

Standing Committee on Copyright and Related Rights

Twenty-First Session

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Report of the Regional Seminar for the Latin American and
Caribbean Countries on the Protection of Broadcasting Organizations

Document prepared by the National Copyright Institute (INDAUTOR), Mexico City

1. The Regional Seminar for the Latin American and Caribbean Countries on the Protection of Broadcasting Organizations (the Seminar) was held in Mexico City, Federal District, on May 31 and June 1, 2010. The Seminar was organized by the National Copyright Institute (INDAUTOR) in cooperation with the World Intellectual Property Organization (WIPO) at the invitation of the Standing Committee on Copyright and Related Rights (SCCR) of the WIPO Secretariat at its Eighteenth Session held from May 25 to 29, 2009 as well as in the Committee's conclusions at its Nineteenth Session held from December 14 to 18, 2009, which stated that "*the Secretariat will organize regional seminars upon requests from Member States to ascertain views on the objectives, specific scope and object of protection of a possible draft treaty following a signal-based approach.*"

2. In order better to understand this technical subject, the Seminar was carried out in two parts.

3. The first part was held on May 31, 2010 and consisted of a series of lectures which included excellent presentations made by 11 experts in the field, both national and international, during which the following topics were discussed: broadcasting for development; developments in broadcasting: technological and market trends and legal challenges; digital sports piracy in Latin America and the Caribbean region; broadcasting piracy: case studies for the Americas; the WIPO Draft Treaty on the Protection of Broadcasting Organizations; the need for an international instrument for the protection of broadcasting organizations and the consequences of its lack of adoption; and the WIPO Draft Treaty on the Protection of Broadcasting Organizations: protecting the public interest. The experts agreed that the main problem that broadcasting organizations faced was signal piracy; a challenge that could be overcome by adopting a Treaty on the protection of the rights of broadcasting organizations which was acceptable to all parties.

4. The second part was held on June 1, 2010 and focused on the task set by the SCCR to "*ascertain views on the objectives, specific scope and object of protection of a possible draft treaty following a signal-based approach*". Four experts in the field participated in this part of the Seminar in order to clarify any questions the representatives of the Latin American and Caribbean countries might have.

5. The Chair started with a presentation outlining the background that had led to the Seminar being held, especially the informal paper (SCCR/17/INF/1) prepared by the Chairman of the Committee for the Seventeenth Session of the SCCR held from November 3 to 7, 2008, in Geneva, according to the decision of the Committee at its Sixteenth Session held in March 2008 on the main positions and differences of opinion for their assessment and discussion, in which attention was drawn to the following:

- the objectives;
- the specific scope; and
- the object of protection.

6. In accordance with the content of this document, what emerged from the section on objectives was the importance of economic investment by the broadcasting organizations in the creation of their broadcasts and the concern of signal theft.

7. With regard to the specific scope, there was a need to define coverage of the Treaty, as well as the type of protection for broadcasting organizations with rights, which were independent of copyright and other related rights.

8. Finally, with regard to the object of protection, it was important to determine what must be considered as a broadcast or signal, including cablecast, and for each of these determine a neutral definition based on technological advances.

9. In light of the above and in order to move the informal consultation forwards, the Chair opened the debate by analyzing the objectives, specific scope and object of protection, taking into account what had been previously discussed by the SCCR.

10. The Chair introduced the first objective: 1.1 Recognizing the exclusive rights of broadcasting organizations in line with technological advances, taking into account that the exclusive rights provided for in the Rome Convention (1961) and the Brussels Convention (1974) needed to be reviewed and possibly adapted to technological advances as well as the current diversification of radio and television services in various telecommunications networks.

11. In relation to this, it was noted that there was a need to identify technological advances in order to adopt a broad and regional position on the impact on broadcasting organizations. There was also a need to increase information sharing in order to get an idea of the current situation. Similarly, it was noted that technological advances increased the possibility of rights holders holding more rights due to the different ways of transmitting signals and broadcasting. It was added that Internet was a subject that was being dealt with in different ways in the region, which was why it was necessary to have an on-going debate on its impact on signal transmission and broadcasts of broadcasting organizations.

12. The Chairperson introduced the second objective: 1.2 Recognizing the general principles related to collective interests, as well as to the public policies adopted in each country, in order to include limitations to exclusive rights of broadcasting organizations in a harmonized way in national legislation, taking into consideration that these general principles were recognized in any forum, not only intellectual property fora.

13. The third objective the Chairperson introduced was 1.3 Recognizing under an international standard that signals, broadcasts or cablecasts of broadcasting organizations, as defined in the Rome Convention, must also be protected in digital networks such as the Internet, taking into consideration that technological progress created new ways of broadcasting information and content.

14. In this way, some countries indicated the importance of identifying broadcasting organizations as subjects for protection and, where applicable, the possible difference with cable organizations and operators, since each country granted entities the licenses or permits to provide radio and television services. Thus, the participants maintained that the protection under the Treaty could be thought of as bolstering the Rome Convention so as to prevent third parties from exploiting signals for commercial purposes without the authorization of the broadcasting organization, which was why it was important to set up flexible international standards so that protection could be established by all States in their national legislation. As a result, it was noted that each legislation should establish its own form of protection and in each case provide for exclusive rights, such as the right to single remuneration, or where applicable, the necessary legal means to sanction persons who appropriated signals or broadcasts which did not belong to them and used them without authorization from the rights holder.

15. As to the specific scope, the Chair said that the Treaty could give States the option of providing broadcasting organizations with international protection to enjoy the rights of their broadcasts, signals and cablecasts, which were generated, transmitted, broadcast and received, in line with technological advances so as to avoid improper commercial use and signal theft, keeping in mind that the main focus should be on granting broadcasting organizations the right to prevent third parties from using or exploiting their broadcasts or signals without their consent; a situation which affected investment in broadcast or signal production and generated economic losses.

16. On this particular aspect, the establishment of a Treaty on the protection of the rights of broadcasting organizations was discussed and how this could be done generically through certain rights, without prejudice to each legislation providing for a right of public communication in its various forms as set out in the Rome Convention. In relation to this topic, the possibility of including cablecast and simulcast as other forms of broadcast subject to protection was also discussed.

17. With regard to the object of protection, the Chair said that one possible object for protection could be the transmission of a broadcasting organization as established in the terms of the country of origin, consisting of a broadcast, signal and cablecast, reflecting the reality of each country and taking into account that cablecasting was a new means by which broadcasting organizations diversified their services and conveyed information.

18. In relation to this, the importance of granting protection to broadcasting organizations against their signals and broadcasts being pirated was noted, as well as the importance of discussing national treatment together with the object of protection.

19. It should be noted that the following countries participated in the Seminar: Argentina, Barbados, Brazil, Chile, Cuba, Dominican Republic, Ecuador, El Salvador, Jamaica, Mexico, Peru, Saint Lucia, Trinidad and Tobago, and Uruguay.

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