

## **Standing Committee on Copyright and Related Rights**

**Thirty-Ninth Session**  
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REVISED CONSOLIDATED TEXT ON DEFINITIONS, OBJECT OF PROTECTION,  
RIGHTS TO BE GRANTED AND OTHER ISSUES

*prepared by the Chair*

*WIPO Treaty on the Protection of Broadcasting Organizations*

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## PREAMBLE

*[The Contracting Parties,*

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

*Recognizing* the profound impact of the development and convergence of information and communication technologies which have given rise to increasing possibilities for unauthorized use of the programme-carrying signals of broadcasting organizations both within and across borders,

*Recognizing* the objective to enhance the international system of protection of broadcasting organizations without compromising copyright in works and related rights in other protected subject matter incorporated in the programme-carrying signals, [as well as the need for broadcasting organizations to acknowledge these rights],

*Stressing* the benefits to authors, performers and producers of phonograms of effective protection by the broadcasting organizations against illegal use of programme-carrying signals,

*Have agreed as follows:]*

## GENERAL PROVISIONS

[Article x]

### *Relation to Copyright and other Related Rights*

Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the protection of copyright or related rights in the programmes incorporated in the programme-carrying signals. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.]

[Article x]

### *Relation to Other Conventions and Treaties*

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

(2) This Treaty is not a special agreement under Article 22 of the Rome Convention.

(3) Contracting Parties, who are Contracting States of the Rome Convention, will apply the provisions of the Rome Convention between themselves when that Convention provides for an obligation which is more extensive than the obligations of this Treaty.]

## SUBSTANTIVE PROVISIONS

### Article **x** *Definitions*

For the purposes of this Treaty:

(a) “broadcasting” means the transmission either by wire or wireless means for reception by the public of a programme-carrying signal; 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. [Transmissions over computer networks shall not constitute “broadcasting”.] Without prejudice to this, the definition of broadcasting for the purposes of this treaty shall not affect contracting parties’ national regulatory framework.

(b) “programme-carrying signal” means an electronically generated carrier, as originally transmitted and in any subsequent technical format, carrying a programme.

(c) “programme” means live or recorded material consisting of images, sounds or both, or representations thereof.

(d) “broadcasting organization” means the legal entity that takes the initiative and has the editorial responsibility for broadcasting, including assembling and scheduling the programmes carried on the signal. Entities that deliver their programme-carrying signal exclusively by means of a computer network do not fall under the definition of a “broadcasting organization”.<sup>1</sup>

(e) “retransmission” means the transmission for the reception by the public by any means of a programme-carrying signal by any other third party than the original broadcasting organization or someone acting on its behalf, whether simultaneous, near-simultaneous [or deferred].

(f) “near simultaneous transmission” means a transmission for the reception by the public by any means of a programme-carrying signal that is delayed only to the extent necessary to accommodate time differences or to facilitate the technical transmission of the programme-carrying signal.

[(g) “deferred transmission” means a transmission for the reception by the public by any means of a programme-carrying signal delayed in time, other than a near simultaneous transmission, including transmissions made in such a way that members of the public may access them from a place and a time individually chosen by them.]

(h) “pre-broadcast signal” means a programme-carrying signal transmitted to or by a broadcasting organization, or to an entity acting on its behalf, for the purpose of subsequent transmission to the public.

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<sup>1</sup> **Agreed Statement regarding the definition of “broadcasting organization”:** For the purpose of this Treaty, the definition of broadcasting organization does not affect the Contracting Parties’ national regulatory framework for broadcasting activities.

[(i) “equivalent deferred transmission” means the deferred transmission broadcast by a broadcasting organization that corresponds to its linear broadcasts and is only available to the public for a limited period of weeks or months.<sup>2 3</sup>]

[(j) “stored version of the programme-carrying signal” means an electronically generated carrier, as originally transmitted and in any subsequent technical format, carrying a programme, which is kept in a retrieval system by a broadcasting organization or an entity acting on its behalf for reception by the public.]

Article **x**  
*Object of Protection*

(1) The protection granted under this Treaty extends only to programme-carrying signals as broadcast including pre-broadcast signals transmitted by, or on behalf of, a broadcasting organization, but not to programmes contained therein.

Alternative 1:

[(2) The object of the protection under this Treaty extends to simultaneous, near simultaneous [and deferred] transmissions of the programme-carrying signals described in para. (1) of a broadcasting organization.]

