

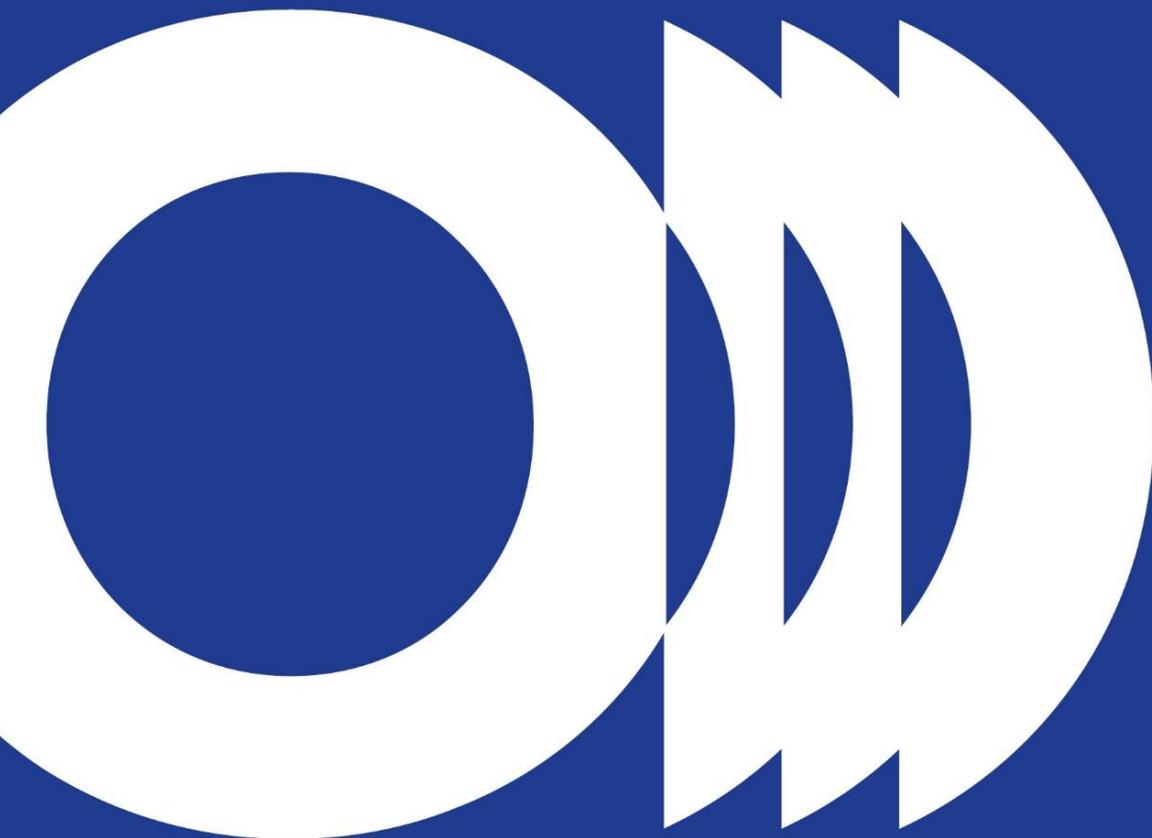
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU Position on the Revised Draft
Text for the WIPO Broadcasting
Organizations Treaty

26 APRIL 2022



European Broadcasting Union position paper on the Revised Draft Text for 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, greatly supports the work of the World Intellectual Property Organization (WIPO) and the WIPO Standing Committee on Copyright and Related Rights (SCCR) in view of adopting a WIPO Broadcasting Organizations Treaty.

The adoption of a WIPO Broadcasting Organizations Treaty would harmonise internationally the protection granted to broadcasting organizations by setting minimum standards. It would be an effective anti-piracy instrument to protect programme-carrying signals on a global scale.

The Revised Draft Text for the WIPO Broadcasting Organizations Treaty (SCCR/42/3) aims at providing a clear, simple, and future-proof approach against the unauthorised or unlawful use of broadcasting organizations' programme-carrying signals, both on a domestic and international level. It is however paramount that the flexibility and the two-tier level protection provided in the proposed text remain balanced without weakening the protection granted.

