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**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
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**STANDING COMMITTEE ON COPYRIGHT  
AND RELATED RIGHTS**

**Ninth Session**  
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PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

COMPARISON OF PROPOSALS OF WIPO MEMBER STATES  
AND THE EUROPEAN COMMUNITY AND ITS MEMBER STATES  
RECEIVED BY APRIL 15, 2003

*prepared by the Secretariat*

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## INTRODUCTORY NOTE

1. The Secretariat of the World Intellectual Property Organization (WIPO) has prepared a document which contains a comparison of the proposals on the protection of the rights of broadcasting organizations submitted by the Member States and the European Community to the Secretariat up to April 15, 2003.
2. This document is based on the following other documents:
  - SCCR/2/5: containing submissions received from Member States of WIPO and the European Community by March 31, 1999 (including a proposal by Switzerland);
  - 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 document 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 document 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 document as “Certain States of Asia and the Pacific”);
  - SCCR/5/4: containing a proposal by Japan;
  - SCCR/6/2: containing a proposal by the European Community and its Member States;
  - SCCR/6/3: containing a proposal by Ukraine;
  - SCCR/7/7: containing a proposal by the Eastern Republic of Uruguay;
  - SCCR/8/4: containing a proposal submitted by Honduras;
  - SCCR/9/3: containing a proposal submitted by Kenya; and
  - SCCR/9/4: containing a proposal submitted by the United States of America.

I. TITLE

*ARGENTINA*

3. The Delegation of Argentina has proposed the following wording:

WIPO Protocol on the Protection of the Broadcasts of Broadcasting Organizations.

*CAMEROON*

4. The Delegation of Cameroon has proposed the following wording:

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

*CERTAIN STATES OF AFRICA*

5. The Representative of Certain States of Africa has proposed the following wording:

The country representatives expressed themselves in favor of a treaty.

*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

6. The Delegation of the European Community and its Member States has proposed the following wording:

WIPO Treaty on the Protection of Broadcasting Organizations.

*HONDURAS*

7. The Delegation of Honduras has proposed the following wording:

Draft WIPO Treaty on the Protection of Broadcasting Organizations

*JAPAN*

8. The Delegation of Japan has proposed the following wording:

WIPO Broadcasting Organizations Treaty.

*KENYA*

9. The Delegation of Kenya has proposed the following wording:

The Proposed Treaty on the Protection of the Rights of Broadcasting Organizations.

*MEXICO*

10. The Delegation of Mexico has proposed the following wording:

Treaty on the Protection of the Rights of Broadcasting Organizations.

*SWITZERLAND*

11. The Delegation of Switzerland has proposed the following wording:

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

*UKRAINE*

12. The Delegation of Ukraine has proposed the following wording:

WIPO Treaty on Broadcasting Organizations.

*UNITED REPUBLIC OF TANZANIA*

13. The Delegation of the United Republic of Tanzania has proposed the following wording:

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

*UNITED STATES OF AMERICA*

14. The Delegation of the United States of America has proposed the following wording:

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

*URUGUAY*

15. The Delegation of Uruguay has proposed the following wording:

WIPO Treaty on the Protection of Broadcasting Organizations .

II. PREAMBLE

*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

16. The Delegation of the European Community and its Member States has proposed the following wording:

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.

#### *HONDURAS*

17. The Delegation of Honduras has proposed the following wording:

*The Contracting Parties,*

*Wishing* to develop and maintain impartial protection of the rights of broadcasting organizations in the most effective and uniform manner possible,

*Recognizing* the need for the international standard to correspond and give timely responses to the questions raised by economic, social, cultural and technological occurrences,

*Recognizing* the profound impact which the development and convergence of information and communication technologies have had, the natural result of which has been the possibility of unauthorized uses of broadcasts in different cultural contexts.

*Recognizing* the need to maintain a balance between the rights of broadcasting organizations, and the rights and interests of the general public, in particular in education, research and access to information.

#### *KENYA*

18. The Delegation of Kenya has proposed the following wording:

*The Contracting Parties,*

*Desiring* to reinforce 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 and widen the application of certain existing 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 both within and across frontiers,

*Stressing* the direct benefit to authors, performers and producers of phonograms of effective and uniform protection against piracy of broadcasts, which also include their works, performances and phonograms,

*Recognizing* the need for a balance between the rights of the broadcasting organizations and the larger public interest, particularly education, research and access to information.

*UNITED STATES OF AMERICA*

19. The Delegation of the United States of America has proposed the following wording:

*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,

*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, cablecasts and webcasts both within and across frontiers,

*Recognizing* the need to maintain a balance between the rights of broadcasting, cablecasting and webcasting organizations and the larger public interest, particularly education, research and access to information, [as reflected in the Berne Convention],

*Stressing* the direct benefit 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.

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

*ARGENTINA*

20. The Delegation of Argentina has proposed the following wording:

*Article 1*  
*Relation to Other Conventions*

(a) 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”).

(b) 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.

(c) This Protocol shall not affect the copyright of broadcasting organizations and/or other owners of rights in relation to the works that are broadcast.

(d) This Protocol shall not have any connection with, or prejudice any right or obligations under, any other treaties.

*CERTAIN CENTRAL EUROPEAN AND BALTIC STATES*

21. The Representative of Certain Central European and Baltic States has proposed the following wording:

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

*CERTAIN STATES OF AFRICA*

22. The Representative of Certain States of Africa has proposed the following wording:

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:

– the relationship of the new instrument to other international instruments for the protection of copyright and neighboring rights;

– 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*

23. The Representative of Certain States of Asia and the Pacific has proposed the following wording:

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*

24. The Delegation of the European Community and its Member States has proposed the following wording:

*Article 1*  
*Relation to Other Conventions and Treaties*

(a) 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.

