

<p><u>Emphasizing that this Treaty shall neither limit nor constrain the freedom of a Contracting Party to protect and promote cultural diversity; the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions provides a framework for those who are parties to it,</u></p> <p><u>Acknowledging that Contracting Parties may take appropriate measures, when applying this Treaty and specifying in their legislation licensing practices or conditions, to prevent the abuse of the protection granted under this Treaty or the recourse to practices which unreasonably restrain trade or adversely affect the international transfer of technology,</u></p> <p><u>Recognizing the objective to establish an international system of protection of broadcasting organizations without compromising the rights of holders of copyright and related rights in works and other protected subject matter carried by broadcasts, as well as the need for broadcasting organizations to acknowledge these rights,</u></p> <p><u>Stressing the benefits to authors, performers and producers of phonograms of effective protection against illegal use of broadcasts,</u></p> <p><u>Have agreed as follows:</u></p>	
<p style="text-align: center;"><u>Article 1</u> <u>Objective</u></p> <p><u>The objective of this Treaty is to provide adequate and effective legal protection for broadcasting organizations against unauthorized use of their broadcasts.</u></p>	<p><u>According to signal based approach</u></p>
<p style="text-align: center;"><u>Article 2</u> <u>Object of Protection</u></p>	

<p><u>(1) The provisions of this Treaty shall apply to the protection of broadcasting organizations in respect of their broadcasts.</u></p> <p><u>(2) The provisions of this Treaty shall apply to the protection of cablecasting organizations in respect of their cablecasts in the same way as they apply to broadcasting organizations and broadcasts.</u></p> <p><u>(3) The provisions of this Treaty do not give rise to any rights in the programs that are broadcast by broadcasting organizations.</u></p> <p><u>(4) The provisions of this treaty do not afford protection to any broadcast or cablecast that contains any program for which the broadcasting organization has no authorization from the copy right or related right holder.</u></p>	<p><u>The objective of protection under Article 1 is “broadcast”. The definition of broadcast in Article 5(a) cover only “assembled and scheduled program” and not program per se. The protection is proposed to be limited to the extent of rights acquired or owned by the broadcasting organizations</u></p>
<p style="text-align: center;"><u>Article 3</u> <u>Scope of Application</u></p> <p><u>The provisions of this Treaty shall provide protection to the broadcasting organizations for their broadcasts on the traditional broadcasting and cable-casting media to enable them to enjoy the rights to the extent owned or acquired by them from the owners of copyrights or related rights but shall not provide any protection in respect of</u></p> <p><u>(i) mere retransmissions;</u></p> <p><u>(ii) any transmissions where the time of the transmission and the place of its reception may be individually chosen by members of the public (on-demand transmissions); or</u></p> <p><u>(iii) any transmissions, including any retransmissions of a broadcast or a cablecast, over computer networks (transmissions or retransmissions using the Internet Protocol, “webcasting”, or “net-casting”).</u></p>	<p><u>It appears from the explanation given in the brackets that the intention of this clause is to exclude only transmission that originates from the computer network. It is not clear whether this clause will also cover the transmission (simultaneous or deferred) of broadcast or cablecast over the computer network though the word “any” is used in the beginning. To make it clear that the transmission of broadcast or cablecast over the computer network is also outside the scope of this treaty the change is suggested. This is needed since there is no express exclusion of transmission over computer network in the definition of ‘broadcast’ and</u></p>

	<u>'cablecast' in Article 5(a) & (d).</u>
<p style="text-align: center;"><u>Article 4</u> <u>Relation to Other Conventions and Treaties</u></p> <p><u>(1) Protection granted under this Treaty shall leave intact and shall in no way affect, limit or prejudice the exclusive rights or protection of copyright or related rights in the programs incorporated in broadcasts enjoyed by such rights holders. Consequently, no provision of this Treaty shall be interpreted as prejudicing such rights or protection.</u></p> <p><u>(2) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the Rome Convention).</u></p> <p><u>(3) Contracting Parties, who are Contracting States of the Rome Convention, will apply the provisions of the Rome Convention between themselves when that Convention provides for an obligation which is more extensive than the obligations of this Treaty.</u></p>	<p><u>Just to clarify the position already stated that the protection shall be afforded to the extent necessary to enjoy the rights acquired or owned by the broadcasting organizations without impinging on the rights of the original rights holders.</u></p>
<p style="text-align: center;"><u>Article 5</u> <u>Definitions</u></p> <p><u>For the purposes of this Treaty:</u></p> <p><u>(a) "broadcast" means the transmission of a set of electronically generated signals by wireless means and carrying a specifically assembled and scheduled program for the reception by the general public;</u></p> <p><u>- transmission of such a set of signals by satellite is also "broadcast";</u></p> <p><u>- transmission of such a set of signals is also "broadcast" when encrypted, if the</u></p>	<p><u>To make the definition of 'broadcast' consistent with the signal based approach mandated by the General Assembly. Also to exclude the transmission or retransmission over computer networks.</u></p>

means for decrypting are provided to the public by the broadcasting organization or with its consent;

- 'broadcast' shall not be understood as including transmission of such a set of signals over the computer networks.

