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## **STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**Fifth Session  
Geneva, May 7 to 11, 2001**

PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS:  
COMPARATIVE TABLE OF PROPOSALS RECEIVED BY APRIL 30, 2001

*Document prepared by the Secretariat*

## Introductory Note

To facilitate the discussions of the Standing Committee, the Secretariat has prepared a comparative table of the proposals on the protection of the rights of broadcasting organizations submitted by the Member States of WIPO and the European Community as of April 30, 2001, including any revised proposal received before that date.

This comparative table is contained in the Annex. It is based on the following documents:

- SCCR/2/5: containing submissions received from Member States of WIPO and the European Community by March 31, 1999
- SCCR/2/7: containing a submission by Mexico
- SCCR/2/10 Rev.: containing the Report on the Regional Roundtable for Central European and Baltic States on the Protection of the Rights of Broadcasting Organizations and on the Protection of Databases, held in Vilnius, from April 20 to 22, 1999 (referred to in the Annex as “Certain Central European and Baltic States”)
- SCCR/2/12: containing a submission by Cameroon
- SCCR/3/2: containing the Report of the Regional Roundtable for African Countries on the Protection of Databases and on the Protection of the Rights of Broadcasting Organizations, held in Cotonou, from June 22 to 24, 1999 (referred to in the Annex as “Certain States of Africa”)
- SCCR/3/4: containing a proposal by Argentina
- SCCR/3/5: containing a submission by the United Republic of Tanzania
- SCCR/3/6: containing the Statement adopted at the Regional Roundtable for Countries of Asia and the Pacific on the Protection of Databases and on the Protection of the Rights of Broadcasting Organizations, held in Manila, from June 29 to July 1, 1999 (referred to in the Annex as “Certain States of Asia and the Pacific”)
- SCCR/5/4: containing a proposal by Japan

[Annex follows]

ANNEX

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I. TITLE

ARGENTINA

WIPO Protocol on the Protection of the Broadcasts of Broadcasting Organizations

CAMEROON

The new instrument should be in the form of a Protocol like the Berne Protocol

CERTAIN STATES OF AFRICA

The country representatives expressed themselves in favor of a treaty

JAPAN

WIPO Broadcasting Organizations Treaty

MEXICO

Treaty on the Protection of the Rights of Broadcasting Organizations

SWITZERLAND

Protocol on the Protection of the Rights of Broadcasting Organizations Under the WIPO Performances and Phonograms Treaty

UNITED REPUBLIC OF TANZANIA

The envisaged international instrument for the protection of the rights of broadcasting organizations should be an independent treaty.

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

ARGENTINA

Article 1  
Relation to Other Conventions

1. Nothing in this Protocol 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 at Rome on October 26, 1961 (hereinafter referred to as “the Rome Convention”).
2. Protection granted under this Protocol shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Protocol may be interpreted as prejudicing such protection.
3. This Protocol shall not affect the copyright of broadcasting organizations and/or other owners of rights in relation to the works that are broadcast.
4. This Protocol shall not have any connection with, or prejudice any rights or obligations under, any other treaties.

CERTAIN CENTRAL EUROPEAN AND BALTIC STATES

When updating broadcasters’ rights the proper balance between the various groups of right holders should be taken into consideration.

CERTAIN STATES OF AFRICA

The country representatives, having carefully studied the proposals submitted by Switzerland (SCCR/2/5) and a group of broadcasting organizations (SCCR/2/6), highlighted the following issues for further study and discussion:

- (b) the relationship of the new instrument to other international instruments for the protection of copyright and neighboring rights;
- (c) the balancing, also with reference to socio-cultural factors in the various regions, of the rights of all interested parties, including authors, broadcasting organizations, performers and producers of phonograms

## CERTAIN STATES OF ASIA AND THE PACIFIC

It is important to strike a balance between the interests of the different stakeholders (i.e. the big and small broadcasting organizations, the authors, the performers, the producers and the public).

There should be no derogation from the rights and obligations conferred under other international treaties/agreements.

