

Standing Committee on Copyright and Related Rights

Twenty-fourth Session
Geneva, July 16 to 25, 2012

COMPARATIVE TABLE

Proposal by Japan

**SCCR/24/3(Japan) SCCR/24/5(South Africa and Mexico) and comments on SCCR/23/6
Comparative Table**

Preamble

SCCR/24/3 (Japan)	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico)	SCCR/23/6 (South Africa and Mexico)	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
The Contracting Parties,	The Contracting Parties,	The Contracting Parties,			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,	Desiring to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible,	Desiring to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible,	This is to clarify that this Treaty is for the “protection” of rights of broadcasting organizations is signal based and in the traditional sense add after “broadcasting organization” “in the traditional sense in their broadcast signal”		Desiring to maintain and develop the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible,
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 need to introduce new international rules <u>using a signal-based approach</u> in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,	Recognizing the need to introduce new international rules using a signal-based approach in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,			Recognizing the need to introduce new international standards in order to provide adequate solutions to the questions raised by the impact of technology on the broadcasting of content protected by copyright and related rights,
Recognizing the <u>profound</u> 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 borders,	Recognizing the impact of the development and convergence of information and communication technologies, <u>including in the digital realm</u> which have given rise to increasing possibilities and opportunities for unauthorized use of broadcast signals both within and across borders,	Recognizing the 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 signals, both, within and across borders,			Taking into account the developments noted in the economic, social, cultural and technological fields and the convergence of information and communication technologies and their consequences in terms of increased possibilities and opportunities concerning unauthorized use of broadcasts, both within and across borders,
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, <u>and the importance of cultural diversity,</u>	Recognizing the need to maintain a balance between the rights of broadcasting organizations and the larger public interest, <u>[as being served also by broadcasting organizations.]</u> particularly in relation to education, research and access to information,	Recognizing the need to maintain a balance between the rights of broadcasting organizations and the larger public interest, particularly in relation to education, research and access to information,			Wishing to maintain a fair balance between the rights of broadcasting organizations and the preservation of the larger public interest, particularly in relation to the fields of education, research and access to information,

<p>Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the need for broadcasting organizations to acknowledge these rights,</p>	<p>Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts <u>signals</u>, as well as the need for broadcasting organizations to acknowledge these rights,</p>	<p>Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts <u>signals</u>, as well as the need for broadcasting organizations to acknowledge these rights,</p>			<p>Convinced, moreover, of the legitimacy of the call by authors, performers and producers of phonograms and videograms for effective and uniform protection against unauthorized content use,</p>
	<p>Recalling the importance of the Development Agenda recommendations, adopted in 2007 by the General Assembly of the Convention establishing the World Intellectual Property Organization (WIPO), which aim to ensure that development considerations form an integral part of the Organization's work,</p>				
<p>Stressing the benefits to <u>authors, performers and producers</u> of phonograms of effective and uniform protection against <u>illegal</u> use of broadcasts</p>	<p>Recognizing the benefits to <u>the owners of copyright and related rights</u> of effective and uniform protection against <u>unauthorized</u> use of their broadcasts,</p>	<p>Recognizing the benefits to the owners of copyright <u>works</u> and related rights <u>works</u> of effective and uniform protection against <u>illegal</u> use of broadcasts signals,</p>			<p>Taking into consideration the growing trend for obtaining access to diverse, quality programs through the use of decoding devices and desiring to offer the public the same opportunities,</p>
					<p>Recognizing the role played by broadcasting organizations in the dissemination of information, access to know-how and knowledge and, finally, urging respect for the rights granted to owners of content rights,</p>
<p>Have agreed as follows:</p>	<p>Have agreed as follows:</p>	<p>Have agreed as follows:</p>			<p>Have agreed as follows:</p>

Relation to Other Conventions and Treaties

SCCR/24/3 (Japan) Article1	SCCR/24/5 (SCCR/23/6 rev). (South Africa and Mexico) Article1	SCCR/23/6 (South Africa and Mexico) Article1	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under any <u>other copyright and related rights treaties</u> .	(1) Nothing in this Treaty shall derogate from existing <u>rights and obligations</u> that Contracting Parties have to each other under any <u>international, regional or bilateral treaties addressing copyright or related rights</u> .	1. Nothing in this Treaty shall derogate from existing rights and obligations that Contracting Parties have to each other under any international, regional or bilateral treaties addressing copyright or related rights.		Comments by Brazil; f) What are the safeguards that can be employed in order to prevent the new rights to be granted from negatively affect the exercise of other copyright and related rights?	ARTICLE1 Nothing in this Draft Treaty shall derogate from the obligations that Contracting Parties have to each other under any other treaties addressing copyright or related rights.
(2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in <u>program material incorporated in broadcasts</u> . Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.	(2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in <u>subject matter carried by broadcast signals</u> . Consequently, no provision of this Treaty shall be interpreted as prejudicing such protection.	2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in subject matter <u>incorporated in</u> broadcasts signals. Consequently, no provision of this Treaty shall be interpreted as prejudicing such protection.			
(3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.	(3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.	3. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.			

