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THE BROADCASTERS' NEIGHBOURING RIGHT

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Forty years ago, the notion of a "neighbouring right" was all but revolutionary. Perhaps understandably, certain authors' representatives were not really at ease with the prospect of authors having neighbours with rights neighbouring on their own rights. This is reflected in the text of Article 1 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961):

"Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection."

The authors' stake could not have been claimed more clearly, and the demarcation line among the new neighbours could not have been drawn more precisely.

But what about today, 40 years later? Is the notion of the broadcasters' neighbouring right commonplace? Do at least all those who are active, in one capacity or another, in the field of copyright really understand the *raison d'être* and scope of this right?

Unfortunately, this is by no means the case, as numerous recent discussions on the international level have shown. The main reason for this widespread lack of understanding lies in silence that existed about the broadcasters' neighbouring right between its introduction in 1960/61 and the early 90s, and that in reality it was not much relied on in practice. This, again, was understandable because of the fact that for various reasons piracy of broadcasts was not widespread in those years. So let us start once again at the beginning: what exactly is the broadcasters' neighbouring right?

Every individual right which the law grants to a physical or legal person (such as a broadcasting organization) has its own *raison d'être*. Copyright protects the fruits of an author's creative efforts. Without this protection, everybody would be free to exploit the work by any possible means, without having to ask anyone's permission or make any payment to the author. This would mean that few people would choose to embark on a career as a writer, composer, painter, photographer, etc.

By the same token, who would be interested in the costly business of setting up and operating a radio and/or television organization if the fruits of his entrepreneurial efforts could be freely exploited by competitors and parasites? What sense would it make, for instance, for a radio organization to broadcast a concert given by its own – extremely costly – symphony orchestra if its competitors were free to relay that broadcast, live or deferred, and, of course, without having to make any payment? Why would a television organization pay a huge sum of money to broadcast a football match if its competitors could relay that broadcast, live or deferred, in full or in summary form, without having to ask for permission or to make any compensatory payment yet probably also eliminating the original advertising and replacing it with their own? The answer is always the same: the broadcasting organization is legally protected against such flagrant acts of piracy.

But is it really?

Those who feel – and who would not? – that the broadcasting organization *ought* to enjoy the right to defend itself against such acts, are – probably unknowingly – the best advocates of a broadcasters' neighbouring right. Just as copyright protects the fruits of the creative efforts of the author, a "neighbouring right" protects the fruits of artistic efforts (in the case of performing artists, such as musicians, actors or dancers) or of entrepreneurial efforts in a field which is closely related to – indeed, "neighbouring" to – the copyright world. The latter concerns, in particular, phonogram producers and broadcasting organizations.

As regards the entrepreneurial activity of a broadcasting organization, it hardly needs to be recalled that the daily programme output must be planned, produced and/or acquired, scheduled and transmitted. It is this combined effort of the broadcasting organization, resulting in the listener's and viewer's ability to receive the programme service, which merits protection against unauthorized appropriation by third parties. "*Broadcast*" is therefore to be understood as *the electronic signal carrying radio or television programmes for reception by the public, irrespective of the origin of such programmes or the ownership of the content thereof*. The broadcaster is protected against the fruits of his entrepreneurial efforts being misappropriated by competitors or other third parties hoping for a free ride.

The term "neighbouring right" furthermore implies that in many respects the right itself is similar to the author's copyright. This particularly concerns the basic individual rights granted (such as the right of reproduction or of rebroadcasting), the fact that the right is limited in time, and the various legal remedies in case of infringement of the right.

A number of important practical consequences follow on from this underlying concept of the broadcasters' neighbouring right:

- it is irrelevant whether the broadcasting organization uses its own transmitters or whether it has its programmes transmitted by a transmission organization (PTT);

- it is irrelevant whether or not the programme material is protected under copyright and/or other neighbouring rights (just as in the case of a musical performance which is recorded in a phonogram);
- it is irrelevant whether the programme material exists in pre-recorded form or whether it is received by the broadcasting organization via direct relay ("live") from another source, including another country. For instance, live or deferred transmission by a broadcaster in France of a football match played in Italy or Brazil constitutes a "broadcast" regarding which the French broadcaster would be protected, notwithstanding any parallel live or deferred transmission of the same match by broadcasters in Italy, Brazil or other countries;
- a modification of the frequency of the programme-carrying signals is as irrelevant as the ultimate delivery of the broadcast to the consumer via a community aerial or cable system, as long as the consumer receives the broadcast simultaneously and unchanged;
- since the content of the broadcast is irrelevant, the period of protection must be established with regard to each individual broadcast. Thus, if a broadcasting organization broadcast a given programme in 1980, and repeats the broadcast in 2001, each such broadcast would enjoy its own separate protection. The objection may be made that in that case the broadcaster could arrange for eternal protection of its programmes. However, if it is recalled that the protection applies only to the broadcast, and not to the content of the broadcast as such, the logic of this will be readily followed; just as it will be accepted that the broadcast of a work which has already fallen into the public domain, or of programme material which is not itself protected under copyright, enjoys full neighbouring rights protection.