(b) "program" means a discreet package of one or more works protected by copyright or related rights, in the form of live or recorded material consisting of images, sounds or both;

(c) "broadcasting organization" means the legal entity that takes the initiative and has the responsibility for the broadcast for the reception by the general public;

(d) "cablecast" means the same as "broadcast" when the transmission is by wire and excluding transmission by satellite or over computer networks;

(e) "rebroadcast" means the simultaneous transmission for the reception by the public of a broadcast or a cablecast by any other person than the original broadcasting organization; simultaneous transmission of a rebroadcast shall be understood as well to be a rebroadcast ;

(f)

(g) "fixation" means the embodiment of a broadcast on a physical support from which the programs carried by the broadcast can be perceived, reproduced or communicated through a device.

Since the General Assembly mandate is for traditional broadcasting media, the term retransmission is considered ambiguous, hence the use of 'rebroadcast'

Communication to the public is not a prohibited activity in Article 8. Hence no need for this definition.

<p style="text-align: center;"><u>Article 6</u> <u>Beneficiaries of Protection</u></p> <p><u>(1) Contracting Parties shall accord the protection provided under this Treaty to broadcasting organizations that are nationals of other Contracting Parties.</u></p> <p><u>(2) Nationals of other Contracting Parties shall be understood to be those broadcasting organizations that meet the following conditions:</u></p> <p><u>(i) the headquarters of the broadcasting organization is situated in another Contracting Party, and</u></p> <p><u>(ii) the broadcasts are transmitted from a transmitter situated in another Contracting Party. In the case of satellite broadcasts, the relevant place shall be the point at which, under the control and responsibility of the broadcasting organization, the broadcast intended for direct reception by the public is introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.</u></p>	<p><u>Both conditions need to be satisfied to be treated as a national of another contracting party.</u></p> <p><u>The object of protection is broadcast and that is defined to include signals carrying ‘assembled and scheduled program’</u></p>
<p style="text-align: center;"><u>Article 7</u> <u>National Treatment</u></p> <p><u>Alternative J (“WPPT Model”)</u></p> <p><u>(1) Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the rights specifically granted and the protection provided for in this Treaty.</u></p> <p><u>Alternative K (“Berne Model”)</u></p> <p><u>(1) Each Contracting Party shall accord to nationals of other Contracting Parties the rights that their respective laws do now or may hereafter grant to their nationals, in respect of broadcasts for which such nationals are protected under this Treaty, as well as the rights specifically granted and the protection provided for in this Treaty.</u></p>	

Alternative VV (“TRIPS Model”)

(1) Each Contracting Party shall accord to the national broadcasting organizations of other Contracting Parties treatment no less favorable than it accords to its own broadcasting organizations in respect of the application of the rights and the protection recognized expressly under this Treaty.

(2) Each Contracting Party may choose to apply the obligation provided for in paragraph (1) only to the extent that the other Contracting Party applies Articles 8(2), 9 and 10 of this Treaty. If a Contracting Party avails itself of the possibility provided for in this paragraph, the Contracting Party shall notify this application to the Director General of the World Intellectual Property Organization (hereinafter WIPO).

Article 8
Protection of Broadcasts

(1) Broadcasting organizations shall enjoy the exclusive right of authorizing:
(i) the simultaneous or deferred rebroadcast of their broadcasts ;
(ii) the fixation of their broadcasts; and
(iii) the direct or indirect reproduction, in any manner or form, of fixations of their broadcasts.

(2) Contracting Parties may, instead of the exclusive rights of authorizing provided for in paragraph (1), establish adequate and effective legal protection for the broadcasting organizations against unauthorized rebroadcast, against unauthorized fixation, and against unauthorized reproduction of their broadcasts subject to such conditions and the extent to which the broadcasting organizations have been so authorized by the owners of the works protected by copyright or related rights transmitted in the broadcasts.

This Article covers three types of activities – retransmission; fixation and reproduction. All these go beyond protecting signals. If the intention of this is to protect the efforts of “assembly and scheduling” of the broadcast the present provision go much beyond this since these acts could affect the rights of content creators and use of public domain materials in the program.
Sub-clause (2) is narrower than sub-clause (1). But we have the following problems to address:
(a) Retransmission ‘by any means’ is included. This includes transmission through computer

network also when interpreted along with the definition of broadcast and retransmission in Article 5. It may be noted that transmission through computer network is a separate right of the content creator that could be enjoyed independently. If retransmission is not confined only to the mode for which the broadcasting organization acquired the rights this could affect the enjoyment of the rights by the content creator in the computer network. Hence the need to limit this right only to the modes for which the broadcasting organizations acquired the rights.