(b) 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.

(c) This Treaty shall have no connection with, nor shall it prejudice any rights and obligations under, any other treaties.

*HONDURAS*

25. The Delegation of Honduras has proposed the following wording:

*Article 1*  
*Relation to other Conventions and Treaties*

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 (hereinafter referred to as the "Rome Convention").

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.

This Treaty shall have no connection with, nor shall it prejudice any rights and obligations under, any other treaties.

*JAPAN*

26. The Delegation of Japan has proposed the following wording:

*Article 1*  
*Relation to Other Conventions And Treaties*

(a) 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.

(b) 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.

(c) This Treaty shall have no connection with, nor shall it prejudice any rights and obligations under, any other treaties.

*KENYA*

27. The Delegation of Kenya has proposed the following wording:

*Article 1*  
*Relation to Other Conventions*

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 on October 26, 1961 (hereinafter known as the "Rome Convention").

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 contained in the broadcasts.

3. This Treaty shall have no connection with, nor shall it prejudice any rights and obligations under any other treaties.

*MEXICO*

28. The Delegation of Mexico has proposed the following wording:

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*

29. The Delegation of Switzerland has proposed the following wording:

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

(a) This treaty constitutes a protocol under the WIPO Performances and Phonograms Treaty (WPPT).

(b) 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 (Rome Convention).

(c) 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.

(d) This Protocol shall not prejudice any rights and obligations under any other treaties.

*UKRAINE*

30. The Delegation of Ukraine has proposed the following wording:

*Article 1*  
*Relation to Other Conventions and Treaties*

(a) Nothing in this Treaty shall limit from existing obligations, that Contracting Parties have to each other under the International Convention for the Protection of Interests of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, on October 26, 1961 (hereinafter the "Rome Convention").

(b) 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.

(c) This Treaty shall have no connection with, nor shall it prejudice any rights and obligations under any other treaties.

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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)."

*UNITED REPUBLIC OF TANZANIA*

31. The Delegation of the United Republic of Tanzania has proposed the following wording:

The proposed instruments 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

*UNITED STATES OF AMERICA*

32. The Delegation of the United States of America has proposed the following wording:

*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 have no connection with, nor shall it prejudice any rights and obligations under, any other treaties.

*URUGUAY*

33. The Delegation of Uruguay has proposed the following wording:

*Article 1*  
*Relation to Other Conventions and Treaties*

(a) 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 (hereinafter referred to as “the Rome Convention”).

(b) 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.

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

#### IV. DEFINITIONS

##### *ARGENTINA*

34. The Delegation of Argentina has proposed the following wording:

##### *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;

(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) “cabled 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*

35. The Delegation of Cameroon has proposed the following wording:

*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*

36. The Representative of Certain States of Africa has proposed the following wording:

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*

37. The Delegation of the European Community and its Member States has proposed the following wording:

*Article Ibis  
Definitions<sup>3</sup>*

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

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<sup>3</sup> 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.

the making available of fixations of broadcasts as set out in Article 7 shall not constitute broadcasting.

*HONDURAS*

38. The Delegation of Honduras has proposed the following wording:

*Article 2*  
*Definitions*

For the purposes of this Treaty, “broadcasting” means the transmission by wire or wireless means, for public reception, of sounds or of images, or of images and sounds or of their representation thereof; transmission of encrypted signals is “broadcasting” where the means for decrypting are supplied to the public by the broadcasting organization or with its consent.

*JAPAN*

39. The Delegation of Japan has proposed the following wording:

*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 their representation 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, other than by broadcasting, of a broadcast; “communication to the public” includes making a broadcast audible or visible or audible and visible to the public.

*KENYA*

40. The Delegation of Kenya has proposed the following wording:

*Article 2*  
*Definitions*

For the purposes of this Treaty:

(a) “broadcast” means the transmission by wire or wireless means of sounds or images or both or their representation thereof, in such manner as to cause such sounds or images to be received by the public and include transmission by satellite;

(b) “broadcasting organization” means an organization that assembles the schedule of programs and transmits the sounds and images or both or representation thereof, in such a manner as to cause such sounds and/or images to be received by the public;

(c) “cabled distribution” means the simultaneous or deferred transmission of broadcasts *via* physical conductors, such as wires, cables, telephoned lines or optical fibres or microwave systems, for reception by the public;

(d) “communication to the public” of a broadcast means making the broadcastor a fixation thereof audible or visible to places accessible to the public;

(e) “fixation” means the embodiment of sounds or images, or of their representation thereof from which they can be communicated through a device;

(f) “re-broadcasting” means the simultaneous or subsequent broadcasting by one or more broadcasting authorities of the broadcast of another broadcasting authority.

### *MEXICO*

41. The Delegation of Mexico has proposed the following wording:

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 drafts 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>

### *UNITED REPUBLIC OF TANZANIA*

42. The Delegation of the United Republic of Tanzania has proposed the following wording:

The instruments should clearly define the following terms:

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

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



*UNITED STATES OF AMERICA*

43. The Delegation of the United States of America has proposed the following wording:

*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 of transmissions of the same sounds, images, or sounds and images or their representations thereof, by wire or wireless means over a computer network at substantially the same time. 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 legal entity that 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 (ii) the assembly and scheduling of the content of the transmission; for purposes of Article 7, a “broadcasting organization” shall include a legal entity that takes the initiative and has the responsibility for the assembly and scheduling of the content of a signal transmitted to another broadcasting organization prior to broadcasting. the

(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) “Computer network retransmission” means the simultaneous transmission by wire or wireless means over computer networks of the broadcast, cablecast or webcast of another broadcasting, cablecasting or webcasting organization;

(h) “Public rendition” of a broadcast, cablecast or webcast means making the transmission or a fixation of a broadcast, cablecast or webcast audible or visible or audible and visible in places accessible to the public;

(i) “Fixation” means the embodiment of sounds, images, or sounds and images, or of their representations thereof, from which they can be perceived, reproduced or communicated through a device.