A critical voice could interrupt this description of the broadcasters' neighbouring right - before there has even been discussion of the present scope of rights, the need for enlargement and improvement, and the situation under international law - to question whether there do not already exist enough other legal remedies ultimately to ensure the desired protection for broadcasters.

Of the many possible arguments against this, the following should be sufficient to demonstrate the real need for a broadcasting organization to have its own specific right:

- Copyright in the programme material as such may come to mind first in this context. However, not all programme material is protected under copyright. Parts of it (e.g. classical music) may have fallen within the public domain, i.e. the period of protection has expired; other material may not qualify for copyright protection (lack of originality/creativity). The latter case is sometimes claimed to arise even with regard to news and sports programming.

- Where the programme material is not produced by the broadcasting organization itself, but is acquired under licence, the terms of the licence may be extremely restrictive and may not entitle the broadcasting organization itself to take action against pirates on the national – and, particularly, foreign – level. While it may be understandable that the copyright owner wishes to act against those pirating his work (e.g. a cinematographic film), the fact remains that the broadcasting organization has its own legitimate interests in taking action against pirates. By using its broadcasts, pirates cause it direct damage and loss of income.
- Even where the licence agreement is less restrictive, under certain national laws a licensee is not entitled to bring an action for copyright violation (this possibility being reserved for the copyright owner or his assignee).
- As regards legal remedies, especially in sports and news programming, where the real value normally lies in the exclusive first transmission, it is vital for the broadcaster to be able to obtain an injunction (i.e. a court order obliging the relevant party to cease at once, or to abstain from commencing, an infringing act), as quickly as possible. In reality, however, on account of the difficulty in providing the necessary evidence in time, it would hardly ever be possible to obtain an injunction if the broadcaster had to rely on rights derived from third parties. This is even more the case when the underlying licensing agreement with the film distributor or sports event organizer is in a foreign language, and where an authenticated translation needs to be submitted to the court.
- The broadcasting organization's entrepreneurial efforts can be thwarted not only by direct use of its broadcast but also by unauthorized use of a pre-broadcast programme-carrying signal transmitted via a terrestrial or satellite telecommunications link and intended only for the broadcaster itself for use in its broadcast. A concrete example would be a football match played in country A; the live coverage (picture and international sound) is sent simultaneously via a communications satellite to the authorized broadcaster in country B; a competitor or cable operator in country B intercepts the satellite signal and uses it himself, probably even adding his own advertising.
- Other legal concepts such as unfair competition law or unjust enrichment may not easily lend themselves to concrete cases, may hardly ever (if at all) be used for obtaining an injunction, and are not well known in every country. The same applies to illicit interference in a contractual relationship, such as a sports rights contract. After all, contracts are legally binding only upon the parties that have concluded them; a third party, such as a competing broadcaster, is not bound by the terms of a contract under which a sports event organizer grants exclusive TV rights to a given broadcaster.

Consequently, the need for a separate right, protecting the broadcast as such (regardless of its content), cannot seriously be called into question. It must, however, also be remembered that the broadcasters' neighbouring right exists independently of any rights which other rightowners may have in the programme material transmitted by the broadcaster. Thus, as regards an illegal relay (rebroadcast) of a radio broadcast, the relevant parties (e.g. the broadcaster, the phonogram producer(s), the author(s) and the performer(s)) would all have their own individual claims vis-à-vis the pirate station. Similarly, both the film producer (distributor) and the broadcaster could take action against the illegal cable distribution of a given film as broadcast; the one based on his copyright, the other based on his neighbouring right.

