

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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PROPOSAL BY BRAZIL
ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

Corrigendum

Please replace the Annex of document SCCR/13/3 with the attached Annex.

[Annex follows]

ANNEX

PROPOSAL ON THE PROTECTION
OF BROADCASTING ORGANIZATIONS

by

Brazil

BACKGROUND

1. As a Member of the Rome Convention and the home country of important broadcasting organizations, Brazil fully shares the objective of preventing the serious problem of theft of signals which are used to carry broadcast programs. Because signal theft has entailed considerable economic losses for broadcasting organizations, Brazil agrees that it would be appropriate to update the rights conferred by the Rome Convention to take into account the implications for signal theft of recent technological developments.
2. Under any circumstances, a new international instrument in this field must strike an appropriate balance between the protection of the rights of broadcasting organizations and the public interest, as well as the rights of other right-holders under the copyright system. Signal theft should not be addressed at the expense of the rights of other right-holders. Furthermore, it is important to recall that broadcasting activities in many countries are intended to have a clear “social dimension”, by servicing the public interest in areas of direct relevance to social, economic and cultural development, such as education, the promotion of cultural diversity and others. In many countries, in fact, broadcasting organizations are required to undertake this “public-service” role in order to receive or renew their license to operate. Any new instrument in this area should therefore seek to preserve this social role of broadcasting organizations, for the benefit of society at large in all countries.
3. In this regard, recent initiatives in different international *fora* have enshrined commitments by the international community to certain fundamental objectives, which are directly relevant to the proposed new treaty and, in particular, to the preservation of the social role of broadcasting organizations. The Declaration of Principles and Plan of Action of the 1st Phase of the World Summit on the Information Society (WSIS), for example, affirmed the promotion of access to knowledge and information as key objectives of the international community, with a view to bridging the digital divide that continues to deprive most developing and less-developed countries from taking full advantage of the potential contribution of modern information and communication technologies (ICTs) to development. Brazil is concerned that certain provisions that have been proposed for the new WIPO treaty on broadcasting, in addition to being of questionable relevance to the protection of broadcast signals, would seem to actually run counter to our internationally agreed goals on the promotion of access to knowledge and information.
4. We also note that developments at the United Nations Educational, Scientific and Cultural Organization (UNESCO) recently delivered a groundbreaking “Convention on the Protection and Promotion of the Diversity of Cultural Expressions”, which enshrined the protection and promotion of cultural diversity as a widely shared commitment of the international community. We note, in particular, that Article 21 of this new Convention, the negotiation of which was wholeheartedly supported by Brazil, affirms that “Parties undertake

to promote the objectives and principles of this Convention in other international forums.” Given the significant role that broadcasting organizations can play in the dissemination of cultural content and expressions, it is crucially important to ensure a relationship of mutual supportiveness between the proposed new WIPO treaty on the protection of broadcasting organizations and the new UNESCO Convention on Cultural Diversity. One should also note that the recent 33rd UNESCO General Conference adopted a Resolution, whereby the membership of that Organization expressed its concern with regard to the possible impact that the discussions on broadcasting organizations at WIPO may have on UNESCO activities and objectives, including in respect of access to knowledge and information.

5. Finally, ensuring that an appropriate balance is struck in the proposed new WIPO treaty between the public interest and any new rights conferred to the beneficiaries of the new instrument, so that the social role of broadcasting organizations is preserved, would be fully in line with the recent calls to establish a “Development Agenda” for WIPO, and to ensure that a “development dimension” is mainstreamed into the international intellectual property system in general.

6. Bearing in mind all of these considerations, and desiring positively to contribute to advancing discussions on the important issue of the protection of the rights of broadcasting organizations in WIPO, Brazil would like to propose, for the consideration of the Members of the SCCR, that any new instrument on the protection of the rights of broadcasting organizations include the provisions which follow. In some cases, only changes to provisions already included in the Consolidated Text of the Chairman (Second Revised Text, Document SCCR/12/2 Rev.2) are proposed.

