



WIPO; Standing Committee on Copyright and related Rights (SCCR)

April 2017

TO WHOM IT MAY CONCERN

On behalf of the World Broadcasting Union's working group for the WIPO Broadcasters' Treaty, which represents all the world's broadcasters of the eight Unions mentioned here, we are all in full, undivided agreement on the absolute necessity to include broadcasters' online signals into the scope of protection under the said Treaty, and most of these signals in a mandatory manner. The reasons justifying this scope of protection are manifold:

- For the Treaty to be meaningful and relevant, it must reflect the rapid technological changes by which broadcast signals are delivered, lest it become obsolete in a few years' time. In order to continue to best serve their public and to fulfill their public interest obligations, broadcasters require protection of their on-line signals to which the public is increasingly migrating.

- Today, consumers demand from broadcasters to provide their programming signals in more convenient ways, including via online platforms, thereby offering more and easier access to their content. Such on-demand ("non-linear") consumption of programming is rapidly increasing, and will soon be a new standard aside from linear (offline) broadcasting. However, if broadcasters are expected to invest in such convenient access, their online signals must also be duly protected.

- A lack of protection for broadcasters' online signals will be creating loopholes for the Treaty also with regard to the offline signals. Where both signals include the same content, it will not be possible to distinguish between a pirated online signal and a pirated offline signal. This would apply to the simulcast signals and for "catch-up" (signals made available for a certain period of time after the actual broadcast), "highlights" (parts of previous broadcasts assembled and made available online) and "previews" (online programming that precedes the programme's linear broadcast). In all such cases of "corresponding" signals, the pirate could claim to have used only the online signal, thereby circumventing the protection granted by the Treaty (or the Rome Convention) to the offline signals. Therefore, such loopholes would be an open invitation for broadcast piracy, for which the Treaty is intended to provide effective remedies. Not including these signals in the protection would be tantamount to a non-commitment to a meaningful Treaty.

- Moreover, the actual trend in broadcasting is to develop more and more "online-only" programming, i.e. content that will not or cannot be broadcast offline and for which online delivery is more suitable for the broadcaster to reach its audience. These are online signals which are "related" to the offline broadcasts, and

• ABU

ASIA-PACIFIC BROADCASTING UNION
- Kuala Lumpur, Malaysia

• ASBU

ARAB STATES BROADCASTING UNION
- Tunis, Tunisia

• AUB

AFRICAN UNION OF BROADCASTING
- Dakar, Senegal

• CBU

CARIBBEAN BROADCASTING UNION
- St. Michael, Barbados

• EBU

EUROPEAN BROADCASTING UNION
- Geneva, Switzerland

• IAB

INTERNATIONAL ASSOCIATION OF BROADCASTING
- Montevideo, Uruguay

• NABA

NORTH AMERICAN BROADCASTERS ASSOCIATION
- Toronto, Canada

• OTI

ORGANIZACION DE TELECOMUNICACIONES IBEROAMERICANAS
- Mexico City, Mexico

examples hereof are given by the recent paper from Argentina, Colombia and Mexico (SCCR33/5): 1) extra news footage which was too long to include in a short news item, 2) additional material to complement an offline broadcast (such as an interview that enriches a recent documentary) or 3) sports events taking place in parallel and simultaneous with another event; the latter is typical for big championship tournaments, such as parallel tennis matches on different courts (Wimbledon), parallel football matches of the same group (FIFA World Cup), and in particular the Olympic Games (different sports disciplines taking place at the same time). The broadcaster, having paid for the rights to use those signals both offline and online, has a clear interest, just as the general public, to make these additional signals available to the public, but the offline broadcast schedule is often too limited to allow for that extra delivery; this is where online signals are used.

- All future television screens will be “hybrid”, i.e. connected to the Internet, allowing for online and over-the-top (OTT) delivery of programming. The previous examples already demonstrate that the definition of “broadcasting” must be technologically neutral; thus, a categorical exclusion of programme-carrying signals over “computer networks” would be both unwise and unwarranted. Such exclusion is also superfluous since pure webcasting organizations are already excluded from the Treaty’s beneficiaries through the definition of “broadcasting organization”.

Supra-national legislators are often lagging behind technological progress, and with respect to the 20 year consideration of the Broadcast Treaty, WIPO has been no exception. The latest SCCR debate demonstrated the urgent necessity for a swift finalization of the drafting process fixing the Diplomatic Conference in 2018.

The WBU highly appreciates the continuous broad support for the Treaty. The broadcasting sector is fully aligned in all parts of the world in terms of the direction of their evolution and their needs for modern protection of their signals at the international level, commercial and public broadcasters alike. (The WIPO Treaty does not affect the regulatory framework for broadcasters in respect of their operations within their own territories.)

The next SCCR is crucial for expediting the work at WIPO towards a long overdue Treaty. We hope sincerely that all delegations will be pro-actively engaged to help the SCCR34 taking the necessary step towards the final goal of adopting a meaningful Treaty in 2018.
