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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Fourteenth Session
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WORKING PAPER
FOR THE PREPARATION OF THE BASIC PROPOSAL
FOR A TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

*prepared by the Chair of the Standing Committee on Copyright and Related Rights in
cooperation with the Secretariat*

Introductory Notes by the Chairman of the Standing Committee

The WIPO General Assembly decided in October 2005 that two sessions of the Standing Committee on Copyright and Related Rights (SCCR) would be scheduled to accelerate its discussions and aim to agree and finalize a Basic Proposal for a treaty on the protection of the rights of broadcasting organizations.

In the end of the meeting of the November 2005 Standing Committee there was an understanding that a new revised consolidated text would be prepared for the next session of the Committee.

The new revised text forms a set of two documents:

- Draft Basic Proposal
- Working Paper for the Preparation of the Basic Proposal

The Draft Basic Proposal contains “a clean text” of a draft treaty without presentation of alternative provisions and including a draft solution in relation to webcasting, in the form of a draft appendix, without presenting different options.

The objective of this separate Working Paper is to accompany the Draft Basic Proposal and to offer a comprehensive and complete basis for the consideration of the Committee.

The Working Paper contains all the alternative provisions that have been removed from the body of the Draft Basic Proposal, as well as all elements from the new proposals received at the November 2005 meeting of the Committee.

The Working Paper is intended to be a tool for the Committee for testing the Draft Basic Proposal, and the basis to consider whether certain elements should be added or replaced.

Both documents should be read in conjunction with the previous set of documents, especially with the Second Revised Consolidated Text (SCCR/12/2 Rev.2).

The two new documents together form the basis for the work of the Committee in its fourteenth session, May 1 to 5, 2006.

It should be stressed that the Draft Basic Proposal is just a draft text. There is no agreement on any element in its content, and it is open for changes based on the discussions on the Working Paper and the Draft Basic Proposal in the Committee. The fact that there are no alternative provisions in the Draft Basic Proposal does not mean that there should be no alternatives in the final Basic Proposal.

It is understood that the Basic Proposal would be prepared after the fourteenth session of the Standing Committee. Again, it should be stressed that even the Basic Proposal will be a draft, forming a working document for the Diplomatic Conference, and subject to change in the conference itself.

[Working Paper follows]

*Working Paper
for the Preparation of the Basic Proposal
for a WIPO Treaty on the Protection of Broadcasting Organizations*

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1. RELATION TO OTHER CONVENTIONS AND TREATIES

Extract from the Second Consolidated Text:

Article 1

Relation to Other Conventions and Treaties

Alternative A

(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.

Alternative B

(1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under any other copyright and related rights treaties.

2. GENERAL PUBLIC INTEREST CLAUSES

New proposals received at the 13th session of the SCCR:

Article [x]

General Principles

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

Article [y]

The Protection and Promotion of Cultural Diversity

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

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

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

3. DEFENSE OF COMPETITION

New proposal received at the 13th session of the SCCR:

Article [x]

Defense of Competition

- (1) The Contracting Parties shall take adequate measures, especially when formulating or amending their laws and regulations, to prevent the abuse of intellectual property rights or the recourse to practices which unreasonably restrain trade or adversely affect the international transfer and dissemination of technology.
- (2) Nothing in this Treaty shall prevent the Contracting Parties from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market.
- (3) Each Contracting Party may take appropriate measures consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights to prevent or control such practices.

4. BENEFICIARIES OF PROTECTION

Extract from the Second Consolidated Text:

Article 4
Beneficiaries of Protection

Alternative H

(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.

5. NATIONAL TREATMENT

Extract from the Second Consolidated Text:

Article 5 *National Treatment*

Alternative K

(1) Subject to Article 7(3) of this Treaty, each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 4(2), 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 under this Treaty, as well as the rights specifically granted in this Treaty.

New proposal received at the 13th session of the SCCR:

Article 5 *National Treatment*

Each Contracting Party shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights recognized expressly under this Treaty.

6. RIGHT OF COMMUNICATION TO THE PUBLIC

Extract from the Second Consolidated Text:

Article 7

Right of Communication to the Public

Alternative L

Broadcasting organizations shall enjoy the exclusive right of authorizing 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.

Alternative M

(1) [Provision as in Alternative L above]

(2) It shall be a matter for 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.

(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.