Definitions

SCCR/24/3 (Japan) Article2	SCCR24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article2	SCCR/23/6 (South Africa and Mexico) Article2	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
For the purposes of this Treaty,	For the purposes of this Treaty:	For the purposes of this Treaty:		<p>Comments by Brazil; a) To what extent are the Definitions and the Scope of Application aligned with the 2007 mandate of the General Assembly? In a preliminary appreciation of the text, in special with regard to the definitions of “broadcast signal” and “broadcasting organizations”, the proposed language seems to go further than the limits established by the mandate that guides the ongoing negotiation. b) In which way are the definitions provided in the submission aligned with the concept of “in the traditional sense”, as established by the General Assembly mandate of 2007 (Document WO/GA/34/8, paragraph 2.(i))? c) In which way would the new definitions of “signal” and “broadcast signal” relate to the current international regulations on protection of broadcasting organizations, in special the Rome Convention and the TRIPS Agreement? d) What are the reasons why the definition of “broadcasting organizations” differs from those presented in other international instruments currently in force, such as the WIPO Performances and Phonograms Treaty (WPPT)?</p>	ARTICLE2
	(a) “signal”, means the electronically- generated carrier of information, data and/or audiovisual content, consisting of sounds or images or sounds and images or representations thereof, whether encrypted or not	(a) “signal”, means the electronically- generated carrier of information, data and/or audiovisual content, consisting of sounds or images or sounds and images or representations thereof, whether encrypted or not.	<p>‘signal’ has to be defined specifically excluding contents but should be linked to the object of protection that is “broadcast/cablecast” Add this new definition “signal” means an electronically–generated carrier capable of transmitting broadcast or cablecast.</p>		- Signal: the conveyance of broadcast programs via electronic means.

<p>(a) “broadcasting” means the transmission by wireless means for the reception by the public of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”. Wireless transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent. “Broadcasting” shall not be understood as including transmissions over computer networks;</p>	<p>(b) “broadcast”, means the transmission of a signal by, or on behalf of, a broadcasting organization for reception by the public.</p>	<p>(b) “broadcast”, means the transmission of the signal <u>by wire or wireless electric means</u> by a broadcasting organization for reception by the public of sounds or images or images and sounds, and broadcasting shall be construed accordingly. <u>Such transmission does not include any rights with respect to the data and/or representations thereof.</u></p>	<p>Broadcast is the object of protection. It is the content carrying signal. Hence the definition needs to be linked to the programme they are transmitting. Internet transmission needs to be specifically excluded from the scope of “broadcast”.</p> <p>“Broadcast” means the transmission of a set of electronically generated signals by wireless and carrying a specifically program for the reception by the general public. ‘Broadcast’ shall not be understood as including transmission of such a set of signals over the computer networks.</p>		<p>-Broadcasting: Two definitions have been proposed: the transmission of programs by radio or television for reception by the public; the transmission, via satellite, by wire or wireless means, of encrypted or unencrypted, programs when the means for decoding the broadcast are provided by the broadcasting organization, or with its consent. - Broadcast: the process whereby the output signal of a broadcasting organization is taken from its point of origin, this being the point where such a signal is made available in its content format, and is conveyed to any broadcast target area by means of electronic communications.</p>
<p>(b) “cablecasting” means the transmission by wire for the reception by the public of sounds or of images or of images and sounds 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;</p>			<p>“Cablecast” means the same as “broadcast” when the transmission is by wire and excluding transmission by satellite or over computer networks;</p>		
	<p>(c) “broadcast signal” means a signal that is broadcast by a broadcasting organization.</p>	<p>(c) “broadcast signal” means the signal that is broadcast by the broadcasting organization.</p>	<p>There is no need for this definition since it is covered in the definition of signal and broadcast.</p>		
<p>(c) “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;</p>	<p>(d) “broadcasting organization”, means the legal entity that takes the initiative for packaging, assembling and scheduling of programme content for which it has, where necessary, been authorized by rights holders and takes the legal and editorial responsibility for the communication to the public of everything which is included in its broadcast signal.</p>	<p>(d) “broadcasting organization”, means the legal entity that takes the initiative for packaging, assembling and scheduling of <u>program</u> content for which it has, where necessary, been authorized by rights holders and takes the legal and editorial responsibility <u>or otherwise has rights of use for the broadcasting to the public of everything which is included in its broadcast signal.</u></p>		<p>Comment by Monaco; Nowadays laws and regulations are increasingly embracing the broader concepts of “content editors” or “audiovisual media services”. The Principality of Monaco is of the opinion that it would be desirable to reflect these developments in the text;</p>	<p>- Broadcasting organization: the legal entity that takes on the responsibility and the initiative for assembling programs, and arranges the transmission of programs (in encrypted or unencrypted format) in accordance with a broadcasting schedule, and which takes on editing responsibilities. All content protection is excluded.</p>