7. Brazil also reserves its right to propose additional changes to other provisions that have been suggested by SCCR Members for the possible new WIPO broadcasting Treaty.

I. GENERAL PUBLIC INTEREST CLAUSES

To underscore the importance that we attach to the above-mentioned international commitments to the promotion of access to knowledge, cultural diversity and development, Brazil proposes that two new clauses on access to knowledge and the protection of cultural diversity should be included in any new treaty on the protection of the rights of broadcasting organizations, which would read as follows:

Article [x] General Principles

Nothing in this Treaty shall limit the freedom of a Contracting Party to promote access to knowledge and information and national educational and scientific objectives, to curb anti-competitive practices or to take any action it deems necessary to promote the public interest in sectors of vital importance to its socio-economic, scientific and technological development.

Article [y] The Protection and Promotion of Cultural Diversity

Nothing in this Treaty shall limit or constrain the freedom of a Contracting Party to protect and promote cultural diversity. To this effect:

(a) In modifying their domestic laws and regulations, Contracting Parties will ensure that any measures adopted pursuant to this Treaty are fully consistent with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

(b) Contracting Parties also undertake to cooperate so as to ensure that any new exclusive rights conferred by this Treaty are applied in a manner supportive of and that does not run counter to the promotion and protection of cultural diversity.

II. LIMITATIONS AND EXCEPTIONS

In order to ensure that the “social dimension” of broadcasting activities is fully preserved, Brazil also proposes that Article 14 of the current Consolidated Text of the Chairman should be redrafted so as to specify certain “public good” exceptions which would be applicable to broadcasts under the proposed new WIPO Treaty. In this regard, Brazil proposes to draw on the content of Article 15 of the Rome Convention itself, with appropriate adaptations to ensure that contemporary issues are properly addressed:

Article 14 *Limitations and Exceptions*

1. Contracting Parties may, in their national legislation, provide for the same kinds of limitations and exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.

2. Contracting Parties may, in their domestic laws and regulations, provide, *inter alia*, the exceptions listed below to the protection guaranteed by this Convention. It is presumed that these uses constitute special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder:

- (a) Private use
- (b) The use of 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;
- (d) Use solely for the purposes of teaching or scientific research;
- (e) The use of works specifically to promote access by persons with impaired sight or hearing, learning disabilities, or other special needs;
- (f) The use by libraries, archivists or educational institutions, to make publicly accessible copies of works that are protected by any exclusive rights of the broadcasting organization, for purposes of preservation, education and/or research;
- (g) Any use of any kind in any manner or form of any part of a broadcast where the program, or any part of it, which is the subject of the transmission is not protected by copyright or any related right thereto.

3. Irrespective of Paragraph 2 above, Contracting Parties may provide additional exceptions to the exclusive rights conferred by this Treaty, provided that such exceptions do not unreasonably conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

III TECHNOLOGICAL PROTECTION MEASURES

Brazil reiterates its proposal to delete *Article 16 (Obligations concerning Technological Measures)* of the current Consolidated Text of the Chairman. There is increasing controversy over the role of technological protection measures in both developed and developing countries and their potential impact on access to information and knowledge. Not only is it feared that technological protection measures may undermine countries' rights to exercise the exceptions and limitations foreseen in their national copyright laws, it is also believed that the use of technological protection measures may unduly restrict access to materials and content that already are in the public domain. Furthermore, we note that the relevance of technological protection measures to signal protection is questionable.

IV. ELIGIBILITY

Finally, Brazil would like to ensure that the proposed new WIPO broadcasting treaty is fully compatible with and is not used to supersede the Rome Convention. We therefore propose to redraft Article 24 of the current Consolidated Text of the Chairman in the following manner:

Article 24
Eligibility for Becoming Party to the Treaty

Any Member State of WIPO may become party to this Treaty, provided that such State is a party to the Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

[End of Annex and of document]