

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Eleventh Session
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TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS AND
CABLECASTING ORGANIZATIONS

Document submitted by Singapore

I. TITLE

WIPO Treaty on the Protection of Broadcasting Organizations and Cablecasting Organizations.

II. PREAMBLE

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible without compromising the rights of authors and holders of copyright and related rights in works and other protected subject matter contained in broadcasts,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across frontiers,

Recognizing the need to maintain a balance between the rights of broadcasting organizations and the larger public interest, particularly education, research and access to information,

Have agreed as follows:

III. RELATION TO OTHER CONVENTIONS AND TREATIES; RELATION TO COPYRIGHT AND OTHER CATEGORIES OF RELATED RIGHTS HOLDERS

Article 1

Relation to Other Conventions and Treaties

Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under existing copyright and related rights treaties, including but not limited to the Berne Convention for the Protection of Literary and Artistic Works (1971), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961.

Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts, cablecasts and consequently no provisions of this Treaty may be interpreted as prejudicing such protection.

This Treaty shall not have any connection with, nor shall it prejudice any obligations under, any other treaties.

IV. DEFINITIONS

Article 2 Definitions

“Broadcasting” means the transmission or wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;

a “broadcasting organization” and a “cablecasting organization” means the legal entity that takes the initiative and has the responsibility for (i) the first transmission to the public of sounds, images or sounds and images or the representations thereof; and (ii) the assembly and scheduling of the content of the transmission and in the case of a “broadcasting organization”, it shall include a legal entity that takes the initiative and has the responsibility for the assembly and scheduling of the content of a signal transmitted to another broadcasting organization prior to broadcasting;

“cablecasting” means the transmission by wire for public reception of sounds, images or sounds and images or of the representations thereof. Transmission by wire of encrypted signals is “cablecasting” where the means for decrypting are provided to the public by the cablecasting organization or with its consent. “Cablecasting” shall not be understood as including transmissions over computer networks or any transmission where the time and place of reception may be individually chosen by members of the public;

“rebroadcasting” means the simultaneous or deferred broadcasting by one broadcasting organization of the broadcast of another broadcasting organization.

V. BENEFICIARIES OF PROTECTION

Article 3 Beneficiaries of Protection Under this Treaty

Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations or cablecasting organizations which have their headquarters on its territory or as regards broadcasts, transmitted from transmitters situated on its territory.

VI. NATIONAL TREATMENT

Article 4 National Treatment

Each Contracting Party shall grant national treatment to broadcast organizations and cablecasting organizations if either of the following conditions is met:

- (i) the headquarters of the broadcasting organization or cablecasting organization is situated in the territory of another Contracting Party;
- (ii) the broadcast was transmitted from a transmitter situated in the territory of another Contracting Party.

VII. RIGHTS OF BROADCASTING ORGANIZATIONS AND CABLECASTING ORGANIZATIONS

Article 5 Rebroadcasting

Broadcasting organizations and cablecasting organizations shall enjoy the exclusive right to authorize or prohibit the rebroadcast of their broadcasts or cablecasts.

Article 6 Right of Fixation

Broadcasting organizations and Cablecasting Organizations shall enjoy the exclusive right to authorize or prohibit the fixation of their broadcasts or cablecasts.

Article 7 Right of Reproduction

Broadcasting organizations and cablecasting organizations shall enjoy the exclusive right to authorize or prohibit the direct or indirect reproduction of fixations, made without their consent, of their broadcasts or cablecasts in any manner or form whatsoever.

Article 8 Right of Cable Retransmission

Broadcasting organizations and cablecasting organizations shall enjoy the exclusive right to authorize or prohibit the retransmission by cable of their broadcasts or cablecasts, whether simultaneous or based on fixations.

Article 9
Right of Public Display

Broadcasting organizations and cablecasting organizations shall enjoy the right to authorize or prohibit the reception and display of their broadcasts or cablecasts of sounds and/or images in places accessible to the public against payment of an entrance fee; it shall be a matter for the law of the Contracting Party where the protection is claimed to determine the conditions under which it may be exercised.

Article 10
Obligations Concerning the Unauthorized Reception
of Broadcasts and Cablecast Signals

(i) Each Contracting Party shall undertake adequate legal protection and effective legal remedies against the unauthorized reception for onward distribution on or from its territory of any broadcast or cablecast signal by any person for whom the signal emitted to or passing through are not intended. This prohibition shall apply where the signals originate from or derived from a beneficiary in another Contracting Party defined in Article 3.

(ii) The provision in this article shall apply whether or not the signals emitted by or on behalf of the originating organization are intended for direct reception by the general public.

VIII. LIMITATIONS AND EXCEPTIONS

Article 11
Limitations and Exceptions

(a) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations and cablecasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.

(b) Contracting Parties shall confine any limitations of or exceptions to rights and obligations provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast or cablecast and do not unreasonably prejudice the legitimate interests of the broadcasting organization or cablecasting organization.

IX. TERM OF PROTECTION

Article 12
Term of Protection

The term of protection to be granted to broadcasting organizations and cablecasting organizations under this Treaty shall last, at least, until the end of a period of 20 years computed from the end of the year in which the broadcast took place for the first time.

X. OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Article 13

Obligations Concerning Technological Measures

Contracting Parties shall provide adequate and effective legal remedies against the unauthorized circumvention of effective technological measures that are used by broadcasting or cablecasting organizations in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their broadcasts, cablecasts which are not authorized by such organizations concerned or permitted by law.

XI. FORMALITIES

Article 14

Formalities

The enjoyment and exercise of rights provided in this Treaty shall not be subject to any formality.

XII. RESERVATIONS

Article 15

Reservations

No reservations to this Treaty shall be permitted.

XIII. APPLICATION IN TIME

Article 16

Application in Time

Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of broadcasting and cablecasting organizations provided for in this Treaty.

XIV. PROVISIONS ON ENFORCEMENT OF RIGHTS

Article 17

Enforcement of Rights

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

XV. ADMINISTRATIVE AND FINAL CLAUSES

Article 18

Assembly

1. (a) The Contracting Parties shall have an Assembly.
 - (b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.
 - (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the World Intellectual Property Organization (hereinafter referred to as "WIPO") to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
2. (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty
 - (b) The Assembly shall perform the function allocated to it under Article 18(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.
 - (c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
3. (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
 - (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States that are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*.
4. The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.
5. The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 19

International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 20

Eligibility for Becoming Party to the Treaty

1. Any Member State of WIPO may become party to this Treaty, provided that such state is a party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
3. The European Union, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty subject to paragraph 1 of this Article.

Article 21

Rights and Obligations Under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 22

Signature of the Treaty

This Treaty shall be open for signature until December 31, 200_, by any Member State of WIPO and by the European Union.

Article 23

Entry into Force of the Treaty

This Treaty shall enter into force three months after ___ instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 24

Effective Date of Becoming Party to the Treaty

This Treaty shall bind

- (a) The ___ States referred to in Article 22, from the date on which this Treaty has entered into force;
- (b) Each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (c) The European Union, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry

into force of this Treaty according to Article 21, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(d) Any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 25
Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 26
Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
2. An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 27
Depositary

The Director General of WIPO is the depositary of this Treaty.

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