## EUROPEAN COMMUNITY AND ITS MEMBER STATES

Consideration of the improvement of the level of protection of broadcasting organizations should be carried out bearing in mind the necessity to safeguard the balance between the different categories of holders of copyright and neighboring rights.

## JAPAN

### 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, 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.

## MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>1</sup>

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<sup>1</sup> See WIPO document SCCR/2/6.

SWITZERLAND

Article 1<sup>2</sup>  
Relation to Other Conventions

1. This treaty constitutes a protocol under the WIPO Performances and Phonograms Treaty (WPPT).
2. Nothing in this Protocol 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 at Rome on 26 October 1961 (Rome Convention).
3. Protection granted under this Protocol shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Protocol may be interpreted as prejudicing such protection.
4. This Protocol shall not prejudice any rights and obligations under any other treaties.

UNITED REPUBLIC OF TANZANIA

The proposed instrument should address clearly the following issues:

- the balance of rights between broadcasters and the owners of broadcast contents, in cable retransmission;
- the balance of all rights owners involved, i.e. the broadcasters, authors, performers, producers of phonograms and cable operators;

III. DEFINITIONS

ARGENTINA

Article 2  
Definitions

For the purposes of this Protocol:

- (a) “emission” or “transmission” means the dissemination of sounds or images, or of images with sound, by means of electromagnetic waves, cable, optic fiber or other comparable media;

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<sup>2</sup> [Note on Article 1 contained in the proposal:] “This proposal is presented as a protocol under the WIPO Performances and Phonograms Treaty (WPPT). Additionally, Article 1 excludes any prejudice of the existing treaties or of copyright protection (see also Article 1 of the WPPT).”

(b) “broadcasting” means the wireless transmission for public reception of sounds or of images with sound, or representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means of decrypting are made available to the public by the broadcasting organization or with its consent;

(c) “cable distribution” means the distribution by wire of sounds or images, or of images with sound, or representations thereof, for public reception;

(d) “broadcasting organization” means the body authorized by any Contracting Party that is capable of emitting sound or visual signals, or both, in such a way that they may be perceived by a number of receiving individuals; the authorized entity that engages in cable distribution is also a “broadcasting organization”;

(e) “retransmission” means the simultaneous emission by one broadcasting organization of the broadcast of another broadcasting organization;

(f) “communication to the public” means making the broadcast of a broadcasting organization, or a fixation thereof, audible or visible in places accessible to the public;

(g) “fixation” means the embodiment of sounds or images, or of images with sound, or the representation thereof, from which they may be perceived, reproduced or communicated by means of a device.

## CAMEROON

### Definitions

Certain expressions and concepts deriving from the progress of technology and deserving international protection should be clearly defined, including:

- satellite;
- encrypted satellite signals;
- communication to the public by satellite;
- cable retransmission;
- terrestrial broadcasting and satellite broadcasting;
- digital networks;
- program-carrying signals.



### Organizations Protected

The protection of broadcasting organizations should extend not only to cable distribution organizations that distribute their own programs by cable, but also to signals transmitted by satellite.

#### CERTAIN STATES OF AFRICA

The definitions of the terms of “broadcast”, “broadcasting”, “cable transmission”, “communication to the public”, “program output” and “rebroadcasting” should be further studied and discussed.

#### EUROPEAN COMMUNITY AND ITS MEMBER STATES

Particular attention should be given to the possible need for a definition of broadcasting by satellite.

#### JAPAN

##### 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.

#### MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting

organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>3</sup>

#### UNITED REPUBLIC OF TANZANIA

The instrument should clearly define the following terms:

- broadcasting by satellite,
- cable retransmission,
- terrestrial broadcasting,
- encrypted satellite signals,
- program-carrying signals,
- digital networks.