As may be deduced from what has been said above, one of the major practical advantages of the broadcasters' neighbouring right is precisely the fact that there is no need for the broadcaster to prove that the content of the broadcast itself is protected under a copyright or a neighbouring right, and/or why and how he was actually entitled to carry out a given broadcast (such as a football match played in a foreign country). This makes it much easier to obtain injunctions, including preliminary (interim) injunctions, to put an immediate stop to the violation of the right or to prevent someone who to all appearances is preparing for a violation of the right from carrying out his unlawful intentions. If it is too late for a preliminary injunction, damages can of course be claimed and, where necessary, a permanent injunction can be sought.

In most European countries today, broadcasters do in fact enjoy a neighbouring right. It is normally worded along the lines of the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Under this Convention, which is currently binding on 67 States (but not, in particular, on the USA), broadcasters from one such State enjoy in all the other States the same neighbouring rights protection which the respective laws grant to national broadcasters (principle of "national treatment"). At the same time, the Rome Convention lays down a standard of protection which each State must grant as a minimum. In reality, in most States the individual rights granted to broadcasters correspond to the minimum provided for under the 1961 Rome Convention. Although the 1960 European Agreement already gave a broader scope of protection, the built-in link and dependence of the Agreement on the Convention unfortunately restricted the long-term influence of the Agreement.

Since 1961, however, the world of broadcasting has evolved in a totally unforeseen manner. As regards technology one need think only of the following innovations: FM, stereo, audio and video recorders, colour, satellite, cable, digital, on-line delivery. Then, mainly as a consequence of these technological developments, deregulation has brought about a multiplicity of new broadcasting organizations and programme channels, of a national, transnational (pan-European) or transborder nature (programme services originating in one country but aimed at the audience in another country). As a result, where there are many

competitors, both national and foreign (via satellite), where furthermore cable distributors increasingly become involved as programme providers (e.g. by choosing from technically available foreign satellite programme services to offer them to their own subscribers, in certain countries even with simultaneous translation ...), and where the fight for exclusive rights has become extremely fierce, the risk of piracy continues apace. In fact, in numerous countries, especially in Central and Eastern Europe, the "risk" is a more or less widespread daily reality.

All this helps to explain why the broadcasters' neighbouring right has suddenly come out into the open and become one of the major areas of focus with respect to international intellectual property rights. Those who wish to rely on it in practice today quickly realize that while the level of protection is a perfect reflection of the technical, regulatory and competitive situation which prevailed in 1961 (the Rome Convention), it is wholly inadequate today.

- The first right which broadcasters enjoy under Article 13 of the Convention is the right to authorize or prohibit the *rebroadcasting* of their broadcasts.

"Rebroadcasting" being defined under Article 3(g) as "the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization", the infringing act would be off-air reception (Ballempfang) and simultaneous parallel broadcasting of the protected broadcast. In practice, such behaviour would be extremely rare; a more probable case of an illegal rebroadcast would be the theft of a pre-broadcast satellite signal for direct or (much more likely) deferred transmission with the pirate's own commentary and own advertisements or indeed a recording of the actual broadcast and again a deferred transmission (in full or in highlights form) with the pirate's own commentary and own advertisements. While it is beyond any doubt that deferred relays are not covered under Article 13(a), it is no less clear that a pre-broadcast satellite transmission is not as such protected against rebroadcasting.

- Incidentally, as regards the definition of "broadcasting" (Article 3(f)), the English version erroneously speaks of "public reception" (whereas the French version correctly refers to "réception par le public"). "Public reception" is generally used to describe reception in a public place (such as a hotel lobby, a bar or a theatre with a large screen), as opposed to private reception at home. The correct wording should therefore be "reception by the public".
- The next right enjoyed by broadcasters under Article 13 is the right to authorize or prohibit the *fixation* of their broadcasts. Nowadays we would tend to use the term "recording".

In economic terms, the importance of this right today lies largely in the private recording of radio and television broadcasts. Article 15(1)(a) nonetheless permits Contracting States to make an exception with regard to private use. As long as this is

not supplemented by a levy on recording equipment and/or blank tapes, to the benefit of broadcasting organizations, the right of fixation (combined with the generally admitted exception for private use) is more or less useless. Theoretically, of course, this right could be helpful in combating deferred rebroadcasts. However, since the Rome Convention does not grant the right of distribution, a clever pirate will always claim that he received the recording from a third party, rather than having carried out a fixation himself.

A second problem is the lack of a clear specification in the Rome Convention (although the European Agreement left no doubt) that the fixation right includes the right to authorize or prohibit the taking of a still photo from a broadcast. Since nowadays the need for such protection (granted by many national laws) is of even greater importance, it is time to make sure that this kind of piracy (which also kills employment for legitimate photographers) can be stopped.