Alternative 2:

[(2) Broadcasting organizations shall, as a minimum, enjoy protection for simultaneous transmissions, near simultaneous transmissions and transmissions made by providing access to a stored version of the programme-carrying signal [that is available for a limited period of weeks or months] [in such a way that members of the public may access them from a place and at the time individually chosen by them.]

[(3) (i) Broadcasting organizations may enjoy protection for any other type of transmission.

Article **x**  
*Rights to be Granted*

Alternative 1:

(1) Broadcasting organizations shall have the exclusive right of authorizing the retransmission of their programme-carrying signal to the public by any means.

[(2) Broadcasting organizations shall also enjoy the exclusive right of authorizing the retransmission of their programme-carrying signal in such a way that members of the public may access it from a place and at a time individually chosen by them.]

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<sup>[2]</sup> **Agreed Statement concerning “equivalent deferred transmissions” and “other deferred transmissions”**: Equivalent deferred transmissions include online repeats, on-demand catch-up services and previews. Other deferred transmissions include parallel sport events, extra footage on news or programs, additional interviews, behind-the-scenes programs, pure on-demand streaming channels and on-demand catalogues.]

<sup>[3]</sup> **Agreed Statement concerning “for a limited period of weeks or months”** is purposely used in the definition to maintain the different uses of the industry worldwide in terms of the time extension of catch-up services and online repetitions.]

Alternative 2:

(1) (i) Broadcasting organizations shall have the exclusive right of authorizing the retransmission of their programme-carrying signal to the public by any means.

[Agreed statement:

For purposes of this paragraph, the retransmission of a programme-carrying signal shall include providing access to a stored version of the signal.]

(ii) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of Article (1)(i) only to certain retransmissions, or that it will limit their application in some other way, provided that the Contracting Party affords adequate and effective protection to broadcasting organizations [against][enabling them to prevent] the retransmission of their programme-carrying signals to the public by any means, without their authorization, through a combination of the right provided for in Article (1)(i) and copyright or related rights.

[(2) Contracting Parties that afford protection to broadcasting organizations through a combination of the exclusive right provided for in Article (1)(i) and copyright or related rights as permitted by Article (1)(ii) shall provide that broadcasting organizations may enforce any copyright or related rights that exist in the programmes carried by the signal against the unauthorized retransmission, to the extent that they are authorized to do so by the owners of those copyright or related rights as permitted by the Contracting Party's domestic law.

(2 bis) A Contracting Party may comply with the obligation in paragraph (2) by providing in its domestic law either that (i) a broadcasting organization that is the owner or exclusive licensee of any copyright or related rights that exist in the programmes carried by the signal is entitled to enforce those rights against the unauthorized retransmission or (ii) a presumption that in the absence of proof to the contrary the broadcasting organization is authorized to enforce those rights against the unauthorized retransmission when it provides a contract showing such an authorization.]

(3) Broadcasting organizations shall also enjoy the right to prohibit the unauthorized retransmission of their pre-broadcast signal by any means.

(4) A Contracting Party may fulfil Article III(3) by providing other adequate and effective pre-broadcast signal protection for broadcasting organizations.

## OTHER ISSUES

### Article **x**

#### *Beneficiaries of Protection*

(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.

(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet either of the following conditions:

- (i) the headquarters of the broadcasting organization is situated in another Contracting Party, or
- (ii) the programme-carrying signal was transmitted from a transmitter situated in another Contracting Party.

(3) In the case of a programme-carrying signal by satellite the transmitter shall be understood to be situated in the Contracting Party from which the uplink to the satellite is sent in an uninterrupted chain of communication leading to the satellite and down towards the earth.

(4) The provisions of this Treaty shall not provide any protection to an entity that merely retransmits programme-carrying signals.

[(5) By means of a notification deposited with the Director General of the World Intellectual Property Organization (WIPO), any Contracting Party may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting Party and the broadcasts are transmitted from a transmitter situated in the same Contracting Party. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.]

[(6) A Contracting Party may provide that a broadcasting organization of another Contracting Party shall enjoy the right referred to in paragraph (3)(i) of Article X [Object of Protection] only if the legislation of that other Contracting Party provides comparable protection.]

### Article **x**

#### *Limitations and Exceptions*

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

(2) Contracting Parties 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 programme-carrying signal and do not unreasonably prejudice the legitimate interests of the broadcasting organization.



## Article x

*Obligations Concerning Technological Protection Measures*

(1) 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, that are not authorized by the broadcasting organizations concerned or are not permitted by law.

(2) Without limiting the foregoing, Contracting Parties shall provide adequate and effective legal protection against the unauthorized decryption of an encrypted programme-carrying signal.