#### IV. BENEFICIARIES OF PROTECTION

#### ARGENTINA

##### Article 3 Beneficiaries of Protection under this Protocol

Contracting Parties shall accord the protection provided for in this Protocol to the broadcasting organizations of other Contracting Parties that meet the following conditions:

- (a) the headquarters of the broadcasting organization must be located on the territory of another Contracting Party;
- (b) the broadcast must be transmitted from a transmitter or transmitters located on the territory of another Contracting Party. In the case of satellite broadcasting, the relevant place shall be the point at which the sounds or images, or images with sound, or the representations thereof, intended for direct reception by the public are introduced, under the control and on the responsibility of the broadcasting organization, into an unbroken chain of communication towards the satellite and from it down to earth.

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<sup>3</sup> See WIPO document SCCR/2/6.

## CAMEROON

### Organizations Protected

The protection of broadcasting organizations should extend not only to cable distribution organizations that distribute their own programs by cable, but also to signals transmitted by satellite.

### Points of Attachment

Those written into Article 6 of the Rome Convention should apply.

## JAPAN

### 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.

## MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>4</sup>

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<sup>4</sup> See WIPO document SCCR/2/6.

SWITZERLAND

Article 2<sup>5</sup>  
Beneficiaries of Protection Under this Protocol

1. Contracting Parties shall accord the protection provided under this Protocol to the broadcasting organizations that are nationals of other Contracting Parties.
2. “Nationals of other Contracting Parties” means broadcasting organizations that satisfy either of the following conditions:
  - (i) the headquarters of the broadcasting organization are located in another Contracting Party or
  - (ii) the broadcasts are transmitted from a transmitter located on the territory of another Contracting Party. In the case of satellite broadcasts, the effective place shall be that at which the program-carrying signals intended for 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.

V. NATIONAL TREATMENT

ARGENTINA

Article 4  
National Treatment

Every Contracting Party shall accord to the broadcasting organizations of other Contracting Parties, as defined in Article 3, the same treatment as it grants to its own broadcasting organizations with respect to the exclusive rights specifically granted in this Protocol.

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<sup>5</sup> [Note on Article 2 contained in the proposal:] “This Article reproduces the criteria under the Rome Convention (Article 6) and adapts them to the accepted provisions on satellite television.”

JAPAN

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.

MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>6</sup>

SWITZERLAND

Article 3<sup>7</sup>  
National Treatment

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

VI. RIGHTS OF BROADCASTING ORGANIZATIONS

ARGENTINA

Article 5  
Rights of Broadcasting Organizations

Broadcasting organizations shall have the following exclusive rights in relation to their broadcasts:

- I. retransmission;
- II. deferred transmission;

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<sup>6</sup> See WIPO document SCCR/2/6.

<sup>7</sup> [Note on Article 3 contained in the proposal:] “The draft Protocol adopts the principle of national treatment without it being necessary to include any restrictions comparable with those under the WPPT (cf. Article 4 of the WPPT).”

- III. cable distribution;
- IV. fixation in a physical medium;
- V. reproduction of fixations;
- VI. decrypting of encrypted broadcasts;
- VII. communication to the public;

VIII. making fixations of broadcasts, available to the public, whether by wire or by wireless means, in such a way that members of that public may access them from a place and at a time individually chosen by them.

## CAMEROON

Cameroon endorses the proposals concerning the exclusive right of broadcasting organizations to authorize or prohibit the acts specified in paragraph 59 of the International Bureau memorandum (document SCCR/1/3 of September 7, 1998).<sup>8</sup>

In the case of cable distribution organizations, we propose that those which distribute their own programs be entitled to the rights granted to broadcasting organizations.

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<sup>8</sup> Paragraphs 58 and 59 of the document SCCR/1/3 read as follow: “58. From April 28 to 30, 1997, WIPO organized, in cooperation with the Government of the Philippines and with the assistance of the *Kapisanan ng mga Brodkaster ng Pilipinas* (KBP) (National Association of Broadcasters of the Philippines) the WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property, in Manila. (The proceedings of the Symposium are published in WIPO publication No. 757 (E/F/S).) At this symposium, representatives of broadcasting organizations pointed out a number of issues which they proposed to be addressed at the international level. Some of these issues are listed in the following paragraph.