<p>(d) “retransmission” means the simultaneous transmission for the reception by the public by any means of a transmission referred to in provisions (a) or (b) of this Article by any other person than the original broadcasting or cablecasting organization; simultaneous transmission of a retransmission shall be understood as well to be a retransmission;</p>	<p>(e) ”retransmission”, means the transmission by any means by any person other than the original broadcasting organization for reception by the public, whether simultaneous or delayed;</p>	<p>(e) ”retransmission”, means the simultaneous or delayed transmission for the reception by the public by any means <u>of a broadcast</u> by any other person than the original broadcasting organization; <u>simultaneous transmission of a re-broadcasting shall be understood as well to be a retransmission.</u></p>	<p>Replace “retransmission” by “rebroadcast” and delete “by any means” since it covers transmission through computer network (webcasting and simulcasting). The modified definition: “Rebroadcast” means the simultaneous transmission for the reception by the public of a broadcast or a cablecast by any other person than the original broadcasting organization; simultaneous transmission of a rebroadcast shall be understood as well to be a rebroadcast;</p>		<p>- Retransmission: SCCR/23/6 page 3 the simultaneous transmission for the reception by the public, via any method, of a wireless transmission of sound or images, or images and sounds, or representations thereof, for reception by the public.</p>
<p>(e) “communication to the public” means making the transmissions referred to in provisions (a), (b) or (d) of this Article audible or visible, or audible and visible, in places accessible to the public;</p>	<p>(g) “communication to the public”, means any transmission or retransmission to the public of a broadcast signal, or a fixation thereof, by any medium or platform.</p>			<p>Comment by Monaco; In the interests of consistency, it would be preferable to use the concept of “communication to the public” (as contained in Article 10(1)(ii)) throughout the text, a change that would involve replacing the expression “broadcasting to the public” in Article 2 d)</p>	<p>- Communication to the public making broadcasts audible, visible or audible and visible, in places accessible to the public.</p>
<p>(f)“fixation” means the embodiment of sounds or of images or of images and sounds or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.</p>	<p>(f) “fixation”, means the embodiment of sounds or of images or of images and sounds or the representations thereof, from which they can be perceived, reproduced or communicated through a device.</p>	<p>(f) “fixation”, means the embodiment of sounds or of images or of images and sounds or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.</p>			<p>- Fixation: the embodiment of sounds or of images or of images and sounds or of the representations thereof, from which they can be perceived, reproduced or communicated through a technical device.</p>
	<p>(g) “communication to the public”, means any transmission or retransmission to the public of a broadcast signal, or a fixation thereof, by any medium or platform.</p>				
	<p>(h) "pre-broadcast signal", means a private transmission of content to a broadcasting organization which that broadcasting organization intends to include in its programme schedule.</p>				

<p>Article 17 (2) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast, the owner of any right in the broadcast, or information about the terms and conditions of use of the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with 1) the broadcast or the signal prior to broadcast, 2) the retransmission, 3) transmission following fixation of the broadcast, 4) the making available of a fixed broadcast, or 5) a copy of a fixed broadcast.</p>	<p>(i) “rights management information” means information which identifies the broadcasting organization, the broadcast, the owner of any right in the broadcast, or information about the terms and conditions of use of the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast or the pre-broadcast signal or its use in accordance with Article 6.</p>				
					<p>- Transmission: the sending, for reception by the public, of visual images, sounds or representations thereof by way of an electronic carrier.</p>
			<p>“programme” means a discreet package of one or more works protected by copyright or related rights, in the form of live or recorded material consisting of images, sounds or both;</p>		

Scope of Application

SCCR/24/3 (Japan) Article3	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article3	SCCR/23/6 (South Africa and Mexico) Article3	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) The protection granted under this Treaty extends only to signals used for the transmissions by the beneficiaries of the protection of this Treaty, and not to works and other protected subject matter carried by such signals.	(1) The protection granted under this Treaty extends only to broadcast signals used by a broadcasting organization, and not to works or other protected subject matter carried by such signals.	1. The protection granted under this Treaty extends only to broadcast signals, and not to works and other subject matter carried by broadcast signals, <u>whether such works and other subject matter are protected by copyright or are in the public domain.</u>	Replace “works and other object matter” by “programme” in both the places in Article 3.1. Also clarify that it is confined to the traditional broadcasting and cable casting media and subjected to contractual relationship. Hence the modified clause (1).The provisions of this Treaty shall provide protection to the broadcasting organizations for their broadcasts on the traditional broadcasting and cable-casting media to enable them to enjoy the rights to the extent owned or acquired by them from the owners of copyrights or related rights.	Comment by Monaco; The Principality of Monaco feels that the scope of protection should be extended beyond the traditional concept of “broadcasting organizations” and that it should be technology-neutral, as well as encompassing new uses (mobile, Internet), in order to take into account the appearance of new multimedia actors.	ARTICLE3 The protection granted under this Treaty extends only to signals used for transmissions by broadcasting organizations, and not to works and other protected subject matter carried by such signals.
(2) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.					
(3) The provisions of this Treaty shall apply <i>mutatis mutandis</i> to the protection of cablecasting organizations in respect of their cablecasts.					
(4) The provisions of this Treaty shall not provide any protection in respect of (i) mere retransmissions by any means <u>of transmissions referred to in Article 2(a9,8b9and(d));</u> (ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public.	(2) The provisions of this Treaty shall not provide any protection in respect of mere retransmissions by any means;	2. <u>The object of protection granted under the provisions of this Treaty shall not include mere retransmission.</u>	In Article 3.2 add the following to clarify on-demand transmission and transmission by computer network are also not protected. Add the following; (ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or (iii) any transmissions, including any retransmissions of a broadcast or a cablecast, over computer networks(transmissions or retransmissions using the Internet Protocol, “webcasting”, or “net-casting”).	Comment by Brazil; e) What is covered by the concept of “mere retransmission”, in Article 3 of the submission?	

