



# IP JUSTICE:

## Top 10 Reasons to REJECT the WIPO Basic Draft Proposal for a Broadcasting Treaty

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### **1. Eliminates the public domain for audio and video programming.**

The WIPO copyright committee's Basic Draft Proposal for a Broadcasting Treaty endangers the public domain for copyrighted materials. It permits broadcasting corporations to "copyright" and control the public's use of programming that is already in the public domain (i.e., legally belongs to the public). This creates a devastating effect on education and development, particularly in countries that can afford it the least.

### **2. Creates obligations for countries that drastically exceed current international standards.**

The Basic Draft Proposal requires nations to amend their domestic laws to create greater restrictions over broadcast media than current international treaty obligations require of countries. For example, the Rome Convention permits countries to grant rights to broadcasting organizations -- but only for 20 years. Article 18 of the Basic Draft Proposal would require all countries to create such rights for broadcasting companies for a minimum of 50 years, more than double the current international standard, and outliving the economic life span of a broadcast and the time required to recoup any economic investment in the programming.

### **3. Chills freedom of expression by outlawing the circumvention of technological restrictions similarly to U.S. Digital Millennium Copyright Act (DMCA).**

Article 19 of the Basic Draft Proposal would forbid the decryption of broadcast signals, even if the programming is in the public domain or when its creator does not wish to suppress its distribution. The proposal threatens to outlaw a broad range of devices (including personal computers), software, and other technical information that could help a consumer to decrypt a broadcast signal. Similar prohibitions in the US DMCA have been invoked to prevent the publication of scientific papers, prosecute reputable cryptographers, censor journalists, limit fair use rights, and prevent competition in markets unrelated to copyright. Creating new anti-circumvention rights for broadcasters (on top of the anti-circumvention rights that copyright holders have been granted) makes no sense.

### **4. Threatens to regulate many Internet transmissions of broadcast media.**

Articles 9 and 14 broadly forbid the retransmission of broadcast programming by any means, including over the Internet. By including Internet transmissions within its scope, the treaty goes beyond its stated objective and proposes to regulate an enormous breadth of consumer activity, chilling innovation and freedom of expression on the Internet.

### **5. Grants copyright protection over "signals", something that is neither creative nor original and thus outside the scope of copyright protection.**

The Basic Draft Proposal departs from the Satellites Convention's "signal centric" approach and attempts to set a dangerous precedent by granting copyright protection for things that do not

qualify as creative works, such as broadcast signals. Under both US Copyright law and the US Constitution, only creative works that are original are eligible for copyright protection. The WIPO Broadcasting Treaty could create new rights that US courts could later find to be unconstitutional.

**6. Freezes fair use and other limitations and exceptions to rightsholders' rights.**

Article 17 confines any limitations and exceptions to the new rights of broadcasting companies to only special cases that do not conflict with the broadcasters' exploitation of the broadcasts. This treaty would freeze fair use and render illegal all future innovations of broadcast media.

**7. Provides advantage to entrenched broadcasting industry at expense of future innovators and non-traditional broadcasters.**

Articles 9 and 14 grants existing broadcasting companies a new right of retransmission over broadcasts "by any means" including over the Internet. This provides the traditional broadcasting industry with a competitive advantage over webcasters and other "new-media" retransmitters who discover new and innovative ways of providing entertainment to consumers, but will be prevented from doing so because this broad grant forecloses all future means of redistribution that is yet to be discovered.

**8. Gives broadcasting companies greater rights than artists are granted over their own performances.**

Article 9's right of retransmission provides broadcasting companies with higher levels of protection over broadcasts than the law gives to the actual creators of the program. Canada proposed a reservation to it out of concern that it creates "a situation where the level of protection of broadcasts would exceed the rights of the rightholders of the content being broadcast." Also, Article 15's right to make available allows broadcasting companies to prevent other rightholders (such the performers of the underlying program) from making their own performances available for viewing.

**9. Experiments with global law-making by creating new rights that exist no where.**

Rather than harmonize existing legal norms, as international treaties are supposed to do, the proposed WIPO Broadcasting Treaty creates entirely new rights, that currently do not exist in any national law (such as Internet transmission rights and anti-circumvention rights for broadcasters). WIPO is not an elected body authorized to create new legal rights that no national parliament or legislature has ever voted to create.

**10. Draft Basic Proposal Ignores Concerns of Member States in Previous Discussions.**

The Draft Basic Proposal for a WIPO Broadcasting Treaty is a poor reflection of the concerns expressed by Member States in previous discussions on the treaty's provisions. The vast majority of Member States expressed a lack of support for including any form of Internet transmissions and for anti-circumvention provisions in the treaty, yet these provisions remain glued to the text of the treaty. The Draft Basic Proposal is a distortion of the SCCR's discussions and "consensus" reached at WIPO.