

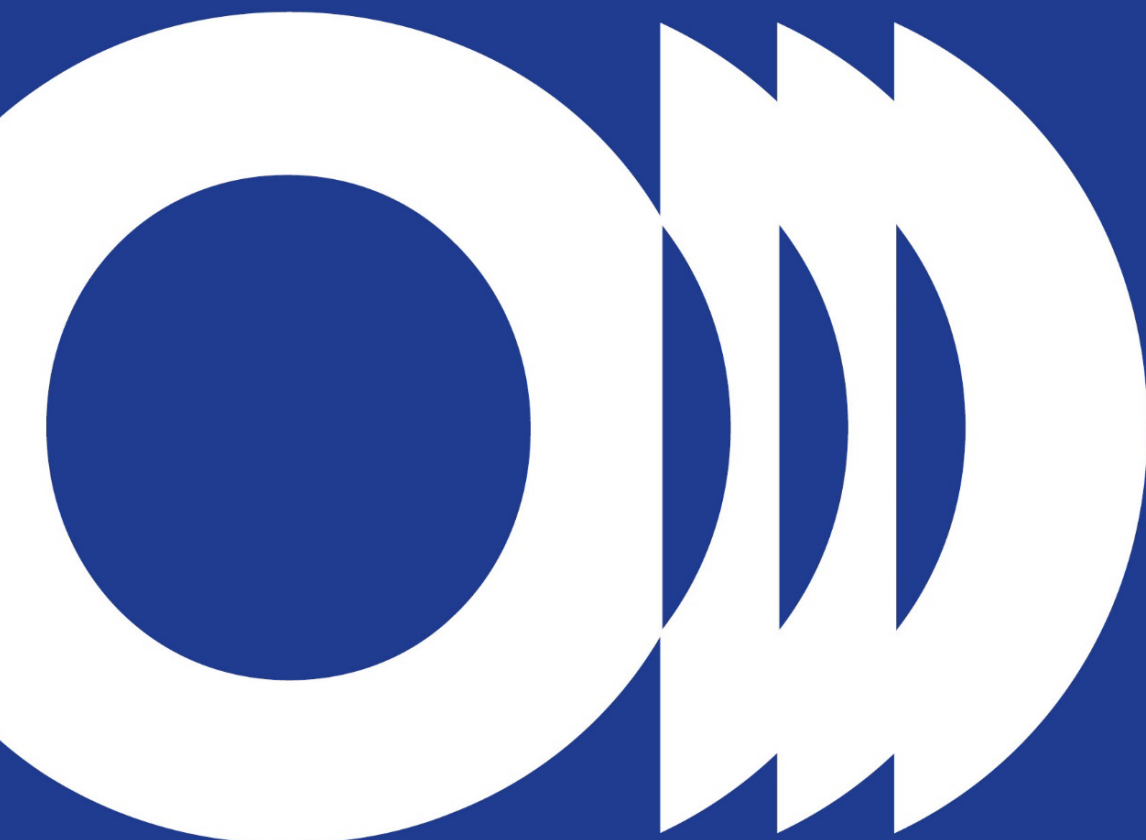
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU Position on the Draft WIPO Broadcasting Organizations Treaty

9 APRIL 2024



European Broadcasting Union position paper on the Draft WIPO Broadcasting Organizations Treaty

Please note that the position below is complementary to, and should not be understood as a substitute for, any EBU Member's position.

The European Broadcasting Union (EBU), which represents public service media organizations in Europe, calls the Member States of the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organization (WIPO) to recommend that the WIPO General Assembly convenes a Diplomatic Conference for the adoption of the WIPO Broadcasting Organizations Treaty.

Piracy of broadcast signals has undoubtedly acquired a global dimension. With the Internet, unauthorised uses and distribution of broadcasters' signals easily cross national borders, if not continents, and cause enormous damage to the efforts of broadcasting organizations. This has negative consequences for the entire society, especially when it affects Public Service Media which play a critical role in safeguarding cultural diversity, enhancing media literacy, and delivering to the public independent and quality content.

The scale of misappropriation of the broadcast signal commands the deployment of adequate legal measures that empower broadcasters to act quickly and efficiently, beyond jurisdictional boundaries.

In light of this situation, the Draft WIPO Broadcasting Organizations Treaty (SCCR/45/3) would be an effective anti-piracy instrument setting international minimum standards to protect programme-carrying signals on a global scale and to harmonise the protection of broadcasting organizations. The Draft Treaty is a complete and balanced text and provides effective legal tools to fight piracy while respecting each national legal tradition.

The EBU and its members believe that the Draft WIPO Broadcasting Organizations Treaty is ready; and call upon the WIPO Member States to recommend the WIPO General Assembly to convene a Diplomatic Conference for its adoption.