59. According to these proposals, broadcasters should be granted exclusive rights to authorize or prohibit the following acts:

- simultaneous or deferred rebroadcasting of their broadcasts, whether these are transmitted via satellite or by any other means;
- simultaneous and deferred retransmission of their broadcasts in cable systems;
- the making available to the public of their broadcasts, by any means, including interactive transmissions;
- the fixation of their broadcasts on any media, existing or future, including the making of photographs from television signals;
- the transmission to the public of programs, transmitted by cable;
- the decoding of encrypted signals; and
- the importation and distribution of fixations or copies of fixations of broadcasts, made without authorization.

In addition, broadcasters should be granted a right of remuneration for private copying, and it should be clarified that the protection applies to not only the sounds and/or images of broadcasts, but also to (digital) representations of such sounds and/or images.”

Program-carrying signals should also be given protection. They should not be received by broadcasting organizations for which they are not intended, on pain of civil or criminal sanctions or both, depending on the seriousness of the infringement.

Moreover, a general right of communication should be recognized to cover communication by interactive transmission.

#### CERTAIN CENTRAL EUROPEAN AND BALTIC STATES

The country representatives considered that the rights of performers and phonogram producers have been updated through the WIPO Performances and Phonograms Treaty (WPPT) and that the Rome Convention of 1961 needs updating also in respect of the rights of broadcasters, in order to cope with new technological and market developments in the field of broadcasting. In particular, they take the view that an enhanced protection of related rights of broadcasters at the international level is needed in order to fight piracy of broadcast programs. When updating broadcasters' rights the proper balance between the various groups of right holders should be taken into consideration.

#### CERTAIN STATES OF AFRICA

The country representatives, having carefully studied the proposals submitted by Switzerland (SCCR/2/5) and a group of broadcasting organizations (SCCR/2/6), highlighted the following issues for further study and discussion:

(c) the balancing, also with reference to socio-cultural factors in the various regions, of the rights of all interested parties, including authors, broadcasting organizations, performers and producers of phonograms;

(d) the scope of the new instrument, with special reference to:

(ii) the exclusive rights granted to broadcasting organizations, with specific reference to the nature of the rights required by broadcasting organizations to protect their legitimate interests;

#### CERTAIN STATES OF ASIA AND THE PACIFIC

The countries present agreed that there was a need to study the possibility of updating the rights of broadcasting organizations, taking into account the technological changes that have occurred between the adoption of the Rome Convention in 1961 up to the present. In any such study, it is important to strike a balance between the interests of the different stakeholders (i.e. the big and small broadcasting organizations, the authors, the performers, the producers and the public). At the same time, the interests of the developing and least developed countries should be a primary concern. In this context, the special circumstances of least developed countries should be kept in mind.

## EUROPEAN COMMUNITY AND ITS MEMBER STATES

The European Community and its Member States consider that the legal framework existing at international level for the protection of broadcasting organizations must be modernized and improved. This improvement of the level of protection is even more necessary in view of the urgent need to fight back more efficiently against signal piracy acts. At the same time, it has to safeguard the balance with the rights of the other categories of neighboring rights holders covered by WPPT.

In the framework of these considerations, and taking as a starting point the level of protection provided by the Rome Convention, particular attention should be given to those aspects which are not satisfactorily covered by that Convention, notably the possible need:

- for a definition of broadcasting by satellite,
- for a cable retransmission right,
- for a making available right,
- for clarifying the scope of the reproduction right.

However, consideration of these issues should be carried out bearing in mind the necessity to safeguard the balance between the different categories of holders of copyright and neighboring rights.

## JAPAN

### 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.

MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>9</sup>

SWITZERLAND

Article 4<sup>10</sup>  
Right of Retransmission

Broadcasting organizations shall enjoy the exclusive right to authorize the retransmission of their broadcasts in any manner or form whatsoever.

Article 5<sup>11</sup>  
Right of Communication to the Public

Broadcasting organizations shall enjoy the exclusive right to authorize the communication to the public of their broadcasts in any manner or form whatsoever.

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<sup>9</sup> See WIPO document SCCR/2/6.