#### URUGUAY

44. The Delegation of Uruguay has proposed the following wording:

#### *Article 2* *Definitions*

For the purposes of this Treaty, “broadcasting” means the transmission by wireless means, 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 supplied to the public; such transmission by satellite shall also be “broadcasting”; the transmission of encrypted signals shall be “broadcasting” where the means for decrypting are supplied to the public by the broadcasting organization or with its consent.

The provisions of this Treaty shall apply to transmissions by wire, including by cable, and to any other similar form of transmission of sounds or of images and sounds, or of the representations thereof, whether encrypted or not.

#### V. BENEFICIARIES OF PROTECTION

#### ARGENTINA

45. The Delegation of Argentina has proposed the following wording:

#### *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 their 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.

*CAMEROON*

46. The Delegation of Cameroon has proposed the following wording:

*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 Conventions should apply.

*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

47. The Delegation of the European Community and its Member States has proposed the following wording:

*Article 2*  
*Beneficiaries of Protection*

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

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

(ii) the broadcasts are transmitted from transmitters situated in another Contracting Party. In the case of satellite broadcasts, the relevant places 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.

(b) 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 transmitters 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.

*HONDURAS*

48. The Delegation of Honduras has proposed the following wording:

*Article 3*  
*Beneficiaries of Protection under this Treaty*

Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations of the other Contracting Parties which meet the following conditions:

- the headquarters of the broadcasting organization is situated in another Contracting Party; or
- the broadcasts are retransmitted from a transmitter or transmitters situated in the territory of 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.

*JAPAN*

49. The Delegation of Japan has proposed the following wording:

*Article 3*  
*Beneficiaries of Protection under this Treaty*

(a) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations which are national of other Contracting Parties.

(b) The national 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 sound 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.

*KENYA*

50. The Delegation of Kenya has proposed the following wording:

*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. Nationals of other Contracting Parties shall be understood to be those broadcasting organizations whose
  - (a) headquarters are situated in another Contracting Party, or
  - (b) broadcasts are transmitted from one transmitter or transmitters situated in another Contracting Party. In the case of a satellite broadcast, the relevant locations shall be the point at which, under the control and responsibility of the broadcasting organization, the sounds, images and sounds or representations thereof intended for reception by the public are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth. n

*MEXICO*

51. The Delegation of Mexico has proposed the following wording:

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 drafts 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>5</sup>

*SWITZERLAND*

52. The Delegation of Switzerland has proposed the following wording:

*Article 2<sup>6</sup>*  
*Beneficiaries of Protection Under this Protocol*

- (a) Contracting Parties shall accord the protection provided under this Protocol to the broadcasting organizations that are nationals of other Contracting Parties.
- (b) “Nationals of other Contracting Parties” means broadcasting organizations that satisfy either of the following conditions:

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<sup>5</sup> See WIPO document SCCR/2/6.

<sup>6</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.”

(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.

*UNITED STATES OF AMERICA*

53. The Delegation of the United States of America has proposed the following wording:

*Article 3*  
*Beneficiaries of Protection Under This Treaty*

1. Contracting Parties shall accord protection provided under this Treaty to broadcasting, cablecasting and webcasting organizations that are nationals of the other Contracting Parties.

2. Nationals of other Contracting Parties shall be understood to be those broadcasting, cablecasting and webcasting organizations that meet either of the following conditions:

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

(b) A broadcast, cablecast or webcast is transmitted from or by a facility situated in another Contracting Party. In the case of satellite broadcasting, a facility shall be construed to be situated where the sounds, images, or sounds and images, or their representations thereof, or accompanying analog or digital data, intended for direct public reception are introduced, under the control and responsibility of the broadcasting, cablecasting or webcasting organization, into an uninterrupted chain of communication leading to the satellite and down towards the earth.

*URUGUAY*

54. The Delegation of Uruguay has proposed the following wording:

*Article 3*  
*Beneficiaries of Protection*

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

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

(ii) the broadcasts are transmitted from transmitters 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.

(b) 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 transmitters 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.

## VI. NATIONAL TREATMENT

### *ARGENTINA*

55. The Delegation of Argentina has proposed the following wording:

*Article 4*  
*National Treatment*

(a) 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.

(b) Paragraph (a) shall not apply where the other Contracting Party avails itself of the right provided for in Article 11 of this Protocol.

### *EUROPEAN COMMUNITY AND ITS MEMBER STATES*

56. The Delegation of the European Community and its Member States has proposed the following wording:

*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.

### *HONDURAS*

57. The Delegation of Honduras has proposed the following wording:

*Article 4*  
*National Treatment*

Each Contracting Party shall accord to nationals of other Contracting Parties, as set out in Article 3 on definitions, the treatment which it grants to its own nationals with regard to the exclusive rights specifically granted in this Treaty. e

*JAPAN*

58. The Delegation of Japan has proposed the following wording:

*Article 4*  
*National Treatment*

Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(b), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty. d

*KENYA*

59. The Delegation of Kenya has proposed the following wording:

*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*

60. The Delegation of Mexico has proposed the following wording:

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>7</sup>

*SWITZERLAND*

61. The Delegation of Switzerland has proposed the following wording:

*Article 3*<sup>8</sup>  
*National Treatment*

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

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<sup>7</sup> See WIPO document SCCR/2/6.

<sup>8</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).”



