

Comments by Australia on draft Non-paper (draft 1.0, 8 March 2007) on the WIPO Treaty on the Protection of Broadcasting Organisations

The following comments are limited to the interpretation, terminology and structure of the draft Treaty and its relationship to other treaties. The comments do not address the policy of the Treaty obligations, on which Australia reserves its position.

Article 4(3):

We query whether the Treaty can direct contracting parties in regard to their obligations under another treaty. Accordingly we suggest the following rewording of the provision.

Where the Rome Convention provides for an obligation that is more extensive than the obligations of this Treaty, the Treaty does not in any way affect the obligations to each other under that Convention of Contracting Parties who are Contracting States under the Convention.

If this suggestion is not accepted, we suggest that the commas after 'Parties' and 'Convention' be omitted, as their presence could imply that all Contracting Parties are Contracting States of the Rome Convention.

Article 5(a) and (c)

We query the inclusion of the qualifier 'general' in front of 'public'. There is no such qualifier where 'public' is used in art 5(e) and (f), and we favour omitting that qualifier in art 5(a) and (c).

Article 5(d)

We query whether the definition could be interpreted as excluding cablecasts in which over-the-air and satellite transmission is used to transport the signal at a stage prior to delivery by cable to the public. We suggest inserting 'for reception by the public' after 'wire' and possibly also after 'satellite'.

Article 5(f)

We query the inclusion of this definition as the term does not seem to be used in the draft text.

Article 5

We note that art 2(2) provides that the Treaty is to apply to the protection of cablecasting organisations in respect of their cablecasts. As 'cablecast' is defined in art 5(d), we suggest that there should also be a definition of 'cablecasting organisation' along the lines of the definition of 'broadcasting organisation' in art 5(c).

Article 7(2)

We are uncertain how this provision would work in the light of art 11. The uncertainty is illustrated by the following example. A Contracting Party ('X') opts to implement the Treaty under art 8(2) and selects one or more of the forms of protection in art 11. If another Contracting Party ('Y') wanted to take advantage of art 7(2) in respect of X, would Y have to mirror the legislative technique(s) selected by X from the range in art 11 in providing for the protection of broadcasters of X, or could Y choose one or more of the other forms of protection listed in art 11, so long as what it chose was 'adequate and effective'?

We suggest replacing 'the other' with 'another'.

Article 8(2)

We suggest inserting 'granting' after 'instead of'.

We suggest that the 'unauthorised reproduction' must be of a *fixation of* a broadcast: compare art 8(1)(iii). We note that there is an issue whether the protection should be against such reproduction of all fixations or only those that were unauthorised.

Article 10(iii)

We are not sure if this provision is intended to afford protection against removal of information from broadcasts prior to their reception by the public or in the course of retransmission or after fixation. We think it would be helpful if an indication could be given of what would be covered by 'information relevant for the application of the protection the broadcasting organisations', perhaps in the 'Notes on the draft'. We suggest omission of 'the' in front of 'broadcasting organisations'.

Article 12(3)

We suggest replacing 'disabled persons' with 'persons with disabilities'.