- The third right is that of authorizing or prohibiting the *reproduction* of certain fixations of the broadcasts. However, since this right is not accompanied by a right of distribution, its practical value is extremely limited.
- Finally, there is the right to authorize or prohibit the *communication to the public* of television broadcasts, "if such communication is made in places accessible to the public against payment of an entrance fee".

In 1961, when the Rome Convention was adopted, rather few households had their own TV sets. The purpose of the communication to the public right in the Rome Convention was to cover circumstances where business enterprises used the broadcast for their own gain. In order to attract clients, the practice of some cafés, hotels and cinemas in those days was to offer the showing of TV broadcasts of notable events, especially sports events, in return for payment of an entrance fee.

Nowadays, whenever an entrepreneur erects a large screen in a beer tent during the period of the Football World Cup, for example, he does not demand an entrance fee but is obviously expecting to make considerable profits for himself from the sales of beer. Moreover, those organizing large screen projections frequently insert banner advertising into their unauthorized public performance of broadcasts, in direct conflict with the advertising and sponsorship contracts concluded by the broadcaster and also with the conditions of the exclusive licence between the sports federation and the broadcaster concerned. The broadcaster must have the possibility to control and prevent such unauthorized activities.

The authors' public performance right is based on the fact that the performance of works in public serves the business interests in question. Public communication of radio and TV broadcasts on business premises (restaurants, hotels, department stores, etc.) likewise serves the business interests in question. For this reason, it is now necessary to update the broadcasters' communication to the public right, to correspond to the authors' right and to today's reality. Unless this is done, the broadcasters' right will be left virtually without any substance.

So much for the rights currently granted under Article 13 of the Rome Convention, which, it must be added, is unfortunately followed in a more or less unmindful manner by numerous national laws, including more recent ones.

If only the word "Internet" is added in this context, it should become clear that not only is there a need for the present catalogue of rights (as granted by Article 13) to be thoroughly updated and modernized but there must be new rights too, such as those granted to performers and phonogram producers under the 1996 WIPO Performances and Phonograms Treaty (WPPT).

Therefore, as far as broadcasters are concerned, such an updated catalogue should give them the right to authorize or prohibit:

- (a) the retransmission of their broadcasts;
- (b) the communication of their broadcasts to the public;
- (c) any fixation of their broadcasts or parts thereof, including still photographs, and any reproduction or distribution of such a fixation;
- (d) any reproduction or distribution of legally made fixations of their broadcasts;
- (e) the making available to the public of fixations of their broadcasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (f) the decoding of their encrypted broadcasts;
- (g) the importation and distribution of fixations of their broadcasts, or of reproductions thereof, made without their authorization in a country in which they do not enjoy protection against the making of such fixations or reproductions.

In fact, this catalogue corresponds in substance to the conclusions reached at the 1997 WIPO Symposium at Manila, as well as, more importantly still, the draft texts for a Treaty which are currently circulated within WIPO.

Naturally, the elementary terms used in the foregoing catalogue need to be defined, and here are precise definitions of such terms:

- "broadcast" means the electronic signal carrying radio or television programmes for reception by the public, irrespective of the origin of such programmes or the ownership of the content thereof;

the concept of "broadcast" also includes the programme-carrying signal which is sent via a (terrestrial or satellite) telecommunications link to a broadcasting organization for use in the latter's broadcast;

- "broadcasting organization" means the organization which assembles and schedules the programme output broadcast by or on behalf of that organization;
- "retransmission" means the simultaneous or deferred transmission of broadcasts either by wireless means or via physical conductors, such as wires, cables, telephone lines or optical fibres, or microwave systems, for reception by the public;
- "communication to the public" of a broadcast means making the broadcast or a fixation thereof audible or visible in places accessible to the public;
- "fixation" means the embodiment of sounds or of images and sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

In addition, there would need to be separate articles dealing with Obligations concerning Technological Measures and Obligations concerning Rights Management Information.

