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Intervention of CCIA on the Question of a Treaty for the Protection of Broadcasting Organisations Delivered at the 22nd Session of the Standing Committee of Copyright and Related Rights of the World Intellectual Property Organisation

As this is the first time we have taken the floor, Mr. Chairman, we would also like to congratulate you and your vice-chairs on your election. We would also associate ourselves with the comments of the many other delegations that have thanked Jukka Liedes of Finland for his more than two decades of service as Chair of this Committee and its predecessors.

Thank you, Mr. Chairman, for an opportunity to be heard today.

Mr. Chairman, CCIA has been active in the discussions related to the Broadcasting treaty for many years now. We've heard for years about piracy of broadcasts – however, the examples given all relate to the misuse of the programmes being transmitted, programmes that are already the subject of copyright protection – protection that is effectively used, time and time again, to redress infringements. The various studies provided to the SCCR, such as that of Screen Digest at SCCR 20, clearly bear this out. CCIA is a member of a broad, global, and diverse group of stakeholders – including major intended beneficiaries of protection of this treaty – whose joint statement is available on the table outside this room.

Mr. Chairman, as we know, copyright is designed and intended to incentivise creativity. In our view, it debases copyright to grant it to an electromagnetic carrier wave like a signal.

We believe that the distinguished delegate of Switzerland in her capacity as Chair of the informal consultations on broadcasting earlier this month has created a useful document in SCCR/22/11[1]. It exposes the inconsistencies of this more than 10 year long debate very effectively and concisely – inconsistencies which are the reason there is no agreement on any of the three elements required by the General Assembly in 2007 before a Diplomatic Conference may be convened. There are many examples I could use to illustrate this conflict but perhaps the most effective is that paragraph five states that protection should only extend to "program carrying signals," yet paragraph 12 states that "the protection afforded by the draft treaty should apply both in relation to the visual

[1] Available from http://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_11.pdf .

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and sound elements of programmes" – in other words, everything *except* the signal.

Mr. Chairman, if the objective is just signal protection – protection which completely excludes the programmes being carried by the signal - then that is easily done and without copyrighting signals. I beg your indulgence, Mr. Chairman, while I read from the operative part of an existing WIPO-administered treaty that provides the answer:

"Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal is not intended...."

This is from Article 2 of the Brussels Satellite Convention, modified *mutatis mutandis* to remove the limitation to satellite transmissions. It is elegantly simple, completely comprehensive protection against misuse of signals – and requires no rights at all.

Mr. Chairman, we submit that there is no justification for further copyrighting of signals. Frankly, it doesn't even sound right! Just because this approach was used in 1961's Rome Convention doesn't mean that we should do the same thing again 50 years later, especially when the last time signal protection was updated, in 1974, negotiators chose not to use rights to protect signals.

We see the insistence on copyright protection by those broadcasters advocating a treaty as a big part of the reason why no treaty has been agreed. The fact that copyright in the programmes being transmitted is used to deal with abuse successfully is undoubtedly another major reason why this is true. Even major intended beneficiaries of protection of this treaty don't want copyright in their signals, as the joint statement available outside this room makes clear.

Mr. Chairman, someday there may actually be a real problem that cannot be solved by the use of present legal protections. Someday is not today, it is probably not tomorrow, and it is very likely not even next year or the year after – but whenever that day does arrive, we are confident that it won't require the extension of copyright in non-creative objects of protection like electromagnetic signals.

Thank you Mr. Chairman once again for your kind indulgence.