*UKRAINE*

62. The Delegation of Ukraine has proposed the following wording:

*Article 2*  
*National Treatment*

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

*UNITED STATES OF AMERICA*

63. The Delegation of the United States of America has proposed the following wording:

*Article 4*  
*National Treatment*

Subject to Article 5(g)(ii) of this Treaty, each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the rights which their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts, cablecasts or webcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted by this Treaty.

*URUGUAY*

64. The Delegation of Uruguay has proposed the following wording:

*Article 4*  
*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.

VII. RIGHTS OF BROADCASTING, CABLECASTING AND WEBCASTING ORGANIZATIONS

*ARGENTINA*

65. The Delegation of Argentina has proposed the following wording:

*Article 5*  
*Rights of Broadcasting Organizations*

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

- retransmission;
- deferred transmission;

- cabledistribution;
- fixationinaphysicalmedium;
- reproductionoffixations;
- decryptingofencryptedbroadcasts;
- communicationtothepublic;
- makingfixationsofbroadcasts,availableto thepublic,whetherbywireorby wirelessmeans,insuchawaythatmembersofthatpublicmayaccessthemfromaplaceand atatimeindividuallychosenbythem.

## CAMEROON

66. TheDelegationofCameroonhasproposedthefollowingwording:

Cameroonendorsestheproposalsconcerningtheexclusiverightofbroadcasting organizationstoauthorizeorprohibittheactsspecifiedinparagraph59oftheInternational Bureauamemorandum(documentSCCR/1/3ofSeptember7,1998).<sup>9</sup>

Inthecaseofcabledi stributionorganizations,weproposethatthosewhichdistribute theirownprogramsbeentitledtotherightsgrantedtobroadcastingorganizations.

Program-carryingsignalsshouldalsobegivenprotection.Theyshouldnotbereceived bybroadcastingorg anizationsforwhichtheyarenotintended,onpainofcivilorcriminal sanctionsorboth,dependingontheseriousnessoftheinfringement.

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<sup>9</sup> Paragraphs58and59ofthedocumentSCCR/1/3readas follow:  
“58.FromApril28to30,1997,WIPOorganized,incooperationwiththeGovernmentof thePhilippinesandwiththeassistanceofthe *KapisanangmggaBrodkasterngPilipinas* (KBP) (NationalAssociationofBroadcastersofthePhilippines)theWI POWorldSymposiumon Broadcasting,NewCommunicationTechnologiesandIntellectualProperty,inManila.(The proceedingsoftheSymposiumarepublishedinWIPOpublicationNo.757(E/F/S).)Atthis symposium,representativesofbroadcastingorganization spointedoutanumberofissueswhich theyproposedtobeaddressedattheinternationallevel.Someoftheseissuesarelistedinthe followingparagraph.

59.Accordingtotheseproposals,broadcastersshouldbegrantedexclusiverightsto authorize orprohibitthefollowingacts:

- simultaneousordeferredbroadcastingoftheirbroadcasts,whethertheseare transmittedviasatelliteorbyanyothermeans;
- simultaneousanddeferredretransmissionoftheirbroadcastsincablesystems;
- themaking availabletothepublicoftheirbroadcasts,byanymeans,including interactivetransmissions;
- thefixationoftheirbroadcastsonanymedia,existingorfuture,includingthe makingofphotographsfromtelevisionsignals;
- thetransmissiontothepubl icofprograms,transmittedbycable;
- thedecodingofencryptedsignals;and
- theimportationanddistributionoffixationsorcopiesoffixationsofbroadcasts, madewithoutauthorization.

Inaddition,broadcastersshouldbegrantedarightofremuner ationforprivatecopying, anditshouldbeclarifiedthattheprotectionappliestoonlythesoundsand/orimagesof broadcasts,butalsoto(digital)representationsofsuchsoundsand/orimages.”

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

*CERTAIN CENTRAL EUROPEAN AND BALTIC STATES*

67. The Representative of Certain Central European and Baltic States has proposed the following wording:

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*

68. The Representative of Certain States of Africa has proposed the following wording:

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:

- 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;

- the scope of the new instrument, with special reference to:
  - 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*

69. The Representative of Certain States of Asia and the Pacific has proposed the following wording:

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*

70. The Delegation of the European Community and its Member States has proposed the following wording:

*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*

(a) Broadcasting organizations 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.

(b) 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 (a) 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 Broadcasting* <sup>10</sup>

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.

*HONDURAS*

71. The Delegation of Honduras has proposed the following wording:

*Article 5*  
*Rights of Broadcasting Organizations*

Economic rights of broadcasting organizations:

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;
- delayed transmission by any means;
- distribution by television;
- the fixation of their broadcasts on a material carrier, including obtaining photographs from television signals;
- direct or indirect reproduction, by any procedure or in any form, of the fixations of their broadcasts;
- the decrypting of encoded broadcasts;
- the transmission of programs by cable to the public;
- the import and distribution of fixations or of copies of fixations of broadcasts produced without authorization;
- commercial hiring to the public;
- the communication to the public of their broadcasts, where such communication is made by television and is in places accessible to the public against payment of an entrance fee;
- 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 a time of their own choosing.

*JAPAN*

72. The Delegation of Japan has proposed the following wording:

*Article 5*  
*Rights of Rebroadcasting, Communication to the Public and Fixation*

Broadcasting organizations shall enjoy the exclusive right of authorizing, as regards their broadcasts:

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<sup>10</sup> 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.

- therebroadcastingandcommunicationtothepublicoftheirbroadcasts;itshallbe  
amatterforthedomesticlawoftheContractingPartywhereprotectionofthisrightis  
claimedtodeterminetheconditionsunderwhichitmaybeexercised;and
- thefixationoftheirbroadcasts;thefixationincludesthemakingofanystill  
photographofatelevisionbroadcast.