It should be stressed here that such an update of the broadcasters' neighbouring right could - and in fact ought to - be introduced *as of now* into any national Copyright Act, without any further loss of time and, in particular, regardless of any possible future revision of the Rome Convention (which, in any event, is extremely unlikely for the foreseeable future) or the more likely adoption of an entirely new Treaty devoted specifically to the protection of the broadcasters' neighbouring right. In fact, such a step by the national legislator would not only immediately remedy the inadequate protection on the national level; by virtue of the principle of *national treatment*, which is the cornerstone of the Rome Convention, broadcasting organizations from numerous other countries would automatically enjoy the same protection under such new legislation in that country. It must be remembered that such protection of foreign broadcasters against piracy and other parasitical acts taking place in the legislating country also has the effect of protecting legitimate national broadcasters against competitors trying to secure a competitive advantage by illegally exploiting foreign broadcasts. For

instance, if a foreign broadcaster can take action against the illegal deferred rebroadcasting or cable distribution of his broadcast on the national territory, then that automatically also protects the national broadcaster against competition which unfairly reduces the value of his own rights (national exclusivity) and/or diminishes the audience which his own broadcast would otherwise have attracted.

Before moving on to the final point, *viz.* procedural matters (where could/should such an updated neighbouring right best be anchored at the international level?), a brief reply still needs to be given to four particular issues which tend to be raised in this context.

- Firstly, why should broadcasters be entitled to receive equitable remuneration in respect of the *private recording* of their broadcasts? As is commonly known, a number of national laws grant such a claim based on the revenue from a levy on recording equipment and/or blank tapes. However, only a few national laws include broadcasters among the beneficiaries of such revenue.

When looking at the relevant international conventions, and in particular the Rome Convention and the 1960 European Agreement on the Protection of Television Broadcasts, it will quickly be realized that the question just asked is not the right one.

Both Conventions provide for the broadcasters' exclusive right to authorize or prohibit the fixation of their broadcasts. The correct question to ask would therefore have been why, contrary to this stipulation, broadcasters are not only deprived of this right (as far as private recording is concerned) but, unlike all the other rightholders (authors, performers, producers of phonograms), they are also excluded from receiving global compensation in return.

Before giving the historic reason for this rather unusual situation, emphasis must be placed on the importance of posing the question in the correct manner. It is not for broadcasters to prove why "exceptionally" they should be entitled to the same treatment as all the other rightholders. *Rather, it is for the legislator to prove, and indeed to justify, why broadcasters should not be treated in the same manner, and why their exclusive right should be taken away from them without any recompense.*

The levy system was first introduced in Germany several decades ago (in 1965, to be precise). At that time, there was no commercial television or radio in Germany. For reasons which need not be expounded upon here, it so happened that the public broadcasters in Germany were rather affluent at the time. And for precisely that reason the German legislator felt that the broadcasters did not really need this additional revenue, whereas the other rightholders concerned did.

When the German model was subsequently adopted by other countries, it was more or less copied, without much reflection on whether the particular situation which prevailed in Germany in 1965 was the same elsewhere. In reality, it probably never was, and it is certainly not today.

There are thus no justifiable grounds for discriminating against broadcasters in this field, and broadcasters can furthermore show that the private recording of their broadcasts does affect their economic interests and should therefore be the subject of compensation. It need merely be mentioned that private recording is frequently used for time-shifting purposes, often with the additional effect that advertising placed within or around the recorded programme will be disregarded.

In conclusion, these brief remarks should suffice to demonstrate the legitimate claim of broadcasters to be among recipients of the revenue derived from the levy on recording equipment and/or blank tapes.

- Next, a word should be said about the *duration of protection*: it should be the same for all three categories of neighbouring rights owners, as is foreseen by Article 14 of the Rome Convention. In addition, as has been pointed out above, it should start at the moment when the broadcast took place (as is, in fact, currently stipulated in Article 14 of the Rome Convention), rather than with the "first" broadcast.
- Yet another point which may give rise to queries is the proposed extension of the concept of "broadcast" to cover the *pre-broadcast programme-carrying signal* which is sent via a terrestrial or satellite telecommunications link to a broadcasting organization for use in the latter's broadcast.

To the extent that such signals are transmitted by (communications) satellite, this would be the typical case envisaged by the Brussels Satellite Convention (1974). Under Article 2 of that Convention, "Each Contracting State undertakes to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended". The most - if not indeed the only - appropriate measure for States to implement this undertaking is to grant a kind of neighbouring right to the broadcasting organization for which the programme-carrying signal is intended and which would be the direct victim of any piracy thereof. If only to avoid problems of proof as to which signal was (or is to be) illegally used, the broadcasting organization must be in a position to protect itself effectively against *any* act of piracy, regardless of whether the pirate steals the broadcast signal itself or the pre-broadcast (communications) signal which comes from abroad and which is simultaneously put on the broadcasting

organization's national transmitter network (e.g. the case of a live transmission of a foreign football match). Consequently, the broadcaster's neighbouring right also needs to cover this type of piracy (although, strictly speaking, it is not a neighbouring right in the broadcaster's own *broadcast*).

