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WORLD INTELLECTUAL PROPERTY ORGANIZATION

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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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PROTECTION OF BROADCASTING ORGANIZATIONS

Proposal by the Delegation of Japan

The Government of Japan hereby submits its proposal at this stage, in treaty language, concerning the substantive provisions of a Treaty on Broadcasting Organizations. Since the proposal reflects the deliberations so far made in Japan, the Government of Japan reserves the right to make further proposals based on subsequent discussions.

In particular, the following issues should further be examined:

1. Protection of signals before broadcasting to the public

Taking into consideration the situation that signals before broadcasting to the public (e.g. signals transmitted in a point-to-point way from a camera/microphone to a broadcasting station) are intercepted and reproduced and/or transmitted without authorization, further consideration should be given to whether to protect such signals or not.

2. Right of rebroadcasting and right of communication to the public, etc. (Article 5(i))

In the present proposal (Article 2(c)), “communication to the public” of a broadcast is defined as the transmission to the public by any medium, otherwise than by broadcasting, of a broadcast and includes wire transmission of a broadcast to the public. Further consideration should be given to the scope of the right of rebroadcasting and the right of wire transmission of a broadcast to the public stipulated in Article 5(i). The scope of the right of communication to the public, stipulated in Article 5(i), should also be elaborated in comparison with Article 13(d) of the Rome Convention and Article 14.3 of the TRIPS Agreement.

3. Right of distribution and right of rental

As regards the rights to authorize the distribution and rental of fixed broadcasts, necessities should further be evaluated taking due account of actual situations of the use of fixed broadcasts. In particular, it seems that at this stage there are not many cases of rental where exercise of reproduction rights are not effective enough.

4. Obligations concerning technological measures (Article 10)

The obligations under the provisions concerning technological measures stipulated in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) are limited to “those used in connection with the exercise of the right.” Broadcasting organizations are not granted any exclusive right to authorize the “reception” of their broadcasting, and therefore, the encryption of broadcasts is totally different from the technological measures stipulated in the WCT and the WPPT. However, it should be discussed whether a similar provision should be established for the encryption of broadcasts or not.

5. Application in time (Article 14)

Further consideration should be given to an option not to apply this provision to fixations that exist at the moment of entry into force of this Treaty.

Title

WIPO Broadcasting Organizations Treaty

Article 1

Relation To Other Conventions And Treaties

1. Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, on October 26, 1961.
2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may 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.

Article 2

Definitions

For the purposes of this Treaty:

- (a) “broadcasting” means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- (b) “rebroadcasting” means the simultaneous or deferred broadcasting by one broadcasting organization of the broadcast of another broadcasting organization;
- (c) “communication to the public” of a broadcast means the transmission to the public by any medium, otherwise than by broadcasting, of a broadcast; “communication to the public” includes making a broadcast audible or visible or audible and visible to the public.

Article 3

Beneficiaries Of Protection Under This Treaty

1. Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations which are nationals of other Contracting Parties.

2. The nationals of other Contracting Parties shall be understood to be those broadcasting organizations which meet either of the following conditions:

(i) the headquarters of the broadcasting organization is situated in another Contracting Party;

(ii) the broadcast is transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasting, a transmitter shall be construed to be situated where the sounds or images, or images and sounds, or the representations thereof, intended for direct reception by the public are introduced, under the control and responsibility of the broadcasting organization, into an uninterrupted chain of communication leading to the satellite and down towards the earth.

Article 4

National Treatment

Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty.

Article 5

Rights Of Rebroadcasting, Communication To The Public And Fixation

Broadcasting organizations shall enjoy the exclusive right of authorizing, as regards their broadcasts:

(i) the rebroadcasting and communication to the public of their broadcasts; it shall be a matter for the domestic law of the Contracting Party where protection of this right is claimed to determine the conditions under which it may be exercised; and

(ii) the fixation of their broadcasts; the fixation includes the making of any still photograph of a television broadcast.

Article 6

Right Of Reproduction

Broadcasting organizations shall enjoy the exclusive right of authorizing the direct or indirect reproduction of fixations of their broadcasts, in any manner or form.

Article 7

Right Of Making Available

Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of their broadcasts and fixations thereof, 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.

Article 8

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 organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.
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.

Article 9

Term Of Protection

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 broadcasting took place.

Article 10

Obligations Concerning Technological Measures

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, which are not authorized by the broadcasting organizations concerned or permitted by law.

Article 11

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 it 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 distribute, import for distribution, rebroadcast, communicate or make available to the public, without authority, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authority.

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 a broadcast.

Article 12

Formalities

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

Article 13

Reservations

No reservations to this Treaty shall be permitted.

Article 14

Application In Time

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

Article 15

Provisions On Enforcement of Rights

1. Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
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 covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

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