

Standing Committee on Copyright and Related Rights

Thirty-fourth Session
Geneva, May 1 to 5, 2017

REVISED CONSOLIDATED TEXT ON DEFINITIONS, OBJECT OF PROTECTION,
RIGHTS TO BE GRANTED AND OTHER ISSUES

prepared by the Chair

INTRODUCTORY NOTE FROM THE CHAIR

The Summary by the Chair of the 33rd session of the SCCR provided that:

“The Committee decided to continue discussions on a revised version of document SCCR/ 33/3 that will be prepared by the Chair for the next meeting of the Committee considering the textual proposals and clarifications made during the session with respect to definitions, object of protection and rights to be granted, as well as the other issues mentioned in the Chair’s chart, with a view to achieving the consensus required for convening a diplomatic conference on the protection of broadcasting organizations.”

This Revised Consolidated Text was prepared by the Chair in view of fostering agreement on a text that will enable a decision to convene a Diplomatic Conference to adopt a Treaty on the protection of broadcasting organizations.

The present text contains four parts: Definitions, Object of Protection, Rights to be Granted and Other Issues. Previous consolidated texts¹ by the Chair included texts for Definitions, Object of Protection and Rights to be Granted. Those three parts have been extensively discussed in the Committee since its 31st Session, held in December 2015.

The part on “Other Issues” was not included in previous versions of the consolidated text. Following the request of the Committee, draft provisions for this part have been included in this document based on the Chair’s non-papers, SCCR document SCCR/27/2/REV., and the wording of the 2012 WIPO Beijing Treaty on Audiovisual Performances.

THE ALTERNATIVES CONTAINED IN THE TEXT

It is noted that some of the provisions included in the text are between brackets, in italics and/or inside a box. Such marks indicate that the Committee has not yet achieved a consensus about those provisions.

– The text placed between brackets refers to alternatives with respect to two matters:

(i) “Cablecasting” and “cablecasting organizations”. Their inclusion and deletion in different parts of the text will depend on the final wording for the definition of “broadcasting”.

(ii) “Deferred” and transmissions made in such a way that members of the public may access them from a place and a time individually chosen by them. The Committee is still discussing the inclusion and wording of these elements that appear in different parts of the text.

– The text in italics indicates that the Committee is still finalizing the wording of that provision.

– Finally, the definition for “broadcasting” was included in a box to indicate that the Committee needs to undertake further work towards a single text.

This Introductory Note aims at facilitating the decision-making process by highlighting under each part of the revised text listed below the key topics yet to be finalized by the Committee.

¹ Documents SCRR/33/3, SCCR/32/3 and SCCR/31/3.

I. DEFINITIONS

- broadcasting

The two alternatives for this definition of “broadcasting” have been included in a box. Alternative A represents having in the text a definition where broadcasting is limited to wireless transmissions only. Respectively, this Alternative A has a separate definition for “cablecasting” in order to cover wire (cable) transmissions.

Alternative B includes both wire and wireless transmissions under a single technology-neutral definition of “broadcasting.” Alternative B is complemented by an agreed statement clarifying the application of the provisions of the text on broadcasting also to cablecasting.

It is noted that the expressions “cablecasting” and “cablecasting organization” appear between brackets in several parts of the text. Their inclusion or deletion will depend on the alternative chosen for the definition of “broadcasting”. It is recalled that during the recent discussions one Delegation has shown concerns with the provisions related to “cablecasting”. The possible acceptance of one alternative is pending the result of internal consultations before the 34th session of the SCCR, where this issue is expected to be finalized.

- broadcasting organization

The expression “cablecasting organization” remains between brackets in the title of the definition since its inclusion depends directly on the alternative to be chosen for “broadcasting”, namely if broadcasting includes wire transmissions or not.

A second point of discussion, regarding the last sentence of this definition that currently appears in italics, refers to those entities that deliver their signal exclusively by means of a computer network. Further work is needed with regard to this definition in order to clarify that broadcasting and cablecasting organizations that provide services over digital transmissions would be protected while other organizations that provide pure video-on-demand services (VOD) not related to traditional broadcasting, would not.

- retransmission

This definition contains the words “cablecasting” and “deferred” in brackets. While the inclusion or deletion of the word “cablecasting” depends on a decision to be taken for the definition of “broadcasting”, the inclusion of the word “deferred” would mean that the definition of retransmission is not limited to simultaneous and near-simultaneous transmissions.

- deferred transmission

The definition of “deferred transmission”, currently in italics in its entirety, requires further input from the Committee. Such wording is necessary to clarify the scope of online broadcast-related services (i.e. catch-up TV and simulcasting) that are closely related to today’s broadcasting activities and have been undertaken by broadcasters for several years now, while excluding video-on-demand (VOD) services.