	<p>(3) Any Contracting Party may deposit with the Director-General of WIPO a declaration that it will limit the protection provided under this Treaty in respect of broadcasts over computer networks to the [simultaneous and unchanged] transmission by a broadcasting organization of its own broadcasts transmitted by other means, provided that such reservation shall only have effect for a period not exceeding three years from the date of entry into force of this Treaty.</p>				
	<p>(4) To the extent that a Contracting Party to this Treaty makes use of the reservation permitted under the preceding paragraph, the obligation of other Contracting Parties provided for in Article 5 paragraph 1 does not apply.</p>				

Beneficiaries of Protection

SCCR/24/3 (Japan) Article4	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article4	SCCR/23/6 (South Africa and Mexico) Article4	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.	(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.	1. Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.			ARTICLE4 The protection provided under this Draft Treaty extends to broadcasting organizations that are nationals of other Contracting Parties, namely:
(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet either of the following conditions:	(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet either of the following conditions:	2. Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet either of the following conditions:			
(i) the headquarters of the broadcasting organization is situated in another Contracting Party, or	(i) the headquarters of the broadcasting organization is situated in another Contracting Party, or	(i) the headquarters of the broadcasting organization is situated in another Contracting Party, or	Replace “or” with “and”		Broadcasting organizations whose headquarters are situated in a Contracting Party, or
(ii) the <u>broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be the point at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for direct reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.</u>	(ii) the <u>broadcast signal was transmitted from a transmitter situated in another Contracting Party.</u> (3) In the case of a broadcast signal by satellite the transmitter shall be understood to be situated in the Contracting Party from which the uplink to the satellite is sent in an uninterrupted chain of communication leading to the satellite and down towards the earth.	(ii) the point of origin of the broadcast output signal in an uninterrupted chain of communication intended for direct reception by the public, sections of the public or subscribers is situated in another Contracting Party.			Broadcasting organizations whose broadcasts are transmitted by a device located in the territory of another Contracting Party; Broadcasting organizations broadcasting via satellite from the place at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for direct reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.
(3) By means of a notification deposited with the Director General of the World Intellectual Property Organization (WIPO), any Contracting Party may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting Party and the broadcasts are transmitted from a transmitter situated in the same Contracting Party. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.					

National Treatment

SCCR/24/3 (Japan) Article5	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article5	SCCR/23/6 (South Africa and Mexico) Article5	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) Each Contracting Party shall accord to the <u>national</u> broadcasting organizations of other Contracting Parties treatment <u>no less favorable than</u> it accords to its own broadcasting organizations in respect of the <u>application</u> of the rights recognized expressly under this Treaty.	(1) Each Contracting Party, shall accord to the broadcasting organizations of other Contracting Parties <u>the same treatment it accords</u> to its own broadcasting organizations in respect of the <u>enjoyment</u> of the rights recognized expressly under this Treaty.	1. Each Contracting Party, shall accord to the <u>national</u> broadcasting organizations of other Contracting Parties treatment <u>no less favorable than</u> it accords to its own broadcasting organizations in respect of the <u>application</u> of the rights recognized expressly under this Treaty.	Delete “no less favorable than” and insert “the“ before “treatment”.		ARTICLE5 Each Contracting Party shall accord to broadcasting organizations that are nationals of other Contracting Parties the protection of the rights that their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts for which such nationals are protected, as well as the rights specifically recognized in this Draft Treaty.
(2) The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the provisions in Article 7(3), Article 9(2), Article 10(3), Article 11(2), and Article 12 (2) of this Treaty.					

Comments regarding the Rights of Broadcasting Organizations (SCCR 23/6 Article 6)

India ;

India opposes Alternative A since it is broad and covers post fixation rights. Support Alternative B with the following modifications:

Monaco;

With regard to Article 6 (“Rights of Broadcasting Organizations”), in principle Alternative A has the advantage of being more exhaustive. However, it should be pointed out that the distinction between “mere retransmission”, which is expressly excluded from the scope of protection within the framework of Article 3, and the right to authorize the retransmission of the signal provided for under Alternative A of Article 6, is not immediately obvious, indeed the two provisions appear to contradict one another in this regard. Clarification is therefore required in order to dispel any ambiguity. For its part, Alternative B may give rise to difficulties in terms of interpretation, owing to the fact that one aspect of the issue is left as a matter for domestic law even though the services are transnational.

Right of Retransmission

SCCR/24/3 (Japan) Article6	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article6	SCCR/23/6 (South Africa and Mexico) Article6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p><i>Alternative 6.1</i> Broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission of their broadcasts by any means, including rebroadcasting, retransmission by wire, and retransmission over computer networks.</p>	<p>(1) Broadcasting organizations shall enjoy the exclusive right to authorize: (i) the communication of their broadcast signals to the public, by any means, including the making available to the public of fixations of the broadcast signal in such a way that members of the public may access them from a place and at a time individually chosen by them;</p>	<p><i>Alternative A</i> Broadcasting organizations shall enjoy the right to authorize: (i) the communication of their broadcast signals to the public, by any means, including the making available to the public of their broadcast signals in such a way that members of the public may access them from a place and at a time individually chosen by them; <u>(ii) the retransmission of their broadcast signal;</u></p>			<p>ARTICLE6&7 Broadcasting organizations shall enjoy the following rights in their broadcasts: -the exclusive right to retransmission; - the exclusive right of authorizing the making available to the public of their broadcasts from fixations, by wire or wireless means, from a place and at a time chosen by them. Broadcasting organizations shall enjoy appropriate and effective protection against any unauthorized acts, including: -unauthorized retransmission of broadcasts,</p>
<p><i>Alternative 6.2</i> Broadcasting organizations shall enjoy the exclusive right of authorizing the retransmission of their broadcast by broadcasting or cablecasting excluding over computer networks, and the right of making available of their broadcasts to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.</p>		<p><i>Alternative B</i> (1)Broadcasting organizations shall enjoy the right to authorize: (i) The transmission of their broadcast signal to the public by any means.</p>	<p>“by any means” will include on demand streaming?/ internet transmissions/ simulcasting etc. The word “transmission” appears to be capable of covering internet transmission. Since the treaty is meant to protect the rights of the broadcasting organizations in the traditional sense it should be replaced with “rebroadcast”.</p> <p>Replace in (i) - “transmission” by “rebroadcast” and delete “by any means”</p>		

