

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

**STANDING COMMITTEE ON COPYRIGHT
AND RELATED RIGHTS**

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PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

Submitted by the European Community and its Member States

The European Community and its Member States wish to reiterate their view, expressed in their submission at the second session of the Standing Committee on Copyright and Related Rights in May 1999, that the legal framework existing at international level for protection of broadcasting organizations must be updated and improved. This improvement of the level of protection is even more necessary in view of the urgent need to fight more efficiently against signal piracy acts. At the same time, it has to safeguard the balance with rights of the other categories of neighboring right holders covered by the WIPO Performances and Phonograms Treaty.

In the framework of these considerations, and taking as a starting point the level of protection provided by the Rome Convention, the European Community and its Member States submit hereby the following proposal for a WIPO Treaty on the Protection of Broadcasting Organizations.

This first submission in treaty language by the European Community and its Member States is intended as a constructive contribution to the discussions in the Standing Committee. In the light of those discussions, we do not exclude the possibility of adapting or adding to our proposal.

WIPO TREATY ON THE PROTECTION OF BROADCASTING ORGANIZATIONS

Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of broadcasting organizations in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities and opportunities for unauthorized use of broadcasts both within and across frontiers,

Recognizing the need for a balance between the rights of broadcasting organizations and the larger public interest, particularly education, research and access to information, as well as for broadcasting organizations to acknowledge the rights of authors and holders of related rights in works and other protected subject matter contained in their broadcasts,

Have agreed as follows:

CHAPTER I GENERAL PROVISIONS

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 or neighboring rights in program material incorporated in broadcasts. 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 1*bis*
Definitions¹

For the purposes of this Treaty, “broadcasting” means the transmission by wire or over the air, including by cable or satellite, for public reception of sounds or of images and sounds or of the representations thereof; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent. The mere retransmission by cable of broadcasts of a broadcasting organization or the making available of fixations of broadcasts as set out in Article 7 shall not constitute broadcasting.

Article 2
Beneficiaries of Protection

1. Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations, which meet either of the following conditions:

(a) the headquarters of the broadcasting organization is situated in another Contracting Party, or

(b) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be that at which, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

2. By means of a notification deposited with the Director General of the World Intellectual Property Organization, 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.

Article 3
National Treatment

Each Contracting Party shall accord to broadcasting organizations of other Contracting Parties, as set out in Article 2, national treatment with regard to the exclusive rights specifically granted in this Treaty.

¹ The European Community and its Member States remain open to further discussion on the question whether further definitions should be added to this Article, as well as on the question whether definitions should be contained in a separate Article or in the provisions concerning the substantive rights.

CHAPTER II
RIGHTS OF BROADCASTING ORGANISATIONS

Article 4
Right of Fixation

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the fixation of their broadcasts.

Article 5
Right of Reproduction

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

Article 6
Right of Retransmission

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the retransmission, by wire or wireless means, whether simultaneous or based on fixations, of their broadcasts.

Article 7
Right of Making Available of Fixed Broadcasts

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit 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.

Article 8
Right of Communication to the Public

Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit 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.

Article 9
Right of Distribution

1. Broadcasting organisations shall enjoy the exclusive right to authorize or prohibit the making available to the public of the original and copies of fixations of their broadcasts, through sale or the 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 with the authorization of the broadcasting organization.

Article 10
Protection in Relation to Signals Prior to Broadcasting²

Broadcasting organizations shall enjoy adequate legal protection against any acts referred to in Article 4 to 9 of this Treaty in relation to their signals prior to broadcasting.

Article 11
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 12
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 broadcast took place for the first time.

Article 13
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.

² The precise nature of this protection and the circumstances in which it would apply may require further consideration in the light of the exclusive rights it is decided to grant to broadcasting organizations and the manner in which these are expressed.

Article 14
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, 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.

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.

Article 15
Formalities

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

Article 16
Reservations

No reservations to this Treaty shall be permitted.

Article 17
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 18
Provisions on Enforcement of Rights

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.

CHAPTER III ADMINISTRATIVE AND FINAL CLAUSES

Article 19 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, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial 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 Treaty and the application and operation of this Treaty.

(b) The Assembly shall perform the function allocated to it under Article 21(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.

(c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
3. (a) Each 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 which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
4. The Assembly shall meet in ordinary session once every two years upon 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 Treaty, the required majority for various kinds of decisions.

Article 20
International Bureau

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

Article 21
Eligibility for Becoming Party to the Treaty

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

Article 22
Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 23
Signature of the Treaty

This Treaty shall be open for signature until by any Member State of WIPO and by the European Community.

³ In the event of it being decided that this instrument should be a protocol to the WPPT, Article 21(1) would read: “Any Member State of WIPO may become party to this protocol if it has deposited its instruments of ratification of the Berne Convention, the WCT and the WPPT.”

Article 24

Entry into Force of the Treaty

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

Article 25

Effective Date of Becoming Party to the Treaty

This Treaty shall bind

(i) the States referred to in Article 24, from the date on which this Treaty has entered into force;

(ii) each other State from the expiration of three months from the date on which the State has deposited 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 such instrument has been deposited after the entry into force of this Treaty according to Article 24, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

(iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 26

Denunciation of the Treaty

This Treaty 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 received the notification.

Article 27

Languages of the Treaty

1. This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these 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 on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 28
Depositary

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

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