The World’s Broadcasting Unions and the WIPO Broadcasters’ Treaty
Importance of the Broadcast Industry

Broadcasting organizations, both in developed and developing countries, fulfill two key roles:

So far as the public is concerned, broadcasting organizations exist to meet their viewers’ demands for popular schedules of news, factual, entertainment and drama productions, thereby providing a showcase for local talent and creativity. Broadcasting is also a manifestation of expression and a motor for political, social and cultural development.

So far as the economic impact of the sector is concerned, broadcasting organizations create jobs, training and skills and stimulate economic development whose effects extend far beyond the broadcasting sector.

Developments in the Broadcasting Environment

Technological developments have transformed the way in which the sector reaches its viewers and listeners. Innovative new systems such as broadband, mobile, IPTV and on-line delivery are making it possible to meet the demands of the public for services which are available at anytime and anywhere.

However, at the same time as bringing new benefits to the public, these new technologies come with new costs and new risks for broadcasters. Such risks include new technologies to easily copy and redistribute digital broadcast programmes.

The Signal Misappropriation Problem

Technological innovations have increased the scope for international signal theft and other forms of misappropriations of broadcast signals. Piracy occurs in new, easier and more sophisticated ways that are often difficult to detect.
Signal misappropriation results in the unauthorized exploitation of the technical, financial and organizational investments by broadcasting organizations. When this happens broadcasters lose their sources of funding (e.g., advertising revenue, subscriptions, license fees, etc.) and potentially their reputation. This, in turn, adversely affects their ability to continue to serve the public.

Most Common Misappropriations of Broadcast Signals

The most common forms of misappropriation are:

1. Unauthorized retransmission of broadcasts by retransmitters operating in neighbouring countries;
2. Unauthorized retransmission and other use of broadcasts via the Internet, either simultaneously or at some time after the broadcast;
3. Distribution of unlawfully recorded broadcasts, including those carrying live sports events;
4. Unauthorized manufacture, importation and distribution of decoders and other equipment that permit unauthorized access to, and distribution of television services.

Why Broadcasters Need Updated International Protection

Broadcasting involves a number of activities that require protection from piracy and free riding. The daily programme schedule of a TV or radio station must be planned; the programmes produced and/or acquired, promoted and finally transmitted to the public. This combined undertaking involves large scale financial, logistic, technical and creative efforts, which quite closely resemble the activities of a record company, and just as phonogram producers and broadcasting organizations were given protection under the Rome Convention, so broadcasting organizations should receive appropriate updated protection in the digital environment, as phonogram producers already have through the 1996 WPPT.
Current protection of broadcasts under the Rome Convention reflects the technological, regulatory and competitive situation of 1961. Consequently, it only protects over-the-air transmissions. It does not cover transmissions by cable, satellite, through the internet or over mobile phone networks: these now constitute a significant part of broadcasting activities.

The only international instrument subsequent to the Rome Convention is the Brussels Satellite Convention of 1974, and although some have argued that it should be the model for a new broadcaster treaty it has a number of serious deficiencies which should rule it out of consideration. First, it is not harmonized across contracting states. Secondly, it does not provide any effective tools for broadcasters themselves to prevent misappropriations. Thirdly, although it has been in force for over three decades, it has only 33 contracting states as opposed to the 88 contracting states party to the Rome Convention.

Adoption of a new treaty will help ensure harmonization of at least a minimum level of updated protection of broadcasts around the world.

**Rights and Protection Required**

Broadcast organizations all over the world require protection of their broadcasts regardless of the technological platform used to transmit the signal. It does not, for example, make sense to protect a signal delivered over the air but not one delivered via cable or satellite.

Broadcasters, like other rights owners, require at least some exclusive rights so as to be able to enforce their rights at the international level in a consistent and harmonized manner. The precise nature and form of new rights is a matter for discussion and negotiation.

Broadcasters recognize and accept that new rights in broadcasts would be subject to the same kind of limitations and exceptions to be found in other treaties, including the Rome Convention itself.
**Misconceptions about the Broadcasters’ Treaty**

A number of misconceptions have been given currency by those opposed to updating broadcasters’ rights. We enumerate some of these below and explain the true position.

*It has been suggested that the rights being proposed to protect the broadcast would mean that material already in the public domain (for example, in the US, films released before the 1920s) would lose their public domain status by being broadcast.*

This is false. The treaty would improve protection of the broadcast but would not change the copyright status of programming content as either protected or in the public domain.

*A new broadcaster treaty would harm the rights of other copyright owners.*

This is untrue. The proposed treaty would not change the rights of other copyright owners whose rights are established by other treaties. Major rights owners’ groups have supported updating broadcasters’ rights.

*The treaty would create new rights that exist nowhere or exceed international standards*

This is largely incorrect. Most of the rights considered for inclusion in a treaty exist in the national laws of many WIPO member countries and have not caused any problems for other rights owners or the public.

*The treaty would override fair use or other exceptions and limitations.*

Broadcasters have always accepted that any new rights would be subject to the same limitations and exceptions found in other WIPO treaties.
There is no need for a treaty

The need for updated protection of broadcasts has been repeatedly demonstrated, starting with the WIPO Symposium in Manila in 1997 and most recently at the Information Session at WIPO on May 25, 2009. The evidence is overwhelming that piracy, other forms of misappropriation and unauthorized exploitation, of broadcast signals is increasing.

Risks of not protecting broadcast signals

Broadcasters have a vital contribution to make both to social cohesion and to adaptation to dynamic change in the process of modernization.

Broadcasters all round the world are suffering serious financial harm from piracy and unauthorized use of their broadcasts. Without the means to address these problems broadcasters may not be able to continue to provide the same services on the same terms to the public. Consumers may find broadcast programming more restricted, less available or more costly. For all services the costs of inadequate protection will result in higher costs or diminished services for the public.
Supporting unions

ABERT: Brazilian Association of Broadcasting
ABU: Asia-Pacific Broadcasting Union
ACT: Association of Commercial Television – Europe
AER: Association of European Radios
AUB: African Union of Broadcasting
IAB: International Association of Broadcasting
ASBU: Arab States Broadcasting Union
CBU: Caribbean Broadcasting Union
EBU: European Broadcasting Union
NAB USA: National Association of Broadcasters – USA
NAB Japan: National Association of Broadcasters – Japan
NABA: North American Broadcasters Association