(b) Reproduction – the definition of broadcast include ‘program’. Program is defined to include “live or recorded materials”. This includes not only copyright materials but also other protected and public domain materials. Hence this right will have impact not only on the right of reproduction of the author and performer but also on the free use of public domain materials. It is made clear in Article 2 (3) that ‘the provisions of this Treaty do not give rise to any rights in the programs that are transmitted’. This provision will become redundant if reproduction is prohibited without conditions. In this context recognition of legal means to prohibit reproduction may be subjected only to cases where the broadcasting organizations have acquired rights over the program. Hence the need to limit the scope. This will enable to achieve the objective of protecting

	<p><u>the efforts taken to “assemble and schedule” the programs in the broadcast without affecting the rights of the content creators and use of public domain materials in the program.</u></p> <p><u>(c) Fixation – the definition of fixation in Article 5(g) makes it clear that it is fixation of the program in the broadcast. So this has the effect of preventing the free use of public domain materials and the rights of the owners of the content. If the idea is to protect the efforts of “assembly and scheduling” of the program this must be made clear. Only fixation of the program in the form in which it is “assembled and scheduled” alone must be prohibited and not the program per se. This could be prevented in case of protected program if the terms and conditions of the contract with the content owner provide for the same.</u></p>
<p style="text-align: center;"><u>Article 9</u> <u>Protection of the Pre-broadcast Signal</u></p> <p><u>Broadcasting organizations shall enjoy adequate and effective legal protection against any acts referred to in Articles 8 and 10 of this Treaty in relation to the transmission of their signals prior to broadcasting.</u></p>	
<p style="text-align: center;"><u>Article 10</u></p>	

<p style="text-align: center;"><u><i>Protection of Encryption and Information Relevant for Protection</i></u></p> <p><u>Contracting Parties shall provide adequate and effective legal protection against unauthorized</u> <u>(i) decryption of an encrypted broadcast;</u> <u>(ii) (iii) removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.</u></p>	<p><u>Sub-clause (ii) has the effect of TPM. This provision is intended to prohibit manufacture, import and sale of technology capable of decrypting an encrypted broadcast. But this has the potential to prevent dual use technology. So there is a need to remove this clause.</u></p>
<p style="text-align: center;"><u>Article 11</u> <u><i>Means of Implementation of the Protection</i></u></p> <p><u>The means by which Contracting Parties shall provide adequate and effective protection under the provisions of Article 8(2), 9 and 10 shall be a matter of the legislation of each Contracting Party, and shall include one or more of the following:</u></p> <p><u>(i);</u></p> <p><u>(ii) protection by means of the law relating to unfair competition, or misappropriation;</u></p> <p><u>(iii) protection by means of a right of prohibition, or of providing for a prohibition, or of adequate measures to prevent unauthorized acts;</u></p> <p><u>(iv) protection by means of penal sanctions.</u></p>	<p><u>Clause (i) is same as providing exclusive right. Since exclusive right is given as another option under Article 8(1), this clause needs to be removed from this section.</u></p>
<p style="text-align: center;"><u>Article 12</u> <u><i>Limitations and Exceptions</i></u></p>	

<p><u>(1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works, and the protection of related rights.</u></p> <p><u>(2) Contracting Parties shall confine any limitations of or exceptions to the protection provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the broadcast and do not unreasonably prejudice the legitimate interests of the broadcasting organization.</u></p> <p><u>(3) Subject to the provisions in paragraph 2, and in accordance with paragraph 1, Contracting Parties may provide for limitations and exceptions to the protection provided in this Treaty for such purposes as private use, educational uses, scientific research, uses for the benefit of disabled persons, legal deposit requirements, reporting of current events, and use for public security and judicial purposes.</u></p>	
<p style="text-align: center;"><u>Article 13</u> <u>Term of Protection</u></p> <p><u>The term of protection to be granted to broadcasting organizations under this Treaty shall last in accordance with the terms of contract with the owners of content or until the end of a period of 20 years computed from the end of the year in which the broadcast took place, whichever is earlier.</u></p>	<p><u>This is needed only if fixation and reproduction is agreed to be protected. The scope of this provision will be further reduced if these rights are subjected to terms of contract with the owners of content.</u></p>
<p style="text-align: center;"><u>Article 14</u> <u>Formalities</u></p>	

<p><u>The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.</u></p>	
<p><u>Article 15</u> <u>Reservations</u> <u>No reservations to this Treaty shall be permitted.</u></p>	
<p><u>Article 16</u> <u>Application in Time</u> <u>(1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, mutatis mutandis, to the rights and the protection of broadcasting organizations provided for in this Treaty.</u> <u>(2) The protection provided for in this Treaty shall be without prejudice to any acts committed, agreements concluded or rights acquired before the entry into force of this Treaty for each Contracting Party.</u></p>	
<p><u>Article 17</u> <u>Provisions on Enforcement of Rights</u> <u>(1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.</u> <u>(2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights or violation of any protection covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.</u></p>	