Right of Communication to the Public

SCCR/24/3 (Japan) Article7	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article6	SCCR/23/6 (South Africa and Mexico) Article6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p>(1) Broadcasting organizations shall enjoy the exclusive right of authorizing <u>the communication to the public of their broadcasts, if such communication is made in places accessible to the public against payment of an entrance fee.</u></p>	<p>(1) Broadcasting organizations shall enjoy the exclusive right to authorize: <u>(ii) the performance in public of their broadcast signal to obtain commercial advantage;</u></p>	<p><i>Alternative A</i> Broadcasting organizations shall enjoy the right to authorize: (v) the performance in public of their broadcast signals <u>for direct profit-making purposes;</u></p> <p><i>Alternative B</i> (1) Broadcasting organizations shall enjoy the right to authorize: (ii) The performance in public of their broadcast signals <u>for direct profit-making purposes.</u></p>	<p>(v) and (vi) evidence that not only symbols but also contents are covered.</p> <p>To ensure that the rights they enjoy are based on the contractual relationship with the content creator add at the end of (ii) after “profit-making purpose” “subject to such conditions and the extent to which the broadcasting organizations have been so authorized by the owners of the works protected by copyright or related rights transmitted in the broadcasts.”</p>		<p>ARTICLE6&7 Broadcasting organizations shall enjoy the following rights in their broadcasts: -the exclusive right to communication to the public; Broadcasting organizations shall enjoy appropriate and effective protection against any unauthorized acts, including: -unauthorized communication to the public,</p>
<p>(2) It shall be a matter for <u>the domestic law of the Contracting Party where protection of the provision of paragraph (1) is claimed to determine the conditions under which it may be exercised.</u></p>	<p>(2) <u>With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party where protection of <u>this right</u> is claimed to determine the conditions under which it may be exercised, <u>provided that such protection is adequate and effective.</u></u></p>	<p><i>Alternative B</i> (2) With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised, provided that such protection is adequate and effective.</p>			
<p>(3) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain communications, or that it will limit their application in some other way, or that it will not apply these provisions at all. If a Contracting Party makes such a declaration, the other Contracting Parties shall not be obliged to grant the right referred to in paragraph (1) to broadcasting organizations whose headquarters are in that Contracting Party.</p>					

Right of Fixation

SCCR/24/3 (Japan) Article8	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article6	SCCR/23/6 (South Africa and Mexico) Article6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
Broadcasting organizations shall enjoy the exclusive right of authorizing the making fixation of their broadcasts.		<i>Alternative A</i> Broadcasting organizations shall enjoy the right to authorize: <u>(iii) the fixation of their broadcast signal;</u>			ARTICLE6&7 Broadcasting organizations shall enjoy the following rights in their broadcasts: - the exclusive right to fixation; Broadcasting organizations shall enjoy appropriate and effective protection against any unauthorized acts, including: -unauthorized fixation of broadcasts,

Right of Reproduction

SCCR/24/3 (Japan) Article9	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article6	SCCR/23/6 (South Africa and Mexico) Article6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.		<i>Alternative A</i> Broadcasting organizations shall enjoy the right to authorize: <u>(iv) the direct or indirect reproduction, in any manner or form, of fixations of their broadcast signal;</u>	(v) and (vi) evidence that not only symbols but also contents are covered.		ARTICLE7 Broadcasting organizations shall enjoy appropriate and effective protection against any unauthorized acts, including: -unauthorized reproduction of their broadcasts following their fixation,
(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), the following rights: (i) broadcasting organizations shall enjoy the exclusive right of authorizing the reproduction of their broadcasts from fixations made pursuant to Article 14 when such reproduction would not be permitted by that Article or otherwise made without their authorization, and (ii) reproduction, without the consent of the broadcasting organizations, of fixations of their broadcasts other than those referred to in subparagraph (i) shall be prohibited.					

Right of Distribution

SCCR/24/3 (Japan) Article10	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article6	SCCR/23/6 (South Africa and Mexico) Article6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of fixations of their broadcasts, through sale or other transfer of ownership.		<i>Alternative A</i> Broadcasting organizations shall enjoy the right to authorize: <u>(vi) the making available to the public of the original and copies of fixations of their broadcast signals, through sale or other transfer of ownership;</u>	This (iv) goes much beyond the scope of signal protection (post fixation rights) and hence to be deleted.		ARTICLE6&7 Broadcasting organizations shall enjoy the following rights in their broadcasts: - the exclusive right to distribution; Broadcasting organizations shall enjoy appropriate and effective protection against any unauthorized acts, including: -unauthorized distribution to the public,
(2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixation of the broadcast with the authorization of the broadcasting organization.					
(3) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), by providing that the distribution to the public and importation, without the consent of the broadcasting organizations, of reproductions of unauthorized fixations of their broadcasts, shall be prohibited.					