The EBU and its Members are of the opinion that the Revised Draft Text for the WIPO Broadcasting Organizations Treaty covers the principles necessary for the legal protection of programme-carrying signals; and, therefore, could serve as a basis for finalising the text of the WIPO Broadcasting Organizations Treaty in view of convening a Diplomatic Conference for the adoption of said treaty.

In this context, they call upon WIPO Member States (i) to reach consensus on key outstanding issues, (ii) to improve the Revised Draft Text for the WIPO Broadcasting Organizations Treaty in dedicated meetings, (iii) to finalise the text of a WIPO Broadcasting Organizations Treaty by the end of the year 2022, and (iv) to circulate the finalised text amongst SCCR delegations for final adoption in plenary in early 2023, enabling the WIPO General Assembly to convene a Diplomatic Conference in late 2023.

Broadcasting is a fast-moving sector. It is important that the WIPO Broadcasting Organizations Treaty takes account of the way in which audiences consume broadcasting organizations' services today, and protects such organizations in the future. In particular, audiences are increasingly consuming these services online, often in addition to and sometimes instead of traditional broadcast distribution. As a result, broadcasting organizations are evolving their services to meet audiences' needs, for example:

- 'Premiering' content online and on-demand first, before it is made available in linear broadcast services;
- Offering linear services by way of online streams, in addition to traditional broadcast distribution;
- Offering online-only services (e.g., video-on-demand (VOD) and online channels).

The EBU and its Members believe that the benefits of the protection offered by the WIPO Broadcasting Organizations Treaty should be available irrespective of the method by which services are delivered by broadcasting organizations.

To strengthen the Revised Draft Text for the WIPO Broadcasting Organizations Treaty, the EBU and its Members would like to make some remarks on the following aspects:

1. Article 2 – Definitions

Broadcasting

The proposed technology neutral definition of broadcasting is welcome. In view of the rapid technology developments, it is paramount that both transmission by wire and wireless transmissions are covered.

Moreover, the notion of 'computer network' may require further clarification in order to ensure the inclusion of modern and developing tools to distribute programme-carrying signals irrespective of the interpretation of such notion (e.g., open network, secured environment, or others).

Broadcasting organization

The proposed definition of 'broadcasting organization' follows a traditional approach of the activities carried out by broadcasting organizations. However, in the event that broadcasting organizations fully¹ or partly offer existing or new services online in line with the needs of the audience, one recommends clarifying that they would still be covered by the proposed definition of 'broadcasting organization' and benefit from the protection granted under the WIPO Broadcasting Organizations Treaty – provided that they meet the characteristics of Article 2(d), *i.e.* that they take the initiative and editorial responsibility for broadcasting.

¹ For example, if the frequencies (spectrum) allocated to broadcasting organizations are reallocated to other players (e.g., broadband operators).

Stored programmes / VOD and online content

The proposed definition of ‘stored programmes’ relates exclusively to programmes that have been previously included in a broadcast by the original broadcasting organizations. In that sense, it seems to cover catch-up services only, and to exclude programmes available only on broadcasting organization’s own video-on-demand (VOD) services.

To ensure a future-looking treaty, one suggests clarifying that programmes made available on broadcasting organizations’ VOD services² would be covered by the definition of ‘broadcasting’ (Art. 2(a)) and would fall under the activities protected in the scope of the treaty (Art. 3).

2. Article 9 – Other Adequate and Effective Protection

In view of the various national legal regimes, the EBU and its Members understand the need for flexibility in protecting the rights provided for in Articles 6 to 8. However, it is paramount that the principle of reciprocity is respected and that a minimum standard of protection is available in the Contracting Parties. This provision should not become a means to circumvent the protection granted by the WIPO Broadcasting Organizations Treaty. As mentioned above, the flexibility and the two-tier level protection should remain balanced and reflect different legal traditions to allow a greater number of Member States to adhere to this treaty without weakening the protection granted; bearing in mind that this treaty aims to be an anti-piracy instrument that provides certainty and a minimum of harmonisation on a global scale.

² Often such services are described in existing legal frameworks as programme or broadcast related.