- pre-broadcast signal

This provision appears in italics and aims at providing a definition for those signals that are not intended for direct reception by the public but by a broadcasting organization or someone acting on its behalf. Because of their economic value, such signals would deserve to be protected from third-party unauthorized uses.

II. OBJECT OF PROTECTION

The Member States are invited to consider the following 3 issues with respect to the object of protection.

- In paragraph (1) whether pre-broadcast signal should be included within the object of protection.
- In paragraph (2) subparagraph (i) the inclusion of deferred transmissions and those digital transmissions in a place and time individually chosen by the public. The respective text for these two matters is placed between brackets in this paragraph as in other parts of the text.
- Paragraph (2) subparagraphs (ii) and (iii) are still to be considered by the Committee and therefore appear in italics and between brackets. Subparagraph (ii) provides a text allowing Member States to limit the protection of deferred transmissions provided in subparagraph (i). Subparagraph (iii) is applicable only in case subparagraph (ii) remains, as it provides the possibility for a contracting party to apply material reciprocity to contracting parties that limit the protection of deferred transmissions as allowed by subparagraph (ii).

In other words, the rationale of paragraph (2) relies on the fact that if the Committee decides not to include “deferred transmission” in the text of subparagraph (i), then subparagraphs (ii) and (iii) would not be needed and should be deleted.

In case “deferred transmission” is included in the text of subparagraph (i), then the Committee may decide to either include subparagraph (ii) or not. Its inclusion would mean having an opt-out solution where contracting parties would have the freedom not to grant protection to “deferred transmissions.”

Finally, in case “deferred transmission” is included in subparagraph (i) and there is an opt-out solution for its protection through subparagraph (ii), the Committee may want to consider whether or not to include subparagraph (iii), allowing those countries that do grant protection to “deferred transmissions” and do not choose to exercise the opt-out from subparagraph (ii) to apply material reciprocity (and not national treatment) to those countries that do not protect deferred transmissions and make use of the opt-out from subparagraph (ii).

III. RIGHTS TO BE GRANTED

The wording under this part makes use of the existing definitions of the Consolidated Text. Paragraph (1)(i) refers to “retransmission” which is still under discussion with regard to the inclusion of deferred transmissions. The expression “by any means”, at the end of the subparagraph (i), appears in italics for a decision by the Committee on the final wording.

The text of paragraph (1)(ii) has been harmonized with the wording of subparagraph (i) by referring to retransmission and “programme-carrying signal”. The use of the word

“retransmission” in subparagraph (ii) also clarifies the objective to benefit broadcasters and not genuine video on-demand (VOD) services.

Paragraph (2) still remains in italics and relates to the inclusion of the pre-broadcast signal under Rights to be Granted.

IV. OTHER ISSUES

As previously noted, the text under this part appears for the first time in this consolidated document.

It is also noted that the text under “Obligations Concerning Technological Protection Measures” and “Obligations Concerning Rights Management Information” reflects those provisions contained in the WIPO Performances and Phonograms Treaty (WPPT) and the Beijing Treaty on Audiovisual Performances (BTAP). It is also in line with the wording contained in document SCCR/27/2 Rev., which has been taken into consideration to better adjust Technological Protection Measures and Rights Management Information to broadcasting and cablecasting activities.

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REVISED CONSOLIDATED TEXT ON DEFINITIONS, OBJECT OF PROTECTION, RIGHTS TO BE GRANTED AND OTHER ISSUES

I. DEFINITIONS

For the purposes of this Treaty:

(a) "broadcasting"

Alternative A

(a) (1) "broadcasting" means the transmission of a programme-carrying signal by wireless means for reception by the public; 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. Transmissions over computer networks shall not constitute "broadcasting".

(2) "cablecasting" means the transmission of a programme-carrying signal by wire for reception by the public. 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. Transmissions over computer networks shall not constitute "cablecasting".

Alternative B

(a) "broadcasting" means the transmission *either by wire or wireless* means for reception by the public of a programme-carrying signal; 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. Transmissions over computer networks shall not constitute "broadcasting".²

(b) "programme-carrying signal" means an electronically generated carrier, as originally transmitted and in any subsequent technical format, carrying a programme.

(c) "programme" means live or recorded material consisting of images, sounds or both, or representations thereof.