Right of Transmission Following Fixation

SCCR/24/3 (Japan) Article11	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article6	SCCR/23/6 (South Africa and Mexico) Article6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p><i>Alternative 11.1</i></p> <p>(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the transmission by any means for the reception by the public of their broadcasts following fixation of such broadcasts.</p> <p>(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), by providing that the transmission, without the consent of the broadcasting organizations, of their broadcasts from unauthorized fixations of their broadcasts shall be prohibited.</p>	<p>(1) Broadcasting organizations shall enjoy the exclusive right to authorize:</p> <p>(i) the communication of their broadcast signals to the public, by any means, including the making available to the public of fixations of the broadcast signal in such a way that members of the public may access them from a place and at a time individually chosen by them;</p>	<p>Broadcasting organizations shall enjoy the right to authorize:</p> <p><u>(viii) the transmission by any means for the reception by the public of their broadcasts signals following fixation of such broadcasts signals.</u></p>			<p>ARTICLE6&7</p> <p>Broadcasting organizations shall enjoy the following rights in their broadcasts:</p> <ul style="list-style-type: none"> - the exclusive right to the post-fixation transmission, by any means, of their broadcasts, for reception by the public; <p>Broadcasting organizations shall enjoy appropriate and effective protection against any unauthorized acts, including:</p> <ul style="list-style-type: none"> -unauthorized post-fixation transmission.
<p><i>Alternative 11.2</i></p> <p>(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the transmission by broadcasting or cablecasting, excluding over computer networks for the reception by the public of their broadcasts following fixation of such broadcasts.</p> <p>(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), by providing that broadcasting or cablecasting, without the consent of the broadcasting organizations, of their broadcasts from unauthorized fixations of their broadcasts, shall be prohibited.</p>					

Right of Making Available of Fixed Broadcasts

SCCR/24/3 (Japan) Article12	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article6	SCCR/23/6 (South Africa and Mexico) Article6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p>(1) Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of <u>their broadcasts from fixations, by wire or wireless means</u>, in such a way that members of the public may access them from a place and at a time individually chosen by them.</p>	<p>(1) Broadcasting organizations shall enjoy the exclusive right to authorize: (i) The communication of their broadcast signals to the public, by any means, including the making available to the public of <u>fixations of the broadcast signal</u> in such a way that members of the public may access them from a place and at a time individually chosen by them;</p>	<p>Alternative A Broadcasting organizations shall enjoy the right to authorize: (i) the communication of their broadcast signals to the public, by any means, including the making available to the public of <u>their broadcast signals</u> in such a way that members of the public may access them from a place and at a time individually chosen by them;</p> <p>Alternative B (1) Broadcasting organizations shall enjoy the right to authorize: (i) <u>The transmission of their broadcast signal to the public,</u></p>			<p>ARTICLE6 Broadcasting organizations shall enjoy the following rights in their broadcasts: - the right to make available fixations of broadcasts;</p>
<p>(2) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will establish protection for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), by providing that the making available to the public, without the consent of the broadcasting organizations, of their broadcasts from unauthorized fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, shall be prohibited.</p>					

Protection in Relation to Signals Prior to Broadcasting

SCCR/24/3 (Japan) Article 13	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article 6	SCCR/23/6 (South Africa and Mexico) Article 6	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p><i>Alternative 13.1</i> Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Article 6 to 12 of this Treaty in relation to their signals prior to broadcasting.</p>	<p>(1) Broadcasting organizations shall enjoy the exclusive right to authorize: (iii) The use of a pre-broadcast signal intended for them.</p>	<p><i>Alternative A</i> Broadcasting organizations shall enjoy the right to authorize: (vii) the use of a pre-broadcast signal intended for them;</p>		<p>Comment by Switzerland; Request for a precise definition of the term “pre-broadcast signal”</p>	
<p><i>Alternative 13.2</i> Contracting Parties shall provide adequate and effective legal protection in relation to their signals prior to broadcasting. The means of the protection granted by this Article shall be governed by the legislation of the country where protection is claimed.</p>	<p>(2) With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised, provided that such protection is adequate and effective.</p>	<p><i>Alternative B</i> (1) Broadcasting organizations shall enjoy the right to authorize: (iii) The use of pre-broadcast signal. (2) With respect to the acts under paragraphs (1)(ii) and (iii), in this article, it shall be a matter for domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised, provided that such protection is adequate and effective.</p>			

Limitations and Exceptions

SCCR/24/3 (Japan) Article14	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article7	SCCR/23/6 (South Africa and Mexico) Article7	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p><i>Alternative 14.1</i></p> <p>(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or 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.</p> <p>(2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.</p> <p><i>Alternative 14.2</i></p> <p>(1) Any Contracting Party may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Treaty:</p> <p>(a) private use;</p> <p>(b) use of short excerpts in connection with the reporting of current events;</p> <p>(c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;</p> <p>(d) use solely for the purposes of teaching or scientific research;</p> <p>(2) Irrespective of paragraph 1 of this article, any Contracting Party may, in its domestic laws and regulations, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations, as it provides, for in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works.</p>	<p>(1) Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Treaty as regards:</p> <p>(i) private use;</p> <p>(ii) use of short excerpts in connection with the reporting of current events;</p> <p>(iii) use solely for the purposes of education and scientific research.</p> <p>(2) Notwithstanding the contents of paragraph (1) of this Article, any Contracting State may, in its domestic laws and regulations, provide for same or other limitations or exceptions as are applied in connection with works protected by copyright to the extent such exceptions and limitations are confined to special cases that do not conflict with the normal exploitation of the broadcast signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.</p>	<p>(1) Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Treaty, as regards:</p> <p>(i) private use;</p> <p>(ii) use of short excerpts in connection with the reporting of current events;</p> <p>(iii) use solely for the purposes of education and scientific research.</p> <p>(2) Notwithstanding the contents of paragraph (1) of this Article, any Contracting State may, in its domestic laws and regulations, provide for same or further limitations or exceptions as are applied in connection with the protection of copyright in copyrightable works to the extent such exceptions and limitations are confined to special cases that do not conflict with the normal exploitation of the broadcast signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.</p>		<p>Comment by Monaco</p> <p>With regard to Article 7, on limitations and exceptions, the Principality of Monaco is of the view that exceptions relating to the use of broadcast signals for educational purposes must be designed to strengthen educational or research usage, in order to ensure access to content for teachers and researchers. This aim should be clearly stated in the text; the terms “short excerpts” and “current events” need to be defined in order to avoid any problems regarding interpretation.</p>	<p>ARTICLE8</p> <p>The following uses of broadcasts are permitted without requiring the authorization of broadcasting organizations: private use; the use of short excerpts in connection with the reporting of current events; use for the purposes of education and scientific research.</p> <p>Comments on article 8: Provision must be made for limitations and exceptions that respond to the legitimate needs of visually impaired persons, as well as to the needs of archive services and libraries, provided that these limitations and exceptions do not conflict with the normal exploitation of broadcasts, or unjustifiably prejudice the legitimate interests of broadcasting organizations.</p> <p>To the same end, the need to protect the interests of content owners must be taken into account.</p> <p>Grounds: The implementation of the World Intellectual Property Organization Development Agenda.</p>