*Article6*  
*RightofReproduction*

Broadcastingorganizationsshallenjoytheexclusiverightofauthorizingthedirector  
indirectreproductionoffixationsoftheirbroadcasts,inanymannerorform.

*Article7*  
*RightofMakingAvailable*

Broadcastingorganizationsshallenjoytheexclusiverightofauthorizingthemaking  
availabletothepublicoftheirbroadcastsandfixationsthereof,bywireorwirelessmeans,in  
suchawaythatmembersofthepublicmayaccessthemfromaplaceandat  
atimeindividuallychosenbythem.

*KENYA*

73. TheDelegationofKenya hasproposedthefollowingwording:

*Article5*  
*SpecificProtection*

1. Broadcastingorganizationsshallenjoytheexclusiverighttoauthorizeorprohibit:
  - (a) thefixationoftheir broadcastsotherthanforprivatepurposes;
  - (b) thereproductionoftheirfixations;
  - (c) themakingavailabletothepublicoffixationsoftheirbroadcasts,by  
wireorwirelessmeans,insuchawaythatmembersofthepublicmayaccess  
themfromaplaceandat atimeindividuallychosenbythem;
  - (d) communicationtothepublicoftheirbroadcasts;
  - (e) thecabletransmissionoftheirbroadcasts;
  - (f) there -broadcastingoftheirbroadcasts;
  - (g) themakingavailabletothepublicoforiginaland/orcopiesof  
fixationsofthei rbroadcasts;
  - (h) thedecryptinganddecodingoftheirbroadcasts.

2. Broadcasting organizations shall enjoy adequate legal protection against any acts referred to in Article 5, Section 1 (a) to (f) of this Treaty in relation to their signals before broadcasting.

*MEXICO*

74. The Delegation of Mexico has proposed the following wording:

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 drafts 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>11</sup>

*SWITZERLAND*

75. The Delegation of Switzerland has proposed the following wording:

*Article 4<sup>12</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>13</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>11</sup> See WIPO document SCCR/2/6.

<sup>12</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 re-broadcasting, cabled distribution and distribution of carrier signals. Moreover, it covers both simultaneous and recorded retransmission."

<sup>13</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 herein 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>14</sup>  
*Right of Decoding*

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

*Article 7*<sup>15</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>16</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>17</sup>  
*Right of Distribution*

(a) 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.

(b) 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 (a) 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>14</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>15</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>16</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>17</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>18</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 fixation 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*

76. The Delegation of the United Republic of Tanzania has proposed the following wording:

The proposed instruments 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.

*UNITED STATES OF AMERICA*

77. The Delegation of the United States of America has proposed the following wording:

*Article 5*  
*Specific Protections*

Broadcasting, cablecasting and webcasting organizations shall enjoy the exclusive right to authorize and prohibit:

- (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;

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<sup>18</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.

(d) The deferred transmission for public reception 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 audiovisual sounds and images 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:

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

(c) The distribution to the public and importation of reproductions of unauthorized 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.

*URUGUAY*

78. The Delegation of Uruguay has proposed the following wording:

*Article 5*  
*Right of Fixation*

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

*Article 6*  
*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 7*  
*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 8*  
*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 9*  
*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.

[This is the wording of the draft submitted by the European Community. The broadcasting organizations are advocating a broader formulation, which would regard as affording more suitable protection for present uses.]

*Article 10*  
*Right of Distribution*

(a) Broadcasting organizations 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.

(b) 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 (a) 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 11*  
*Right of Decrypting*

Broadcasting organizations shall have the exclusive right to authorize or prohibit the decrypting of their broadcasts.

*Article 12*  
*Protection in Relation to Signals Prior to Broadcasting*

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

VIII. LIMITATIONS AND EXCEPTIONS

*ARGENTINA*

79. The Delegation of Argentina has proposed the following wording:

*Article 6*  
*Limitations and exceptions*

(a) 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 legislative already contains with regard to the protection of the copyright in literary and artistic works.

(b) The Contracting Parties may understand the mere supply of the physical installation that serves to facilitate or make a communication as not, in itself, constituting communication to the public.

(c) Contracting Parties shall confine any limitations 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.

(d) Contracting Parties may provide in their national legislation that the simultaneous cabled distribution, without charge, 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*

80. The Delegation of Cameroon has proposed the following wording:

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

*CERTAIN CENTRAL EUROPEAN AND BALTIC STATES*

81. The Representative of Certain Central European and Baltic States has proposed the following wording:

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

*CERTAIN STATES OF AFRICA*

82. The Representative of Certain States of Africa has proposed the following wording:

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

- 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;
- the scope of the new instrument, with special reference to:  
exceptions and limitations

*CERTAIN STATES OF ASIA AND THE PACIFIC*

83. The Representative of Certain States of Asia and the Pacific has proposed the following wording:

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*

84. The Delegation of the European Community and its Member States has proposed the following wording:

*Article 11  
Limitations and Exceptions*

(a) 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.

(b) Contracting Parties shall confine any limitations of or exception 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.

*HONDURAS*

85. The Delegation of Honduras has proposed the following wording:

*Article 6*  
*Limitations and Exceptions*

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.

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

*JAPAN*

86. The Delegation of Japan has proposed the following wording:

*Article 8*  
*Limitations and Exceptions*

(a) 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.

(b) Contracting Parties shall confine any limitations of or exception 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.

*KENYA*

87. The Delegation of Kenya has proposed the following wording:

*Article 6*  
*Limitations and Exceptions*

1. Contracting Parties, in their national legislation, may provide for the same kind 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.

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 the normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.

