

CCIA Submission to the Informal Negotiations on the Question of a Treaty for the Protection of Broadcasting Organisations at the 28th Session of the Standing Committee of Copyright and Related Rights of the World Intellectual Property Organisation

Thank you for the opportunity to be heard in the informal process. During SCCR 28, you may reach our representative to the meeting, Nick Ashton-Hart, at nashton@consensus.pro and the CCIA office in the person of Matthew Schruers Esq. at mschruers@ccianet.org.

1. Object of Protection

With respect to the object of protection, we all must recognise a fundamental truth: fixed signals are a fiction, as any electrical engineer with the relevant expertise can tell you. Upon reception there is only the programme, already protected by copyright proper. For the avoidance of doubt this includes deferred or near-simultaneous transmissions, as well as making available or on-demand transmissions.

If the treaty says at the same time that it does not cover the programmes carried by signals, and then proceeds to protect post-fixation-related objects, it creates an inherent conflict that any legislator or court confronted with the treaty in real life will struggle to implement in a coherent way.

We have in the past been signatories to a text that provides a comprehensive adaptation of the Brussels approach to this process. We are reviewing that text now but for information it contains the following definition of the signal and the programme respectively¹:

“signal” means an electronically-generated carrier capable of, and emitted for the purpose of, transmitting programmes for public reception;

“programme material” or “programme” means a body of fixed or unfixed material consisting of sounds or of images or of images and sounds or of the representations thereof which can be perceived or communicated through a device²

2. Model of Protection: Rights-based or Brussels Satellite Convention-Based?

¹ This document may be found online at

<http://www.ccianet.org/wp-content/uploads/2014/06/Non-paper-SS2-v2-NGO-Coalition-Mods-v1.1-Framework-Convention-Approach.pdf>

² Derived from the Satellites Convention, Article 1(ii): “‘programme’ is a body of live or recorded material consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution”. The addition of the phrase “which can be perceived or communicated through a device” provides further clarity that the reception of the materials is remote from their point of origin.

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CCIA believes that a different model of protection than rights will make agreement easier to reach, the scope of protection more technology-neutral, and create less risk of unanticipated negative side-effects.

Here is a slight rephrasing of a key Article of the Brussels Satellite Convention to take account of the current objective:

“Contracting Parties shall take adequate and effective measures to prevent the theft or intentional misappropriation of signals which are the object of protection of this Treaty, including any such act in relation to signals prior to transmission.”

Proponents of a treaty have said that they don't like this approach because it does not give them the ability to take action to protect their interests since it relies upon criminal law processes which may or may not be timely.

It seems to us that the key value of any treaty is that parties can rely upon one another to ensure the measures taken to implement the provisions are effective. In that vein, one could easily imagine a minor addition to the above to make clear that the treaty intends civil or criminal measures being enacted, or both, in the relevant article in the administrative clauses where parties are obliged to implement the agreement in a way that ensures other parties may rely upon them.

3. Studies being updated to support the current work

WIPO is obliged to assess the real-world impacts of the treaties its mechanisms propose to create. Some analysis has been done, but addressing rights-based protection regimes; it is more than time for these efforts to be updated and to ensure equal treatment between rights and non-rights-based signal protection regimes. The *Study on the Social and Economic Effects of the Proposed Treaty on the Protection of Broadcasting Organizations (SCCR/21/2)*³ should be one of the studies updated.

The Process of Submitting Information to Member-States on Technical Matters

Regarding the procedure whereby member-states may request technical advice from experts on key points during discussions. We believe our members will be happy to help and will ensure any expertise they offer is versed in the real world application of these technologies, especially with respect to the Internet. In the interests of transparency, we request the Secretariat to:

³ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=144152

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1. Post all of the requests made this week publicly and collect input, which should include the background of respondents to evaluate their relative knowledge base and perspective, and to publish them *as they are received and in full* alongside the questions to which they relate
2. Ensure that the opportunity to make such submissions remains open intercessionally;
3. Ensure there is time during the SCCR's present and future meetings for all stakeholders attending to ask questions that follow-up on previous questions and receive answers from those who posed responses if they wish.

Who we are:

For those not familiar with us, the Computer & Communications Industry Association represents for-profit global technology sector firms operating globally that collectively employ almost one million workers and generate turnover of nearly \$300 billion annually. CCIA has been an active participant in the work of the committee for many years as its members have a significant stake in the outcome.