[(3) Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent third parties from enjoying content that is unprotected or no longer protected, as well as the limitations and exceptions provided for in this Treaty.]

## Article x

*Obligations Concerning Rights Management Information*

(1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that 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 retransmit the programme-carrying signal knowing that electronic rights management information has been without authority removed or altered.

(2) As used in this Article, “rights management information” means the information which identifies the broadcasting organization, the broadcasting, the owner of any right in the programme, or information about the terms and conditions of use of the programme-carrying signal, and any numbers or codes that represent such information, when any of these items of information is attached to or associated with the programme-carrying signal.

Agreed Statement: It is understood that the definition of rights management information includes data embedded in a programme-carrying signal by a broadcasting organization, among other things, to identify and monitor its broadcasts such as a watermark.

[Article x]

*Means of Implementation and Relation to Other Rights*

(1) (i) Nothing in Article III Alt 2(1)(ii) requires Contracting Parties to extend or alter copyright or related rights protection in the programmes carried by the signal, including any applicable exceptions or limitations.

(ii) This Treaty shall in no way be interpreted to limit or prejudice the protection otherwise secured to authors, to performers, or to producers of phonograms under domestic law or international agreement.

[Agreed statement:

It is understood that Article (x) clarifies the relationship between rights in programme-carrying signals under this Treaty and rights in the content embodied in such signals. In cases where authorization is needed from both the rights holder of content embodied in such a signal and a broadcasting organization, the need for the authorization of the right holder does not cease to exist because the authorization from the broadcasting organization is also required, and vice-versa. In addition, the rights granted to broadcasting organizations under this Treaty may not be invoked against the holder of rights in the content and, in particular, may not deprive them of the ability to control, by contract, the relations with broadcasting organizations and to exploit content contained in programme-carrying signals independently.]

(2) The means by which this Treaty is implemented shall be a matter for the domestic law of each Contracting Party and [may include, inter alia,] [shall include] one or more of the following: protection by means of the grant of a copyright or other specific right; protection by means of the law relating to unfair competition or misappropriation; protection by means of telecommunications law and regulations.]

[Article x]

*Enforcement of Rights*

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

(2) Contracting Parties shall ensure that enforcement procedures are available [to broadcasting organizations] under their law so as to permit effective action against any act of [infringements][violation] of rights covered by this Treaty, including expeditious remedies to prevent [infringements][violation] and remedies which constitute a deterrent to further [infringements][violation].

Agreed Statement:

It is understood that nothing in this Treaty affects any right owned or exercised by right holders in the content of programme-carrying signals or otherwise deprives such right holders of the ability to control, by contract, their relations with broadcasting organizations.]

Article **x**  
*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] [20] [x] years computed from the end of the year in which the programme-carrying signal was transmitted.

**ADMINISTRATIVE AND FINAL CLAUSES**

Article x  
*Assembly*

Article x  
*International Bureau*

Article x  
*Eligibility for Becoming Party to the Treaty*

Article x  
*Rights and Obligations Under the Treaty*

Article x  
*Signature of the Treaty*

Article x  
*Entry into Force of the Treaty*

Article x  
*Effective Date of Becoming Party to the Treaty*

Article x  
*Denunciation of the Treaty*

Article x  
*Languages of the Treaty*

Article x  
*Depositary*

[Annex follows]

## ANNEX

[Article x

### *Relation to Other Conventions and Treaties*

(4) Berne Convention for the Protection of Literary and Artistic Works applies to collections of programmes by broadcasting organization under Article NN which by reason of the selection and arrangement of their contents, constitute intellectual creations.]

Article x

### *Rights to be Granted*

(ii) Any Contracting Party may, in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of Article (1)(i) only to certain retransmissions, or that it will limit their application in some other way, provided that the Contracting Party affords adequate and effective protection to broadcasting organizations [against][enabling them to prevent] the retransmission of their programme-carrying signals to the public by any means, without their authorization, through a combination of the right provided for in Article (1)(i) and copyright or related rights [or other rights with respect to programmes that consist of live events.] [, so long as the content embodied in the programme-carrying signals is subject to copyright or related rights. If that is not the case, the Contracting Party shall provide the broadcasting organizations with the right set forth in Article (1)(i) in the presumption that the broadcasting organizations are authorized to enforce the rights of the producers of non-copyrightable content against their unauthorized retransmission and communication to the public.]

(x) In the case of programmes carried by the signal that are live events not protected by copyright or related rights in that contracting party, the contracting party shall provide that the broadcasting organization has the same ability to enforce rights in such programmes as in those programmes protected by copyright or related rights.

[End of annex and document]