The new *Draft WIPO Broadcasting Organizations Treaty* (document SCCR/45/3) was published on 15 February 2024, by the Secretariat of the WIPO Standing Committee on Copyright and Related Rights (SCCR). If the previous text already provided a level of protection that was satisfactory for the EBU, this new Draft incorporates some new elements that further improve the protection granted to broadcasting organisations at the international level.

The EBU and its members continue to support a technology-neutral Treaty that covers all forms of transmission of the signal, including online transmissions. To help WIPO Member States conclude a meaningful Treaty for broadcasters, the EBU and its members have made the following remarks:

Article 2 – Definitions

Broadcasting / Broadcasting Organization

The new text no longer contains a standalone definition of ‘broadcasting’. This has been included in the definition of “broadcasting organisation” which refers to *transmission by any means*. These amendments make no difference to the quality of the protection as all transmission methods remain covered, including transmissions via computer networks (i.e., the protection of the signal remains technology-neutral).

Apart from incorporating the definition of ‘broadcasting’, the definition of ‘broadcasting organization’ did not change and still emphasises that a broadcasting organization is protected if it meets the requirements of taking the initiative and editorial responsibility of transmitting the signal and assembling and scheduling the programmes.

Stored programmes

The EBU and its members welcome the inclusion of a new sentence to the definition of ‘stored programmes’ which makes it clear that stored programmes are both programmes *produced by a third party* and programmes *produced by or on behalf of a broadcasting organization*. Conversely, the previous text only referred to programmes for which the broadcaster “acquired” the transmission rights and consequently excluded programmes that were produced by the broadcasting organization.

The EBU welcomes this clarification in the text and is happy to see that the definition of stored programmes has finally achieved a comprehensive scope.

Pre-broadcast signal

The definition of “pre-broadcast signal” has been restricted in this new text: it only protects signals transmitted *by* a broadcasting organisation, whereas before it also covered signals

transmitted to a broadcasting organisation. This means that signals received by broadcasters from an entity other than a broadcaster (e.g., an audiovisual producer or sports organization), would no longer be protected by the Treaty. This restricted definition can adversely affect broadcasters' investments in acquiring signals from other entities as they would not have a legal basis to enforce their rights against infringers who intercept signals before they are acquired from third parties.

For the sake of broader protection against piracy, the EBU suggests that the definition of pre-broadcast signals returns to its original wording.

Article 5 – National Treatment

While the previous version of Article 5(1) provided that the national treatment to broadcasting organizations of other Contracting Parties had to be granted *with regard to the rights and the protection provided for in their domestic legislation*, the new text provides that the national treatment is to be granted *with regard to the rights and the protection provided for in this Treaty*. The national treatment principle is therefore now more limited in scope because it only obliges Contracting Parties to protect non-national broadcasters according to the provisions of the Treaty, and not based also on the larger protection set by their national laws.

The EBU and its members are aware of the fact that national legislations present important differences from country to country for the protection of broadcasting organizations. Therefore, they can accept this restricted national treatment in the Draft Broadcasting Treaty, as long as an updated minimum standard of protection is achieved at the international level.

Article 8 - Transmission of Stored Programmes

A new sentence added at the end of Article 8 states that the right of broadcasting organizations to prohibit the retransmission and fixation of the transmissions of their stored programmes is subject to a time limit that runs from *the original linear transmission of [the] stored programme*. This time limit is not laid down in the Treaty but must *be determined by the domestic legislation of each Contracting Party*. Based on the Explanatory Note to Article 8, the application of a time limit to the transmissions of stored programmes is justified by the fact that after some time from the original linear transmission, the making available of a stored programme can no longer be considered an integral part of the linear broadcasting.

This time limit provision does not meet the request of some Member States for a fully-fledged term of protection at the international level and can cause the negative effect of having different terms of protection from country to country. Consequently, the proposed Treaty may not achieve its objective of harmonizing national legislations on this matter. For this reason, the

EBU and its members call for clarification on the provision of a time limit for the transmission of stored programmes.

Article 10 – Other Adequate and Effective Protection

Article 10 gives Contracting Parties the possibility to provide alternative adequate and effective protection to broadcasting organizations in place of the exclusive rights of authorization and protection granted by the Treaty.

The previous version of the text (SCCR/44/3) already added paragraph (4) which requested Contracting Parties to indicate with a notification to the Director General of WIPO the national measures adopted to protect broadcasting organisations through other means of protection. This transparency obligation wants to prevent Contracting Parties from circumventing the protection granted by the WIPO Treaty through the implementation of general and inadequate national measures.

The new text of Article 10(4) now requests also to notify without delay any *changes* in the domestic protection that a Contracting Party adopts at a later point in time. This means that also updates such as new or modified laws, regulations and procedures have to be communicated to the Director General of WIPO. The purpose is to prevent that Contracting Parties, after the first compliant implementation of the Treaty obligations, might subsequently deteriorate the protection of broadcasting organisations with new measures for which there is no longer a reporting obligation of Article 10(4).

The EBU and its members welcome the addition of this provision which further contributes to ensuring legal certainty in the Treaty.

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