#### *MEXICO*

88. The Delegation of Mexico has proposed the following wording:

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 drafts 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>

#### *SWITZERLAND*

89. The Delegation of Switzerland has proposed the following wording:

#### *Article 11<sup>20</sup>* *Limitations and Exceptions*

(a) 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.

(b) 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*

90. The Delegation of the United Republic of Tanzania has proposed the following wording:

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

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

<sup>20</sup> [Note on Article 11 contained in the proposal:] "This Article corresponds to Article 16 of the WPPT."

*UNITED STATES OF AMERICA*

91. The Delegation of the United States of America has proposed the following wording:

*Article 8<sup>21</sup>*  
*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.

*URUGUAY*

92. The Delegation of Uruguay has proposed the following wording:

*Article 13*  
*Limitations and Exceptions*

(a) 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.

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<sup>21</sup> The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 8(2) and 8(3) (on Limitations and Exceptions) of the WIPO Treaty for the Protection of the Rights 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 law 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."



(b) 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.

## IX. TERM OF PROTECTION

### *ARGENTINA*

93. The Delegation of Argentina has proposed the following wording:

#### *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*

94. The Delegation of Cameroon has proposed the following wording:

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*

95. The Representative of Certain States of Africa has proposed the following wording:

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

### *EUROPEAN COMMUNITY AND ITS MEMBER STATES*

96. The Delegation of the European Community and its Member States has proposed the following wording:

#### *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.

*HONDURAS*

97. The Delegation of Honduras has proposed the following wording:

*Article 7*  
*Term of Protection*

The term of protection to be granted to broadcasting organizations under this Treaty shall be not less than 50 years, calculated from the end of the year in which the broadcast took place for the first time.

*JAPAN*

98. The Delegation of Japan has proposed the following wording:

*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.

*KENYA*

99. The Delegation of Kenya has proposed the following wording:

*Article 7*  
*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 fifty years (50) computed from the end of the year in which the broadcast first took place.

*MEXICO*

100. The Delegation of Mexico has proposed the following wording:

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>22</sup>

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<sup>22</sup> See WIPO document SCCR/2/6.

*SWITZERLAND*

101. The Delegation of Switzerland has proposed the following wording:

*Article 12*<sup>23</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.

*UKRAINE*

102. The Delegation of Ukraine has proposed the following wording:

*Article 3*  
*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 January 1 of the following year of the first broadcast of the broadcasting program.

*UNITED STATES OF AMERICA*

103. The Delegation of the United States of America has proposed the following wording:

*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.

*URUGUAY*

104. The Delegation of Uruguay has proposed the following wording:

*Article 14*  
*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.

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<sup>23</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.”

X. OBLIGATIONS CONCERNING TECHNOLOGICAL MEASURES

*ARGENTINA*

105. The Delegation of Argentina has proposed the following wording:

*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:

- (a) decrypt an encrypted program -carrying signal;
- (b) 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;
- (c) 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.

*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

106. The Delegation of the European Community and its Member States has proposed the following wording:

*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 organization concerned or permitted by law.

*HONDURAS*

107. The Delegation of Honduras has proposed the following wording

*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 Treaty and that restrict acts, in respect of their broadcasts, which are not authorized by the broadcasting organizations concerned or permitted by law.

*JAPAN*

108. The Delegation of Japan has proposed the following wording:

*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.

*KENYA*

109. The Delegation of Kenya has proposed the following wording:

*Article 8*  
*Obligations Concerning Technological Measures*

Contracting Parties shall provide adequate legal protection and effective 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*

110. The Delegation of Mexico has proposed the following wording:

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>

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

*SWITZERLAND*

111. The Delegation of Switzerland has proposed the following wording:

*Article 13*<sup>25</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>26</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.

*UNITED STATES OF AMERICA*

112. The Delegation of the United States of America has proposed the following wording:

*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.

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<sup>25</sup> [Note on Article 13 contained in the proposal:] “This Article corresponds to Article 18 of the WPPT.”

<sup>26</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.”

*URUGUAY*

113. The Delegation of Uruguay has proposed the following wording:

*Article 15*  
*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.

XI. OBLIGATIONS CONCERNING RIGHTS MANAGEMENT INFORMATION

*ARGENTINA*

114. The Delegation of Argentina has proposed the following wording:

*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 ground 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.

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*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

115. The Delegation of the European Community and its Member States has proposed the following wording:

*Article 14*  
*Obligations Concerning Rights Management Information*

(a) 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.

(b) 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.

*HONDURAS*

116. The Delegation of Honduras has proposed the following wording:

*Article 9*  
*Obligations Concerning Rights Management Information*

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:

– to remove or alter any electronic rights management information without authorization;

– to distribute, import for distribution, retransmit, communicate or make available to the public, without authorization, broadcasts or fixations of broadcasts knowing that electronic rights management information has been removed or altered without authorization.



*JAPAN*

117. The Delegation of Japan has proposed the following wording:

*Article 11*  
*Obligations Concerning Rights Management Information*

(a) 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 ground 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.

(b) 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.

*KENYA*

118. The Delegation of Kenya has proposed the following wording:

*Article 9*  
*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, or with respect to civil remedies having reasonable ground to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:

(a) to remove or alter any electronic rights management information without authority,

(b) to distribute, import for distribution, transmit, communicate or make available to the public, without authority, broadcasts or fixations thereof, knowing that the 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 accompanies the transmission, communication or making available of a broadcast, or any fixation thereof, to the public.

*MEXICO*

119. The Delegation of Mexico has proposed the following wording:

It considers it important that the subsequent negotiation 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>27</sup>

*SWITZERLAND*

120. The Delegation of Switzerland has proposed the following wording:

*Article 15*<sup>28</sup>  
*Obligations Concerning Rights Management Information*

(a) 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.