<sup>10</sup> [Note on Article 4 contained in the proposal:] “This Article is drafted in a sufficiently broad manner to include at the same time - in particular - rebroadcasting, cable distribution and distribution of carrier signals. Moreover, it covers both simultaneous and recorded retransmission.”

<sup>11</sup> [Note on Article 5 contained in the proposal:] “Contrary to Article 13(d) of the Rome Convention, the concept of communication to the public is defined here in a broad sense and is not restricted to those instances where an entrance fee is required. The cases concerned are, in particular, public reception of broadcasts in hotels, restaurants and other public premises of like nature. This right corresponds to the right “to make broadcasts perceivable” under Article 37(b) of the Swiss Copyright Law.”

Article 6<sup>12</sup>  
Right of Decoding

Broadcasting organizations shall enjoy the exclusive right to authorize the decoding of their encrypted broadcasts.

Article 7<sup>13</sup>  
Right of Fixation

Broadcasting organizations shall enjoy the exclusive right to authorize the fixation in whole or in part, direct or indirect, of their broadcasts on phonograms, videograms or other data carriers.

Article 8<sup>14</sup>  
Right of Reproduction

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

Article 9<sup>15</sup>  
Right of Distribution

1. Broadcasting organizations shall enjoy the exclusive right to authorize the making available to the public of the original and copies of fixations of their broadcasts through sale or other transfer of ownership.
2. Nothing in this Protocol 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 with the authorization of the author.

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<sup>12</sup> [Note on Article 6 contained in the proposal:] “Faced with the advance of technology, broadcasting organizations must be given the right to combat the fraudulent decoding of their broadcasts. What is basically aimed at is the making available to individuals of the means of decoding encrypted broadcasts. Decoding by an individual would normally take place within the private circle of that individual and could therefore be permitted by the national provisions that authorize private use (see Article 11 of this draft Protocol on limitations and exceptions).

<sup>13</sup> [Note on Article 7 contained in the proposal:] “By specifying that fixation may be in whole or in part, this Article also covers the making of a still photograph from an individual image in a broadcast. Additionally, the proposed right also covers both the direct fixation of a broadcast and a fixation on the basis of a simultaneous rebroadcast.”

<sup>14</sup> [Note on Article 8 contained in the proposal:] “This Article specifies the requirement to obtain authorization not only for the direct fixation of a broadcast, but also for indirect fixation.”

<sup>15</sup> [Note on Article 9 contained in the proposal:] “This Article corresponds to Article 6 of the WCT and Articles 8 and 12 of the WPPT.”

Article 10<sup>16</sup>  
Right of Making Available to the Public

Broadcasting organizations shall enjoy the exclusive right to authorize the making available to the public, by wire or wireless means, of fixations of their broadcasts in such a way that members of the public may access them from a place and at a time individually chosen by them.

UNITED REPUBLIC OF TANZANIA

The proposed instrument should address clearly the following issues:

- the balance of rights between broadcasters and the owners of broadcast contents, in cable retransmission;
- the balance of all rights owners involved, i.e. the broadcasters, authors, performers, producers of phonograms and cable operators;
- the nature of the rights accorded. It is proposed that they should not be absolute and should have clearly spelt exceptions and limitations.

VII. LIMITATIONS AND EXCEPTIONS

ARGENTINA

Article 6  
Limitations and exceptions

1. Contracting Parties may, in their national legislation, provide for the same kinds of limitation or exception with regard to the protection of broadcasting organizations as that legislation already contains with regard to the protection of the copyright in literary and artistic works.
2. The Contracting Parties may understand the mere supply of the physical installations that serve to facilitate or make a communication as not, in itself, constituting communication to the public.

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<sup>16</sup> [Note on Article 10 contained in the proposal: “This Article corresponds to the right of making available to the public contained at the end of Article 8 of the WCT and in Articles 10 and 14 of the WPPT. To ensure concordance with those provisions, it therefore reproduces exactly the same formulation, particularly the term “by wire or wireless means”. However, there is no fundamental difference intended with the term “in any manner or form whatsoever” used in Articles 4 and 5 of this draft Protocol with respect to retransmission and communication to the public.

3. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Protocol to certain special cases that do not conflict with the normal exploitation of the broadcast or unreasonably prejudice the legitimate interests of the broadcasting organization.

4. Contracting Parties may provide in their national legislation that the simultaneous cable distribution, without change, of a wireless broadcast of a broadcasting organization within the area serviced by the latter does not constitute retransmission or communication to the public.

#### CAMEROON

The “permitted exceptions” of Article 15 of the Rome Convention should be retained in the new instrument.

#### CERTAIN CENTRAL EUROPEAN AND BALTIC STATES

When updating broadcasters’ rights the proper balance between the various groups of right holders should be taken into consideration.

#### CERTAIN STATES OF AFRICA

The country representatives highlighted the following issues for further study and discussion:

(c) the balancing, also with reference to socio-cultural factors in the various regions, of the rights of all interested parties, including authors, broadcasting organizations, performers and producers of phonograms;

(d) the scope of the new instrument, with special reference to:

(iv) exceptions and limitations;

#### CERTAIN STATES OF ASIA AND THE PACIFIC

It is important to strike a balance between the interests of the different stakeholders (i.e. the big and small broadcasting organizations, the authors, the performers, the producers and the public). At the same time, the interests of the developing and least developed countries should be a primary concern. In this context, the special circumstances of least developed countries should be kept in mind.

#### EUROPEAN COMMUNITY AND ITS MEMBER STATES

Consideration of the improvement of the level of protection of broadcasting organizations should be carried out bearing in mind the necessity to safeguard the balance between the different categories of holders of copyright and neighboring rights.

JAPAN

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.

MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>17</sup>

SWITZERLAND

Article 11<sup>18</sup>  
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 Protocol 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.

UNITED REPUBLIC OF TANZANIA

It is proposed that the rights accorded should not be absolute and should have clearly spelt exceptions and limitations.

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<sup>17</sup> See WIPO document SCCR/2/6.

<sup>18</sup> [Note on Article 11 contained in the proposal:] “This Article corresponds to Article 16 of the WPPT.”

## VIII. TERMS OF PROTECTION

### ARGENTINA

#### Article 7 Term of Protection

The protection to be granted to broadcasting organizations under this Protocol shall have a term of not less than 50 years counted from the first of January of the year following that in which the broadcast was first transmitted.

### CAMEROON

Cameroon proposes that the term of protection should be extended to 50 years counted from the date on which the program was broadcast.

### CERTAIN STATES OF AFRICA

The term of protection, including the possible extension of such term by rebroadcasting, should be further studied and discussed.

### JAPAN

#### 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.

### MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>19</sup>

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<sup>19</sup> See WIPO document SCCR/2/6.

SWITZERLAND

Article 12<sup>20</sup>  
Term of Protection

The term of protection to be granted to broadcasting organizations under this Protocol shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast was broadcast for the first time.

IX. OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

ARGENTINA

Article 8  
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 Protocol and that restrict acts, in respect of their broadcasts, that are not authorized by the broadcasting organizations concerned or permitted by law.

In particular, effective legal remedies shall be provided against those who:

- I. decrypt an encrypted program-carrying signal;
- II. receive and distribute or communicate to the public an encrypted program-carrying signal that has been decrypted without the express authorization of the broadcasting organization that emitted it;
- III. participate in the manufacture, importation, sale or any other act that makes available a device or system capable of decrypting or helping to decrypt an encrypted program-carrying signal.

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<sup>20</sup> [Note on Article 12 contained in the proposal:] “It is proposed that the term of protection be aligned on that under the WPPT (Article 17) for performers and phonogram producers. The fifty-year term of protection also corresponds to the term laid down by the Swiss Copyright Law (Article 39). The draft Protocol provides that the term should run once only as from the first broadcasting.”

JAPAN

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.

MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>21</sup>

SWITZERLAND

Article 13<sup>22</sup>  
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 Protocol and that restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations or permitted by law.