The same must then, and on account of the same reasoning, also apply when pirates steal from a feeder link between the studio and the entrance into the transmitter network.

By the same token, of course, the Brussels Convention (which unfortunately has never enjoyed the hoped-for broad acceptance) would no longer be necessary.

- Finally, what about the famous "*balance of interest*" among the different categories of rightowner? Would a reinforced neighbouring right of the broadcasters tip the balance in their favour?

It cannot be stressed strongly enough that effective protection of the broadcasters' neighbouring right would serve to fight against pirates or anyone else who would otherwise obtain an unfair free ride at the expense of the broadcaster's entrepreneurial efforts. Unlike the increased protection sought by (and partially already granted to) performers and phonogram producers, it would not work to the detriment of the other two parties protected under the Rome Convention, or, indeed, to the detriment of authors. On the contrary, those parties (*viz.* the performers and the phonogram producers) would, together with the authors, likewise benefit from a reinforcement of the position of broadcasting organizations *vis-à-vis* the pirates of broadcasts which also include their performances, phonograms and works. At the same time, owing to the independently existing rights in the programme *content*, the above-mentioned rightowners would naturally continue to be able to exercise their own respective rights against pirates or any other infringing parties.

This leads us on to the final question to be resolved, *viz.* how to enshrine the modernized neighbouring right of broadcasting organizations into a binding international legal instrument.

To begin with, for various reasons it appears safe to say that a revision of the Rome Convention is out of the question.

Instead, following the precedent of the 1996 WPPT, whereby the neighbouring rights of two of the three beneficiaries under the Rome Convention were updated, WIPO envisages setting up a completely new international Treaty, devoted exclusively to the protection of the broadcasters' neighbouring right.

As a matter of fact, there is wide support for this among governments, and three countries (Argentina, Japan and Switzerland) have already submitted concrete treaty-language proposals. It was nevertheless decided to deal with audiovisual performances first, although from the outset there appeared to be (considerably) less support for a Treaty dealing with those rights. In fact, a Diplomatic Conference which was convened in Geneva in December 2000 to set up an Audiovisual Performances Treaty ended without result, other than the recommendation that the next WIPO General Assembly (September 2001) should reconvene the Diplomatic Conference (presumably towards the end of 2002). Whatever the ultimate decisions will be, it is therefore unlikely that a Diplomatic Conference for the establishment of a Broadcasters' Neighbouring Right Treaty will be held before 2003.

Finally, as far as *European* broadcasters are concerned, one could also envisage a Council of Europe Convention *not* as an alternative but as a complementary and more timely measure. As it happens, in this very field there is already a precedent of a partially overlapping regulation emanating from two international bodies, *viz.* WIPO/Unesco/ILO (1961 Rome Convention) and the Council of Europe (1960 European Agreement on the Protection of Television Broadcasts). As a matter of fact, such a procedure would have even more arguments in its favour today than was the case in 1960/61. At that time, broadcast satellites did not exist (and had not even been dreamt of), and the cable distribution of foreign broadcasts was just beginning in a few countries. Today, satellites, combined with cable, have transformed the whole of Europe into one single, borderless territory. At the same time, however, for technological reasons (coverage area of satellites, the "footprint") and for reasons of geography, the major risk of piracy of European broadcasts is virtually also limited to this area. While recordings of European broadcasts could be exploited illicitly all over the world, and whereas the Internet piracy of European broadcasts will know no geographical borders, the major form of piracy of European broadcasts (*viz.* cable distribution and relays via terrestrial transmitters, both live and deferred) is also virtually limited to the same geographical area where these broadcasts originate, *viz.* Europe. Unlike 40 years ago, however, it is not only broadcast technology that has transformed the whole of Europe into a single territory. The Council of Europe has done the same. *Par excellence* it has thus become *the* natural regulator for trans-border broadcasting issues for the entire European continent.

For the time being, however, the European Union (with its 15 Member States) does not appear to favour the setting-up of such a regional Convention, so that at this stage only a non-binding Council of Europe recommendation on measures to enhance the protection of the neighbouring rights of broadcasting organizations has been prepared. As currently drafted, the recommendation includes a wide-ranging catalogue of rights which largely meets the broadcasters' expectations and needs (as outlined above). It may reasonably be assumed that the recommendation will be formally adopted in the course of 2001.