(b) As used in this Article, “rights management information” means information which identifies the broadcast 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 transmission, the communication or making available of a broadcast or a fixation of a broadcast to the public.

*UNITED STATES OF AMERICA*

121. The Delegation of the United States of America has proposed the following wording:

*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

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<sup>27</sup> See WIPO document SCCR/2/6.

<sup>28</sup> [Note on Article 15 contained in the proposal:] “This Article corresponds to Article 19 of the WPPT.”

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 fixations 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, when any of these items of information is attached to or associated with the broadcast, cablecast or webcast.

#### *URUGUAY*

122. The Delegation of Uruguay has proposed the following wording:

#### *Article 16* *Obligations Concerning Rights Management Information*

(a) 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.

(b) 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.

## XII. FORMALITIES

### *ARGENTINA*

123. The Delegation of Argentina has proposed the following wording:

*Article 10*  
*Formalities*

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

### *EUROPEAN COMMUNITY AND ITS MEMBER STATES*

124. The Delegation of the European Community and its Member States has proposed the following wording:

*Article 15*  
*Formalities*

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

### *HONDURAS*

125. The Delegation of Honduras has proposed the following wording:

*Article 10*  
*Formalities*

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

### *JAPAN*

126. The Delegation of Japan has proposed the following wording:

*Article 12*  
*Formalities*

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

*KENYA*

127. The Delegation of Kenya has proposed the following wording:

*Article 10*  
*Formalities*

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

*MEXICO*

128. The Delegation of Mexico has proposed the following wording:

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 drafts 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>29</sup>

*SWITZERLAND*

129. The Delegation of Switzerland has proposed the following wording:

*Article 16*<sup>30</sup>  
*Formalities*

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

*UKRAINE*

130. The Delegation of Ukraine has proposed the following wording:

*Article 4*  
*Formalities*

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

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<sup>29</sup> See WIPO document SCCR/2/6.

<sup>30</sup> [Note on Article 16 contained in the proposal:] "This Article corresponds to Article 20 of the WPPT."

*UNITED STATES OF AMERICA*

131. The Delegation of the United States of America has proposed the following wording:

*Article 12*  
*Formalities*

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

*URUGUAY*

132. The Delegation of Uruguay has proposed the following wording:

*Article 17*  
*Formalities*

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

XIII. RESERVATIONS

*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

133. The Delegation of the European Community and its Member States has proposed the following wording:

*Article 16*  
*Reservations*

No reservation to this Treaty shall be permitted.

*HONDURAS*

134. The Delegation of Honduras has proposed the following wording:

*Article 11*  
*Reservations*

No reservation to this Treaty shall be permitted.

*JAPAN*

135. The Delegation of Japan has proposed the following wording:

*Article 13*  
*Reservations*

No reservation to this Treaty shall be permitted.

*KENYA*

136. The Delegation of Kenya has proposed the following wording:

*Article 11*  
*Reservations*

No reservation to this Treaty shall be permitted.

*MEXICO*

137. The Delegation of Mexico has proposed the following wording:

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>31</sup>

*SWITZERLAND*

138. The Delegation of Switzerland has proposed the following wording:

*Article 17*<sup>32</sup>  
*Reservations*

No reservation to this Protocol shall be permitted.

*UKRAINE*

139. The Delegation of Ukraine has proposed the following wording:

*Article 5*  
*Reservations*

No reservation to this Treaty shall be permitted.

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<sup>31</sup> See WIPO document SCCR/2/6.

<sup>32</sup> [Note on Article 17 contained in the proposal:] "Contrary to the WPPT, there is no need to provide for the possibility of reservation to the Protocol."

*UNITED STATES OF AMERICA*

140. The Delegation of the United States of America has proposed the following wording:

*Article 13  
Reservations*

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

*URUGUAY*

141. The Delegation of Uruguay has proposed the following wording:

*Article 18  
Reservations*

No reservation to this Treaty shall be permitted.

XIV. APPLICATION IN TIME

*ARGENTINA*

142. The Delegation of Argentina has proposed the following wording:

*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.

*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

143. The Delegation of the European Community and its Member States has proposed the following wording:

*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.



*HONDURAS*

144. The Delegation of Honduras has proposed the following wording:

*Article 12*  
*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.

*JAPAN*

145. The Delegation of Japan has proposed the following wording:

*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.

*KENYA*

146. The Delegation of Kenya has proposed the following wording:

*Article 12*  
*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*

147. The Delegation of Mexico has proposed the following wording:

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>33</sup>

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<sup>33</sup> See WIPO document SCCR/2/6.

*SWITZERLAND*

148. The Delegation of Switzerland has proposed the following wording:

*Article 18<sup>34</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.

*UKRAINE*

149. The Delegation of Ukraine has proposed the following wording:

*Article 6*  
*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.

*UNITED STATES OF AMERICA*

150. The Delegation of the United States of America has proposed the following wording:

*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 interactive webcasting organizations provided for in this Treaty.

*URUGUAY*

151. The Delegation of Uruguay has proposed the following wording:

*Article 19*  
*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.

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<sup>34</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.”

## XV. PROVISIONSONENFORC EMENTOFRIGHTS

### *ARGENTINA*

152. The Delegation of Argentina has proposed the following wording:

*Article 12*  
*Provisionson EnforcementofRights*

(a) Contracting Parties undertake to adopt, in conformity with their legal systems, the measures necessary to ensure the application of this Protocol.

(b) 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.

### *CAMEROON*

153. The Delegation of Cameroon has proposed the following wording:

*SanctionsforViolationofRights*

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.

### *EUROPEANCOMMUNITYANDITSMEMBERSTATES*

154. The Delegation of the European Community and its member States has proposed the following wording:

*Article 18*  
*ProvisionsonEnforcementofRights*

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their laws 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.