Article 14<sup>23</sup>  
Obligations Concerning the Manufacture and Marketing of Appliances for the Fraudulent  
Decoding of Encrypted Broadcasts

Contracting Parties shall prohibit and provide effective legal remedies against the manufacture, import, export, transport, marketing or installation of appliances of which the components or data processing programs serve to fraudulently decode encrypted broadcasts or are used to that end.

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<sup>21</sup> See WIPO document SCCR/2/6.

<sup>22</sup> [Note on Article 13 contained in the proposal:] “This Article corresponds to Article 18 of the WPPT.”

<sup>23</sup> [Note on Article 14 contained in the proposal:] “The fact that a broadcasting organization is given the right to oppose the decoding of its broadcast is not enough. It is also necessary to prohibit the manufacture and marketing of apparatus used for decoding encrypted broadcasts. This provision corresponds largely to that of Article 150*bis* of the Swiss Penal Code.”



## X. OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

### ARGENTINA

#### Article 9 Obligations Concerning Rights Management Information

Contracting Parties shall provide adequate and effective legal remedies against any person who knowingly performs any one 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 of the rights provided for in this Protocol:

- removing or altering any electronic rights management information without authority;
- distributing, importing for distribution, transmitting, communicating or making available to the public, without authority, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authority.

As used in this Article, “rights management information” means information that identifies the broadcasting organization and/or the broadcast and/or 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 those items of information accompany the transmission, communication or making available to the public of the broadcast or a fixation thereof.

### JAPAN

#### 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.

## MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>24</sup>

## SWITZERLAND

### Article 15<sup>25</sup> Obligations Concerning Rights Management Information

1. Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any one 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 Protocol:

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

(ii) to distribute, import for distribution, retransmit, 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 accompany the retransmission, the communication or making available of a broadcast or a fixation of a broadcast to the public.

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<sup>24</sup> See WIPO document SCCR/2/6.

<sup>25</sup> [Note on Article 15 contained in the proposal:] “This Article corresponds to Article 19 of the WPPT.”

## XI. FORMALITIES

### ARGENTINA

#### Article 10 Formalities

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

### JAPAN

#### Article 12 Formalities

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

### MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>26</sup>

### SWITZERLAND

#### Article 16<sup>27</sup> Formalities

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

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<sup>26</sup> See WIPO document SCCR/2/6.

<sup>27</sup> [Note on Article 16 contained in the proposal:] “This Article corresponds to Article 20 of the WPPT.”

## XII. RESERVATIONS

### JAPAN

#### Article 13 Reservations

No reservations to this Treaty shall be permitted.

### MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>28</sup>

### SWITZERLAND

#### Article 17<sup>29</sup> Reservations

No reservation to this Protocol shall be permitted.

## XIII. APPLICATION IN TIME

### ARGENTINA

#### Article 11 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 Protocol.

This Protocol shall not detract from the rights acquired in any Contracting Party prior to the date of its entry into force for that Party.

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<sup>28</sup> See WIPO document SCCR/2/6.

<sup>29</sup> [Note on Article 17 contained in the proposal:] “Contrary to the WPPT, there is no need to provide for the possibility of reservations to the Protocol.”

JAPAN

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.

MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>30</sup>

SWITZERLAND

Article 18<sup>31</sup>  
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 Protocol.

XIV. PROVISIONS ON ENFORCEMENT OF RIGHTS

ARGENTINA

Article 12  
Provisions on Enforcement of Rights

1. Contracting Parties undertake to adopt, in conformity with their legal systems, the measures necessary to ensure the application of this Protocol.
2. Contracting Parties shall ensure that enforcement procedures are available in their legislation to permit effective action against any act of infringement of rights referred to in this Protocol, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to further infringement.

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<sup>30</sup> See WIPO document SCCR/2/6.

<sup>31</sup> [Note on Article 18 contained in the proposal:] “This Article corresponds to Article 22(1) of the WPPT and Article 13 of the WCT. There is no need to provide in the Protocol for derogations to the principle laid down in Article 18 of the Berne Convention.”

## CAMEROON

### Sanctions for Violation of Rights

Cameroon proposes the inclusion in the instrument of strong criminal provisions to discourage the pirating of both broadcast and televised programs, or that of encrypted program-carrying satellite signals.