Term of Protection

SCCR/24/3 (Japan) Article15	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article8	SCCR/23/6 (South Africa and Mexico) Article8	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p><i>Alternative 15.1</i> The term of protection to be granted to broadcasting organizations under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast took place.</p>			Delete this article since there is no need for fixing term as only signal is protected.	Comment by Monaco; The term of protection provided for under Article 8 seems much too vague. The Principality of Monaco believes that a single, harmonized term should be established at the international level, given that broadcasting services are becoming increasingly transnational in nature.	ARTICLE9 The term of protection granted to broadcasting organizations under this Draft Treaty must last for a minimum period of 50 years computed from the date on which the broadcast was first communicated to the public; the term of protection shall run from January 1 of the calendar year following the first communication.
<p><i>Alternative 15.2</i> The term of protection to be granted to broadcasting 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.</p>	<p>Alternative A The term of protection to be granted to broadcasting organizations under this Treaty shall last for a minimum period of 20 years computed from the end of the year in which the broadcast signal was broadcast.</p> <p>Alternative B (1) Contracting parties may provide in its national law the term of protection to be granted to the beneficiaries under this treaty, (2) Notwithstanding the contents of paragraph (1), such a term of protection shall not be in conflict with the normal exploitation of the broadcast signal and do not unreasonably prejudice the legitimate rights of the broadcasting organizations nor the rights holders.</p> <p>Alternative C No such provision.</p>	<p>The term of protection to be granted to broadcasting organizations under this Treaty shall last for a minimum period of 20 years computed from the end of the year in which the broadcast signal was broadcast.</p>			

Obligations Concerning Technological Measures

SCCR/24/3 (Japan) Article16	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article9	SCCR/23/6 (South Africa and Mexico) Article9	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p>(1) Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their broadcasts, that are not authorized by the broadcasting organizations concerned or are not permitted by law.</p>	<p>(1) Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their broadcasts, that are not authorized by the broadcasting organizations concerned or are not permitted by law.</p>	<p>(1) Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their broadcast <u>signals</u>, that are not authorized by the broadcasting organizations concerned or are not permitted by law.</p>	<p>There is no need for TPM or RMI since this relate to protecting content. What is needed is the protection to the signal. We may argue for replacing this and the next article with the following;</p> <p>Protection of Encryption and information relevant for protection Contracting Parties shall provide adequate and effective legal protection against: (1)unauthorized decryption of an encrypted broadcast; (2)removal or alternation of any electronic information relevant for the application of the protection of the broadcasting organizations .</p>		<p>ARTICLE 10 The Contracting Parties must provide adequate legal protection and effective legal remedies against any attempt to circumvent, or circumvention of, technological protection measures implemented by broadcasting organizations in connection with the exercise of their rights under the provisions of this Draft Treaty. The aim of these technological measures is to restrict acts, in respect of their broadcasts, that are not authorized by the broadcasting organizations concerned, such as: - the decoding of encrypted signals; - the reception, distribution and communication to the public of such program-carrying signals, without the authorization of the broadcasting organization concerned; - participation in the manufacture, import, sale or any other act making available a device or system capable of decoding an encrypted signal. Comments on Article 10: The use of technological protection measures should in no way constitute an obstacle to access to broadcast programs for visually impaired persons, archive services or libraries.</p>
	<p>(2) Without limiting the foregoing, Contracting Parties shall provide adequate and effective legal protection against: (i) unauthorized decryption of an encrypted broadcast signal; (ii) removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.</p>	<p>(2) <u>Contracting parties may, in the absence of voluntary measures by the relevant rights holders, expressly provide that the legal protection and legal remedies contemplated in paragraph 1) of this Article shall not apply to situations where national laws relating to the protection of the work being broadcast or the broadcast itself would permit the work to be used, where the enforcement and exercise of such legal protections or remedies would adversely impact such permitted uses.</u></p>			

	<p>(3) Contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of technological measures that are used by broadcasting organizations in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their broadcast signals, which are not authorized by the broadcasting organizations concerned or permitted by law.</p>				
--	--	--	--	--	--