*HONDURAS*

155. The Delegation of Honduras has proposed the following wording:

*Article 13*

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that rights enforcement procedures are available under their laws so as to permit effective action against any act of infringement of rights covered by this Treaty, including efficient remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

*JAPAN*

156. The Delegation of Japan has proposed the following wording:

*Article 15*  
*Enforcement of Rights*

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their laws 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.

*KENYA*

157. The Delegation of Kenya has proposed the following wording:

*Article 13*  
*Provisions on the 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 so as 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.

*MEXICO*

158. The Delegation of Mexico has proposed the following wording:

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 drafts 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>35</sup>

*SWITZERLAND*

159. The Delegation of Switzerland has proposed the following wording:

*Article 19*<sup>36</sup>  
*Provisions on Enforcement of Rights*

(a) Contracting Parties undertake to adopt, in conformity with their legal systems, the measures necessary to ensure the application of this Protocol.

(b) Contracting Parties shall ensure that enforcement procedures are available under their laws so as to permit effective action against any act of infringement of rights conferred by this Protocol, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

*UKRAINE*

160. The Delegation of Ukraine has proposed the following wording:

*Article 7*  
*Provisions on Enforcement of Rights*

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their laws 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.

*UNITED STATES OF AMERICA*

161. The Delegation of the United States of America has proposed the following wording:

*Article 15*  
*Provisions 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 so as to permit effective action against any act of infringement of rights or violation

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<sup>35</sup> See WIPO document SCCR/2/6.

<sup>36</sup> [Note on Article 19 contained in the proposal:] "This Article corresponds to Article 23 of the WPPT."

against any prohibition covered by this Treaty, including expeditious remedies to prevent infringements or violations, which constitute a deterrent to further infringements and violations.

*URUGUAY*

162. The Delegation of Uruguay has proposed the following wording:

*Article 20*  
*Provisions on Enforcement of Rights*

(a) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.

(b) Contracting Parties shall ensure that enforcement procedures are available under their laws 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.

XVI. ADMINISTRATIVE AND FINAL CLAUSES

*ARGENTINA*

163. The Delegation of Argentina has proposed the following wording:

*Article 13*  
*Assembly*

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

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

(iii) 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.

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

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

(iii) 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.

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

(ii) 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.

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

(e) 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*

(a) Any Member State of WIPO may become party to this Protocol.

(b) 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.

(c) 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. g

*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:

- (a) the 30 States referred to in Article 18 from the date on which this Protocol enters into force;
- (b) 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;
- (c) 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;
- (d) 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 denunciations shall take effect one year from the date on which the Director General of WIPO receives the notification.

*Article 21*  
*Languages of the Protocol*

- (a) 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.
- (b) An official text in any language other than those referred to in paragraph (a) shall be established by the Director General of WIPO at 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, 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.



*EUROPEAN COMMUNITY AND ITS MEMBER STATES*

164. The Delegation of the European Community and its Member States has proposed the following wording:

*Article 19*  
*Assembly*

- (a) (i) The Contracting Parties shall have an Assembly.
- (ii) Each Contracting Party shall be represented by one delegate whom may be assisted by alternated delegates, advisors and experts.
- (iii) 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.
- (b) (i) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
- (ii) The Assembly shall perform the functions allocated to it under Article 21 (b) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.
- (iii) 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.
- (c) (i) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
- (ii) 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 organizations shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.
- (d) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.
- (e) 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*

(a) Any Member State of WIPO may become party to this Treaty. <sup>37</sup>

(b) 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.

(c) 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 provision 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.

*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:

(a) the ..... States referred to in Article 24, 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 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

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<sup>37</sup> In the event of it being decided that this instrument should be a protocol to the WPPT, Article 21(b) 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."

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;

(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 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*

(a) 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.

(b) An official text in any language other than those referred to in paragraph (a) 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.

*KENYA*

165. The Delegation of Kenya has proposed the following wording:

*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 (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 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 organizations 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 sessions 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 to Becoming Party to the Treaty*

1. Any Member State of WIPO may become party to the 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 its Member States, in accordance with its internal procedure, 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 19*  
*Rights and Obligations Under the Treaty*

Subject to any specific provision 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.....by any Member State of WIPO and by the European Community.

*Article 21*  
*Entry into Force*

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*

The Treaty shall bind:

- (i) the.....States referred to in Article 21, from the date on which the State has entered into force;
- (ii) each other State from the expiration of the 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 21, or, three months after the entry into force of this Treaty if such instrument has been deposited before 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 23*  
*Denunciation of the Treaty*

Any Contracting Party may denounce this Treaty 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 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. The Director General of WIPO, on the request of an interested party, shall establish an official text in any language other than those referred to in Paragraph 1 after consultation with all interested parties. For the purposes of this paragraph, "interested party" means any Member State of WIPO whose official language, or one 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 25*  
*Depositary*

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

*MEXICO*

166. The Delegation of Mexico has proposed the following wording:

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 drafts 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>38</sup>

*SWITZERLAND*

167. The Delegation of Switzerland has proposed the following wording:

*Administrative and Final Clauses*

In accordance with the provisions under the WPPT.

*UNITED STATES OF AMERICA*

168. The Delegation of the United States of America has proposed the following wording:

*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.

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<sup>38</sup> See WIPO document SCCR/2/6.

(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 December 31, 200\_, 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.

*URUGUAY*

169. The Delegation of Uruguay has proposed the following wording:

*Administrative and Final Clauses*

As in the proposal by the European Community.

*170. The Standing Committee on  
Copyright and Related Rights is invited  
to note the contents of the document.*

[End of document]