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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

**STANDING COMMITTEE ON COPYRIGHT
AND RELATED RIGHTS**

Eighth Session
Geneva, November 4 to 8, 2002

PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

Proposals submitted by the United States of America

TITLE

Draft WIPO Treaty for the Protection of the Rights of Broadcasting, Cablecasting and Webcasting Organizations

PREAMBLE

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of broadcasting, cablecasting and webcasting organizations in a manner as effective and uniform as possible without diminishing the protection afforded to works, performances and phonograms included in broadcasts, cablecasts and webcasts,

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,

Acknowledging 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, cablecasts and webcasts both within and across frontiers,

Stressing the direct benefits to authors and holders of related rights in works and other protected subject matter contained in broadcasts, cablecasts and webcasts by protecting the rights of broadcasting, cablecasting and webcasting organizations to prevent certain activities,

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 existing copyright and related rights treaties, including but not limited to the Berne Convention for the Protection of Literary and Artistic Works (1971), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, 26 October 1961.

2. Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts,

cablecasts or webcasts. Consequently no provisions of this Treaty may be interpreted as prejudicing such protection.

3. This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

Article 2
Definitions

For purposes of this Treaty:

(a) "Broadcasting" means the transmission by wireless means for public reception of sounds, images or sounds and images, or of their representations thereof; such transmission by satellite is also "broadcasting." Wireless transmission of encrypted signals is "broadcasting" where the means for decrypting are provided to the public by the broadcasting organization or with its consent. "Broadcasting" shall not be understood as including transmission over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;

(b) "Cablecasting" means the transmission by wire for public reception of sounds, images, or sounds and images or of their representations thereof. Transmission by wire of encrypted signals is "cablecasting" where the means for decrypting are provided to the public by the cablecasting organization or with its consent. "Cablecasting" shall not be understood as including transmission over computer networks or any transmission where the time and place of reception may be individually chosen by members of the public;

(c) "Webcasting" means the making accessible for public reception of transmissions of sounds, images, or sounds and images or their representations thereof, by wire or wireless means over a computer network. Such transmissions, when encrypted, shall be considered as "webcasting" where the means for decrypting are provided to the public by the webcasting organization or with its consent. Webcasting and other computer network transmissions, whether by wire or wireless means, shall not be understood as "broadcasting" or "cablecasting";

(d) A "broadcasting organization" a "cablecasting organization" or a "webcasting organization" means the person or the legal entity, who or which takes the initiative and has the responsibility for: (i) the first transmission to the public of sounds, images or sounds and images or their representations thereof; and/or (ii) the assembly and scheduling of the content of the transmission;

(e) "Rebroadcasting" means the simultaneous broadcasting by one broadcasting organization of the broadcast, cablecast or webcast of another broadcasting, cablecasting or webcasting organization;

(f) "Cable retransmission" means the simultaneous transmission to the public by wire of the broadcast, cablecast or webcast of another broadcasting, cablecasting or webcasting organization;

(g) “Computernetworkretransmission” meansthesimultaneous transmissionbywire orwirelessmeansovercomputernetworksofthebroadcast, cablecastorwebcastofanother broadcasting,cablecastingorwebcastingorganization;

(h) “Publicrendition” ofabroadcast,cablecastorwebcastmeansmakingthe transmissionorafixationofabroadcast,cablecastorwebcastaudibleorvisibleor audible andvisibleinplacesaccessibletothepublic;

(i) “Fixation” meanstheembodimentofsounds,images,orsoundsandimages,orof therepresentationsthereof,fromwhichtheycanbeperceived,reproducedorcommunicated throughadevice.

Article3

BeneficiariesofProtectionUnderThisTreaty

1. ContractingPartiesshallaccordprotectionprovidedunderthisTreatytobroadcasting, cablecastingandwebcastingorganizationswhicharenationalsoftheotherContracting Parties.

2. NationalsofotherContractingPartiesshallbeunderstoodtobethosebroadcasting, cablecastingandwebcastingorganizationswhichmeeteitherofthefollowingconditions:

(a) Theheadquartersofthebroadcasting,cablecastingorwebcastingorganizationis situatedinanotherContractingParty,or

(b) Abroadcast,cablecastorwebcastistransmittedfromorbyafacilitysituatedin anotherContractingParty.Inthecaseofsatellitebroadcasting,afacilityshallbeconstruedto besituatedwherethesounds,images,orsoundsandimages,ortherepresentationsthereof,or accompanyinganalogordigitaldata,intendedfordirectpublicreceptionareintroduced, underthecontrolandresponsibilityofthebroadcasting,cablecastingorwebcasting organization,intoanuninterruptedchainofcommunicationleadingtothesatelliteanddown towardstheearth.

Article4

NationalTreatment

EachContractingPartyshallaccordtonationalsofotherContractingParties,asdefined inArticle3(2),therightswhichtheirrespective lawsdonowormayhereaftergranttotheir nationals,inrespectofbroadcasts,cablecastsorwebcastsforwhichsuchnationalsare protectedunderthisTreaty,aswellastherightsspecificallygrantedbythisTreaty.