Obligations Concerning Rights Management Information

SCCR/24/3 (Japan) Article17	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article10	SCCR/23/6 (South Africa and Mexico) Article10	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:	(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:	(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:	Delete this article.		ARTICLE 11 The Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts, or having reasonable grounds to think that it will induce, enable, facilitate or conceal an infringement of a right: the removal or alteration of electronic rights management information without authorization; the distribution or import of broadcast signals for distribution, transmission or communication to the public, without authorization, knowing that electronic rights management information has been removed from or altered in the broadcast signal or prior to broadcast without authorization.
(i) to remove or alter any electronic rights management information without authority;	(i) to remove or alter any electronic rights management information without authorization;	(i) to remove or alter any electronic rights management information without authorization;			
(ii) to distribute or import <u>for distribution fixations of broadcasts</u> , to retransmit or communicate to the public <u>broadcasts</u> , or to <u>transmit or make available to the public fixed broadcasts</u> , without authority, knowing that electronic rights management information has been without <u>authority</u> removed from or altered in the broadcast or the signal prior to broadcast.	(ii) to distribute or import <u>broadcast signals for retransmission or communication to the public</u> , broadcasting, or <u>copies of fixations of their broadcast signals</u> , without <u>authorization</u> , knowing that electronic rights management information has been removed from or altered in the broadcast <u>signals or pre- broadcast signals</u> without authorization.	(ii) to distribute or import broadcast signals for distribution, retransmission or communication to the public, broadcasting, or <u>making available to the public</u> , without authorization, knowing that electronic rights management information has been removed from or altered in the broadcast signal or <u>the signal prior to broadcast</u> without authorization.			
(2) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast, the owner of any right in the broadcast, or information about the terms and conditions of use of the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with 1) the broadcast or the signal prior to broadcast, 2) the retransmission, 3) transmission following fixation of the broadcast, 4) the making available of a fixed broadcast, or 5) a copy of a fixed broadcast.	<i>Article 2 i) “rights management information” means information which identifies the broadcasting organization, the broadcast, the owner of any right in the broadcast, or information about the terms and conditions of use of the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast or the pre-broadcast signal or its use in accordance with Article 6.</i>	(2) As used in this Article, “rights management information” means information which identifies the broadcasting organization, the broadcast signal, the owner of any right in the broadcast signal, or information about the terms and conditions of use of the broadcast signal, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the broadcast signal or the signal prior to broadcast or its use in accordance with Article 6.			

Formalities

SCCR/24/3 (Japan) Article18	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico)	SCCR/23/6 (South Africa and Mexico)	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.					

Reservations

SCCR/24/3 (Japan) Article19	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico)	SCCR/23/6 (South Africa and Mexico)	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
Reservations to this Treaty shall be permitted only according to the provisions of Articles 4(3),7(3), 9(2), 10(3), 11(2)and 12(2).					

Application in Time

SCCR/24/3 (Japan) Article20	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico)	SCCR/23/6 (South Africa and Mexico)	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
<p><i>Alternative 20.1</i> (1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, <i>mutatis mutandis</i>, to the rights of broadcasting organizations provided for in this Treaty.</p> <p>(2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.</p> <p><i>Alternative 20.2</i> (1) Contracting Parties shall accord the protection granted under this Treaty to fixed broadcast that exists at the moment of the entry into force of this Treaty and to all broadcastings that occur after the entry into force of this Treaty for each Contracting Party</p> <p>(2) Notwithstanding the provisions of paragraph (1), a Contracting Party may declare in a notification deposited with the Director General of WIPO that it will not apply the provisions of Articles 6 to 12 of this Treaty, or any one or more of those, to fixed broadcasts that existed at the moment of the entry into force of this Treaty for each Contracting Party. In respect of such Contracting Party, other Contracting Parties may limit the application of the said Articles to broadcasting that occurred after the entry into force of this Treaty for that Contracting Party</p>					<p>ARTICLE13 The Contracting Parties shall implement the provisions governing the application of the present Draft Treaty in the case of broadcasts made prior to the entry into force of the Treaty and which are still covered by the term of protection and in the case of broadcasts made following the entry into force of the Treaty. Comments: The proposal complies with the provisions of Article 18 of the Berne Convention for the Protection of Literary and Artistic Works, <i>mutatis mutandis</i>, reflected in Article 13 of the WIPO Copyright Treaty (WCT) and Article 22 of the WIPO Performances and Phonograms Treaty (WPPT).</p>

Provisions on Enforcement of Rights

SCCR/24/3 (Japan) Article21	SCCR/24/5 (SCCR/23/6 rev.) (South Africa and Mexico) Article11	SCCR/23/6 (South Africa and Mexico) Article11	Comments on SCCR/23/6		
			Comments by India	Comments by Brazil, Monaco, Switzerland	Comments by Senegal
(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.	(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.	1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.			ARTICLE 12 PROCEDURES AND SANCTIONS As a part of their national legislations, the Contracting Parties shall adopt procedures designed to ensure that the rights granted by this Draft Treaty are respected so as to permit effective action against any act conflicting with the rights of broadcasting organizations, including efficient remedies to prevent infringements.
(2) 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 or violation of any prohibition covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.	(2) 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 or <u>unauthorized use as covered or prohibited</u> by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.	(2) 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 or <u>violation of any prohibition covered</u> by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.			

[Notes for reference]

- The shaded portion highlights the provisions which are the same or almost same between SCCR/24/3 and SCCR/24/5.
- The underlined portion in the shaded area indicates the difference in wording between the two.
- The double-underlined portion in SCCR/23/6 indicates the parts different from SCCR24/5.
- The provisions in italics are included for reference only to contrast SCCR/24/3 and SCCR/24/5.

[End of document]