart from those countries, cable retransmission rights (whether exclusive rights or a right to obtain equitable remuneration) appear to be granted in the following countries, either explicitly or as part of general rights of making available to the public or similar broader rights: *Barbados, Costa Rica, Cuba, Hungary, Japan, Jordan, Kazakstan, Latvia, Lesotho, Liberia, Mexico, Republic of Moldova, Namibia, New Zealand, Nigeria, Pakistan, Peru, Qatar, Romania, Russian Federation, Saint Lucia, Singapore, Slovakia, South Africa, Switzerland, Trinidad and Tobago, Uganda, Ukraine, United Arab Emirates, United States of America, Yemen* and *Zambia*.

50. Another right which exceeds the minimum protection of broadcasting organizations under the Rome Convention is the right of issuing copies of broadcasts to the public. That right appears to be granted, either explicitly or as part of a right of distribution, publication or similar broader rights, in the copyright laws of the following countries: *Austria, Barbados, Belgium, Cameroon, Cuba, Czech Republic, Denmark, France, Germany, Greece, Holy See, Italy, Jamaica, Liechtenstein, Lithuania, Luxembourg, Madagascar, Netherlands, New Zealand, Nigeria, Oman, Qatar, Saint Lucia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Uganda, United Arab Emirates, United Kingdom, United States of America* and *Yemen*. Provisions granting a right of rental of copies of broadcasts have been identified in the legislation of the following countries: *Austria, Cameroon, Denmark, Finland, France, Greece, India, Jordan, Madagascar, Nigeria, Romania, Saint Lucia* and *Slovakia*.

51. Certain countries also grant broadcasting organizations a right of adaptation. Provisions to this effect have been identified in the legislation of the following countries: *Austria,*

Barbados, Cuba, Jamaica, Jordan, Lithuania, New Zealand, Oman, Qatar, Saint Lucia, United Arab Emirates and United States of America.

52. In certain national laws, provisions have been identified which might extend the protection of broadcasting organizations to interactive communication in digital networks, such as those covered by Article 8 of the WCT and Articles 10 and 14 of the WPPT, such as a general right of communication to the public. The application of such provisions, however, frequently may rely on an interpretation of the scope of that right under the particular national law.

53. The Rome Convention allows member countries to impose certain limitations on the conventional minimum rights (Article 15(1)). This issue has not been examined in detail for this memorandum, among other reasons because such an examination would entail a comprehensive analysis of the limitations and exceptions regarding copyright protection to which reference is frequently made in the provisions granting protection for broadcasting organizations.

54. In some countries, provisions in the copyright laws which, at least to some extent, offer the protection against technological measures provided for in Article 11 of the WCT and Article 18 of the WPPT have been identified. This is, for example, the case in the following countries: *Ecuador, Malta, Mexico, New Zealand and United Kingdom.* It should be noted that such provisions may appear also in other national legislation than the copyright law. No provisions granting the protection of rights management information, corresponding to Article 12 of the WCT and Article 19 of the WPPT have been identified in the examined national legislation.

D. Term of protection

55. As regards the term of protection, the majority of the examined laws have granted a term of 50 years. This appears to be the case in the following countries: *Australia, Barbados, Belgium, Botswana, Cameroon, Canada, Chile, China, Costa Rica, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Honduras, Hungary, Ireland, Italy, Jamaica, Japan, Kazakstan, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Namibia, Netherlands, New Zealand, Nigeria, Norway, Panama, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Saint Lucia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Uganda, Ukraine, United Kingdom, Zambia and Zimbabwe.*

56. The term of protection of 20 years, which is the minimum period under Article 14 of the Rome Convention and Article 14.5 of the TRIPS Agreement, appears to have been granted in the following countries: *Argentina, Gabon, Lesotho, Madagascar, Malawi, Mauritius, Paraguay, Republic of Korea, United Republic of Tanzania and Uruguay.* The following countries appear to grant periods of protection of more than 20 and less than 50 years, namely: *Bangladesh, Colombia, Guinea, Iceland, India, Jordan, Liberia, Mexico, Mongolia, Niger, Pakistan, Philippines, Rwanda and Togo,* while the following countries appear to grant a protection of more than 50 years: *Brazil, Ecuador, Guatemala, Peru, Turkey and Venezuela.*

57. While minor differences in the wording exist, all the examined legislation seem to consider the time at which the broadcast takes place as the point from which the term of the protection is calculated. In a number of countries, explicit provisions clarify that the term is calculated from the first broadcasting, and that possible repeated broadcasts of the same program do not entail a new term of protection calculated from that repeated broadcast. Provisions to this effect have been identified in the following countries: *Australia, Bangladesh, Barbados, Botswana, Cameroon, China, Czech Republic, Estonia, Finland, France, Gabon, Germany, Greece, Honduras, Italy, Jamaica, Kazakstan, Latvia, Liechtenstein, Luxembourg, Mongolia, New Zealand, Nigeria, Norway, Poland, Romania, Russian Federation, Saint Lucia, Singapore, Slovakia, Slovenia, South Africa, Spain, Switzerland, Trinidad and Tobago, Turkey, Ukraine, United Kingdom and Zambia*. Explicit provisions stating that repeated broadcasts give rise to a new term of protection have not been identified in any of the examined legislation.

V. QUESTIONS RAISED CONCERNING FUTURE INTERNATIONAL NORMS ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

58. From April 28 to 30, 1997, WIPO organized, in cooperation with the Government of the Philippines and with the assistance of the Kapisanan ng mga Brodkaster ng Pilipinas (KBP) (National Association of Broadcasters of the Philippines) the WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property, in Manila. (The proceedings of the Symposium are published in WIPO publication No. 757 (E/F/S).) At this symposium, representatives of broadcasting organizations pointed out a number of issues which they proposed to be addressed at the international level. Some of these issues are listed in the following paragraph.

59. According to these proposals, broadcasters should be granted exclusive rights to authorize or prohibit the following acts:

- simultaneous or deferred rebroadcasting of their broadcasts, whether these are transmitted via satellite or by any other means;
- simultaneous and deferred retransmission of their broadcasts in cable systems;
- the making available to the public of their broadcasts, by any means, including interactive transmissions;
- the fixation of their broadcasts on any media, existing or future, including the making of photographs from television signals;
- the transmission to the public of programs, transmitted by cable;
- the decoding of encrypted signals; and
- the importation and distribution of fixations or copies of fixations of broadcasts, made without authorization.

In addition, broadcasters should be granted a right of remuneration for private copying, and it should be clarified that the protection applies to not only the sounds and/or images of broadcasts, but also to (digital) representations of such sounds and/or images.

60. In the WIPO Symposium for Latin American and Caribbean Countries on Broadcasting, New Communication Technologies and Intellectual Property, held in Cancun, Mexico, from

February 16 to 18, 1998, the participating broadcasting organizations and cable program distributors, in the conclusions adopted by them, formulated similar requests for an international protection system. In addition, they requested the following exclusive rights:

- the right of broadcasters to authorize the communication to the public of their broadcasts, whether or not the communication is to a paying audience or is made in places accessible to the public against payment of an entrance fee;
- the right of broadcasters, cable distributors or other distributors to distribute to the public their own signals, transported by communications satellites or intended for them; and
- the right to authorize the rental of copies made from the fixation of broadcasts.

61. In both above-mentioned symposia, nearly all participating experts from WIPO Member States favored continuing discussions at international level on the need for a more up-to-date protection of broadcasters' rights, while reserving their respective governments' position on that need in general as well as on the extent to which new international norms may be necessary in this respect.

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