Civil sanctions should also be contemplated.

## JAPAN

### Article 15 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.

## MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>32</sup>

## SWITZERLAND

### Article 19<sup>33</sup> Provisions on Enforcement of Rights

1. Contracting Parties undertake to adopt, in conformity with their legal systems, the measures necessary to ensure the application of this Protocol.
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 conferred by this

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<sup>32</sup> See WIPO document SCCR/2/6.

<sup>33</sup> [Note on Article 19 contained in the proposal:] “This Article corresponds to Article 23 of the WPPT.”

Protocol, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

## XV. ADMINISTRATIVE AND FINAL CLAUSES

### ARGENTINA

#### CHAPTER III – ADMINISTRATIVE AND FINAL CLAUSES

##### Article 13 Assembly

(1)(a) The Contracting Parties shall have an Assembly.

(b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisers and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed it. The Assembly may ask WIPO to grant bilateral assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

(2)(a) The Assembly shall deal with matters concerning the maintenance and development of this Protocol and its application and operation.

(b) The Assembly shall perform the function allocated to it under Article 15(2) regarding the admission of certain intergovernmental organizations to become party to this Protocol.

(c) The Assembly shall decide on the convocation of any Diplomatic Conference for the revision of this Protocol and give the necessary instructions to the Director General of WIPO for the preparation of such Diplomatic Conference.

(3)(a) Every Contracting Party that is a State shall have one vote and shall vote only in its own name.

(b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its member States, with a number of votes equal to the number of its member States that are party to this Protocol. No such intergovernmental organization shall participate in the vote if any of its member States exercises its right to vote, and vice versa.

(4) The Assembly shall meet in ordinary session every two years on convocation by the Director General of WIPO.

(5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Protocol, the required majority for various kinds of decision.

Article 14  
International Bureau

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

Article 15  
Eligibility to Become Party to the Protocol

1. Any Member State of WIPO may become party to this Protocol.
2. The Assembly may decide to admit any intergovernmental organization to become party to this Protocol that declares that it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Protocol and that it has been duly authorized, in accordance with its internal procedures, to become party to this Protocol.
3. The European Community, which made the declaration referred to in the preceding paragraph at the Diplomatic Conference that adopted this Protocol, may become party to this Protocol.

Article 16  
Rights and Obligations Under the Protocol

Subject to any specific requirements to the contrary in this Protocol, every Contracting Party shall enjoy all the rights and assume all the obligations provided for in this Protocol.

Article 17  
Signature of the Protocol

This Protocol shall remain open until ....., for signature by any Member State of WIPO and by the European Community.

Article 18  
Entry into Force of the Protocol

This Protocol shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.



Article 19  
Effective Date of Becoming Party to the Protocol

This Protocol shall bind:

- (i) the 30 States referred to in Article 18 from the date on which this Protocol enters into force;
- (ii) any other State from the expiry of three months from the date on which the State deposits its instrument with the Director General of WIPO;
- (iii) the European Community from the expiration of three months after the deposit of its instrument of ratification or accession if it is deposited after the entry into force of this Protocol according to Article 18, or three months after the entry into force of this Protocol if it is deposited before the entry into force of this Protocol;
- (iv) any other intergovernmental organization that is admitted to become party to this Protocol from the expiration of three months after the deposit of its instrument of accession.

Article 20  
Denunciation of the Protocol

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

Article 21  
Languages of the Protocol

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

Article 22  
Depositary

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

MEXICO

It considers it important that the subsequent negotiations and discussions leading to a Treaty on the Protection of the Rights of Broadcasting Organizations should take into consideration the draft submitted by the various unions and associations of broadcasting organizations and distributed at the meeting of the Standing Committee on Copyright and Related Rights in November 1998.<sup>34</sup>

SWITZERLAND

Administrative and Final Clauses

In accordance with the provisions under the WPPT.

[End of Annex and of document]

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<sup>34</sup> See WIPO document SCCR/2/6.