



IP JUSTICE:

Top 10 Reasons to REJECT the WIPO SCCR Chair's Proposal for a Broadcast Treaty

42nd WIPO General Assembly ~ 25 September - 3 October 2006

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

The WIPO Standing Committee on Copyrights and Related Rights (SCCR) Chairman's Proposal for a Broadcast Treaty endangers the public domain for copyrighted materials. It permits broadcast 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 SCCR Chair's 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 broadcast companies -- but only for 20 years. The Chair's proposal would require all countries to create such rights for broadcast companies for a minimum of 50 years, more than double the current international standard, and far outliving the economic life span of a broadcast and the time required to recoup any economic investment in the program.

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 Chair's proposal would forbid the decryption of broadcast signals, even if the program 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 consumer devices, 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 consumer fair use rights, and prevent competition in unrelated markets. Creating new anti-circumvention rights for broadcasters (on top of the anti-circumvention rights that copyright holders have) 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 explicitly 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 intellectual property rights for "signals", something neither creative nor original and thus outside the scope of intellectual property protection.

The Chair's proposal departs from the Satellites Convention's "signal centric" approach and attempts to set a dangerous precedent by granting new intellectual property rights 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 Broadcast Treaty could create new intellectual property 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 broadcast 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 broadcast industry at expense of future innovators and non-traditional broadcasters.

Articles 9 and 14 grant existing broadcast companies a new right of retransmission over broadcasts "by any means" including over the Internet. This provides the traditional broadcast industry with a competitive advantage over webcasters and other "new-media" re-transmitters 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. Broadcast companies can hinder podcasters and others who rely on "viral distribution" methods by claiming an IP right on podcasts transmitted over their networks and thus preventing any redistribution of that podcast -- regardless of the intentions of the program's creators and copyright owners.

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

Article 9's right of retransmission provides broadcast 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 broadcast 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 else.

Rather than harmonize existing legal norms, as international treaties are supposed to do, the proposed WIPO Broadcast 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. Nor is it the place for experimentation with law-making.

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

The SCCR Chair's Proposal for a Broadcast Treaty is a poor reflection of the concerns expressed by Member States in previous discussions on the treaty. The vast majority of Member States expressed a lack of support for including any form of Internet transmission rights and anti-circumvention provisions in the treaty, yet these provisions remain glued to the text of the treaty. The Chairman's Proposal is a distortion of the SCCR's discussions, and the lack of consensus behind it calls WIPO's legitimacy into question as a UN agency and democratic institution qualified to make international treaties.