(d) "broadcasting organization" [*and "cablecasting organization"*] means the legal entity that takes the initiative and has the editorial responsibility for broadcasting [*or cablecasting*], including assembling and scheduling the programmes carried on the signal. *Entities that deliver their programme-carrying signal exclusively by means of a computer network do not fall under the definition of a "broadcasting organization" [or a "cablecasting organization"]*.³

² **Agreed Statement concerning the definition of "broadcasting"**: Provisions related to broadcasting are applicable to cablecasting.

³ **Agreed Statement regarding the definition of "broadcasting organization"**: For the purpose of this Treaty, the definition of broadcasting organization does not affect the Contracting Parties' national regulatory framework for broadcasting activities.

(e) “retransmission” means the transmission for the reception by the public by any means of a programme-carrying signal broadcast by any other entity than the original broadcasting *[/cablecasting]* organization or someone acting on its behalf, whether simultaneous, near-simultaneous *[or deferred]*.

(f) “near simultaneous transmission” means a transmission that is delayed only to the extent necessary to accommodate time differences or to facilitate the technical transmission of the programme-carrying signal.

(g) “deferred transmission” means a transmission delayed in time, other than a near simultaneous transmission, including transmissions made in such a way that members of the public may access them from a place and a time individually chosen by them.

*(h) “pre-broadcast signal” means a programme-carrying signal transmitted to a broadcasting *[/cablecasting]* organization, or to an entity acting on its behalf, for the purpose of subsequent transmission to the public.*

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II. OBJECT OF PROTECTION

(1) The protection granted under this Treaty extends only to programme-carrying signals as broadcast *including pre-broadcast signals* transmitted by, or on behalf of, a broadcasting [*or cablecasting*] organization, but not to programmes contained therein.

(2) (i) Broadcasting [*or cablecasting*] organizations shall also enjoy protection for a simultaneous, near simultaneous [*or deferred*] transmission by any means [*including for a transmission made in such a way that members of the public may access it from a place and at the time individually chosen by them.*]

[(ii) Contracting Parties may limit protection of deferred transmissions including for a transmission made in such a way that members of the public may access it from a place and at the time individually chosen by them.]

[(iii) Contracting Parties may limit protection accorded to broadcasting [*or cablecasting*] organizations from another Contracting Party that chooses to apply subparagraph (ii), to those rights that its own broadcasting [*or cablecasting*] organizations enjoy in that other Contracting Party.]

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III. RIGHTS TO BE GRANTED

(1) (i) Broadcasting *[and cablecasting]* organizations shall have the exclusive right of authorizing the retransmission of their programme-carrying signal to the public *by any means*.

(ii) *Broadcasting [and cablecasting] organizations shall also enjoy the exclusive right of authorizing the retransmission of their programme-carrying signal in such a way that members of the public may access it from a place and at a time individually chosen by them.*

(2) *Broadcasting [and cablecasting] organizations shall also enjoy the right to prohibit the unauthorized retransmission of their own pre-broadcast signal by any means.*

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IV. OTHER ISSUES

Beneficiaries of Protection

- (1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting [or cablecasting] organizations that are nationals of other Contracting Parties.
- (2) Nationals of other Contracting Parties shall be understood to be those broadcasting [or cablecasting] organizations that meet either of the following conditions:
 - (i) the headquarters of the broadcasting [/cablecasting] organization is situated in another Contracting Party, or
 - (ii) the programme-carrying signal was transmitted from a transmitter situated in another Contracting Party.
- (3) In the case of a programme-carrying 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.
- (4) The provisions of this Treaty shall not provide any protection to an entity that merely retransmits programme-carrying signals.

Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting [or cablecasting] organizations as they provide, 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 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 programme-carrying signal and do not unreasonably prejudice the legitimate interests of the broadcasting [or cablecasting] organization.

Obligations Concerning Technological Protection Measures

- (1) Contracting Parties shall provide adequate legal protection and effective legal remedies against the 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, that are not authorized by the broadcasting [or cablecasting] organizations concerned or are not permitted by law.
- (2) Without limiting the foregoing, Contracting Parties shall provide adequate and effective legal protection against the *unauthorized decryption of an encrypted programme-carrying signal*.

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Obligations Concerning Rights Management Information

(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 will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

(i) to remove or alter any electronic rights management information without authority;

(ii) to retransmit the programme-carrying signal knowing that electronic rights management information has been without authority removed or altered.

(2) As used in this Article, "rights management information" means the information which identifies the broadcasting [*or cablecasting*] organization, the broadcasting, the owner of any right in the programme, or information about the terms and conditions of use of the programme-carrying signal, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the programme-carrying signal.

Term of Protection

The term of protection to be granted to broadcasting [*or cablecasting*] 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 programme-carrying signal was transmitted.

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