7. RIGHT OF REPRODUCTION

Extract from the Second Consolidated Text:

Article 9 *Right of Reproduction*

Alternative N

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

Alternative O

(1) Broadcasting organizations shall have the right to prohibit the reproduction of fixations of their broadcasts other than those referred to in paragraph (2).

(2) 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.

8. RIGHT OF DISTRIBUTION

Extract from the Second Consolidated Text:

Article 10 *Right of Distribution*

Alternative P

- (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.
- (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.

Alternative Q

Broadcasting organizations shall have the right to prohibit the distribution to the public and importation of reproductions of unauthorized fixations of their broadcasts.

Alternative II

- (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.
- (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 for the broadcasting organizations, instead of the exclusive right of authorizing provided for in paragraph (1), a right to prohibit the distribution to the public and importation of reproductions of unauthorized fixations of their broadcasts.

9. RIGHT OF TRANSMISSION FOLLOWING FIXATION

Extract from the Second Consolidated Text:

Article 11 *Right of Transmission Following Fixation*

Alternative JJ

Broadcasting organizations shall have the exclusive right of authorizing the transmission of their broadcasts following fixation of such broadcasts.

10. RIGHT OF MAKING AVAILABLE OF FIXED BROADCASTS

Extract from the Second Consolidated Text:

Article 12 *Right of Making Available of Fixed Broadcasts*

Alternative R

Broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of their broadcasts from 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.

Alternative S

Broadcasting organizations shall have the right to prohibit the making available to the public 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.

11. LIMITATIONS AND EXCEPTIONS

Extract from the Second Consolidated Text:

Article 14 *Limitations and Exceptions*

Alternative T

(3) If on [the date of the Diplomatic Conference], a Contracting Party has in force limitations and exceptions to the rights conferred in Article 6 in respect of non-commercial broadcasting organizations, it may maintain such limitations and exceptions.

New proposal received at the 13th session of the SCCR:

Article 14 *Limitations and Exceptions*

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

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

- (a) Private use
- (b) The use of excerpts in connection with the reporting of current events;
- (c) Ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
- (d) Use solely for the purposes of teaching or scientific research;
- (e) The use of works specifically to promote access by persons with impaired sight or hearing, learning disabilities, or other special needs;

(f) The use by libraries, archivists or educational institutions, to make publicly accessible copies of works that are protected by any exclusive rights of the broadcasting organization, for purposes of preservation, education and/or research;

(g) Any use of any kind in any manner or form of any part of a broadcast where the program, or any part of it, which is the subject of the transmission is not protected by copyright or any related right thereto.

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

New proposal received at the 13th session of the SCCR:

Article 14

Limitations and Exceptions

1. Each Contracting Party may incorporate in its legislation exceptions to the protection granted by this Treaty in the following cases:

- (a) private use;
- (b) short excerpts used in connection with the reporting of current events;
- (c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
- (d) use only for the purposes of teaching or scientific research;
- (e) use with the sole objective of making the broadcast accessible to disabled persons;
- (f) use by publicly accessible libraries or museums, or by archive services, which do not seek to obtain economic or commercial benefit.

2. The Contracting Parties may, in their national legislations, provide for the same kinds of limitations or exceptions with regard to broadcasting organizations as they provide for in their national legislation, in connection with the protection of copyright in literary and artistic works, or other limitations or exceptions in so far as they concern special cases which do not affect commercialization of the broadcast and do not unreasonably prejudice the legitimate interests of the rightsholder.

12. TERM OF PROTECTION

Extract from the Second Consolidated Text:

Article 15 *Term of Protection*

Alternative EE

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.

13. OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

Extract from the Second Consolidated Text:

Article 16
Obligations Concerning Technological Measures

Alternative V

- (2) 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.

Alternative W

- (2) [No such provision]

Alternative NN

[No such Article]

14. ELIGIBILITY FOR BECOMING PARTY TO THE TREATY

Extract from the Second Consolidated Text:

Article 24
Eligibility for Becoming Party to the Treaty

Alternative AA

(1) Any Member State of WIPO may become party to this Treaty, provided that such State is a party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

New proposal received at the 13th session of the SCCR:

Article 24
Eligibility for Becoming Party to the Treaty

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

15. SIGNATURE OF THE TREATY

Extract from the Second Consolidated Text:

Article 26 *Signature of the Treaty*

Alternative CC

This Treaty shall be open for signature untilby any State that has acceded to or ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty and by the European Community.

[End of Working Paper and of document]