CHAPTER II

RIGHTS OF BROADCASTING, CABLECASTING AND WEBCASTING ORGANIZATIONS

Article 5
Specific Protections

Broadcasting, cablecasting and webcasting organizations shall enjoy the exclusive right of authorizing:

- (a) The broadcasting of their broadcasts, cablecasts or webcasts;
- (b) The computer network retransmission of their broadcasts, cablecasts or webcasts;
- (c) The cable retransmission of their broadcasts, cablecasts or webcasts;
- (d) The deferred transmission by wire or wireless means, including by means of a computer network, of their broadcasts, cablecasts or webcasts from fixations of their broadcasts, cablecasts or webcasts;
- (e) The fixation of their broadcasts, cablecasts or webcasts;
- (f) The reproduction of their broadcasts, cablecasts or webcasts from fixations made:
(1) without their consent; or (2) pursuant to Article 8 when such reproduction would not be permitted by that Article;
- (g) (i) The public rendition of their broadcasts, cablecasts or webcasts of sounds and images embodied in audiovisual works in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the Party where protection of this right is claimed to determine the conditions under which it may be exercised;
- (ii) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (i) 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 (i) to broadcasting, cablecasting or webcasting organizations whose headquarters are in that State.

Article 6
Rights to Prohibit

Broadcasting, cablecasting and webcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization:

- (a) The making available to the public of fixations of their broadcasts, cablecasts or webcasts, 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,

- (b) The reproduction or fixation of their broadcasts, cablecasts or webcasts,
- (c) The distribution to the public and importation of reproductions or fixations of their broadcasts, cablecasts or webcasts.

Article 7

Protection in Relation to Signals Prior to Broadcasting, Cablecasting or Webcasting

Broadcasting, cablecasting and webcasting organizations shall also enjoy adequate and effective legal protection against any acts referred to in Articles 5 and 6 in relation to their signals prior to broadcasting, cablecasting or webcasting.

Article 8¹

Limitations and Exceptions

1. The rights of broadcasting, cablecasting and webcasting organizations set forth in Articles 5, 6, and 7 shall leave intact and shall in no way affect the protection of copyright or related rights in program material incorporated in broadcasts, cablecasts or webcasts.
2. Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting, cablecasting and webcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works and with the protection of the related rights of performers and producers of phonograms.
3. Contracting Parties shall confine any limitations or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast, cablecast or webcast and do not unreasonably prejudice the legitimate interests of the broadcasting, cablecasting or webcasting organizations as set forth herein.
4. If on [the date of the Diplomatic Conference], a Contracting Party has in force limitations and exceptions to the rights conferred in Article 5(a) - (c) in respect of non-commercial broadcasting organizations, it may maintain such limitations and exceptions.

¹ The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 8 (on Limitations and Exceptions) of the WIPO Treaty for the Protection of the Right of Broadcasting, Cablecasting and Webcasting Organizations. [The text of the agreed statement concerning Article 10 of the WCT reads as follows: "It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment. "It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention."]

Article 9
Term of Protection

The term of protection to be granted to broadcasting, cablecasting and webcasting organizations under this Treaty shall last at least 50 years until the end of a period computed from the end of the year in which the broadcast, cablecast or webcast took place.

Article 10
Obligations Concerning Technological Measures

Contracting Parties shall provide adequate and effective legal remedies against the circumvention of effective technological measures that are used by broadcasting, cablecasting and webcasting organizations in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their broadcasts, cablecasts or webcasts, which are not authorized by the beneficiary concerned or permitted by law.²

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 or violation of any prohibition covered by this Treaty:

(a) To remove or alter any electronic rights management information without authority;

(b) To distribute, import for distribution, retransmit, communicate or make available to the public, without authority, broadcasts, cablecasts, webcasts or fixation thereof, knowing that electronic rights management information has been removed or altered without authority.

2. As used in this Article, "rights management information" means information provided by the broadcasting, cablecasting or webcasting organization which identifies such organization, the broadcast, cablecast or webcast, the owner of any right in the broadcast, cablecast or webcast, or information about the terms and conditions of use of the broadcast, cablecast or webcast, and any numbers or codes that represent such information, whenever any of these items of information is attached to or associated with the broadcast, cablecast or webcast.

² It is understood that in Article 10, the use of encryption for the purpose of preventing unauthorized reception of a broadcast, cablecast or webcast is a technological measure used by a broadcasting, cablecasting or webcasting organization that restricts acts, in respect of its broadcast, cablecast or webcast that are not authorized by the beneficiary concerned.

Article 12
Formalities

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

Article 13
Reservations

Subject to the provisions of Article 5(g)(ii), no reservation to this Treaty shall be permitted.

Article 14
Application in Time

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

Article 15
Provision on Enforcement of Rights

1. Contracting Parties shall 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 laws to permit effective action against any act of infringement of rights or violation against any prohibition covered by this Treaty, including expeditious remedies to prevent infringements or violations, which constitute a deterrent to further infringements and violations.

CHAPTER III

ADMINISTRATIVE AND FINAL CLAUSES

Article 16
Assembly

1. (a) The Contracting Parties shall have an Assembly.
(b) Each Contracting Party shall be represented by one delegate whom may be assisted by alternated 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 the World Intellectual Property Organization (hereinafter referred to as "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 functions allocated to it under Article 18(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 that 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 17 *International Bureau*

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

Article 18 *Eligibility for Becoming Party to the Treaty*

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.

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 all 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 Union, 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 subject to paragraph 1 of this Article.

Article 19
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 20
Signature of the Treaty

This Treaty shall be open for signature until 31 December 2007, by any Member State of WIPO and by the European Union.

Article 21
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 22
Effective Date of Becoming Party to the Treaty

This Treaty shall bind

- (a) The ___ States referred to in Article 21, from the date on which this Treaty has entered into force;
- (b) 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;
- (c) The European Union, 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 21, 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;
- (d) 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 23
Denunciation of the Treaty

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

Article 24
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 Union, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 25
Depositary

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

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