

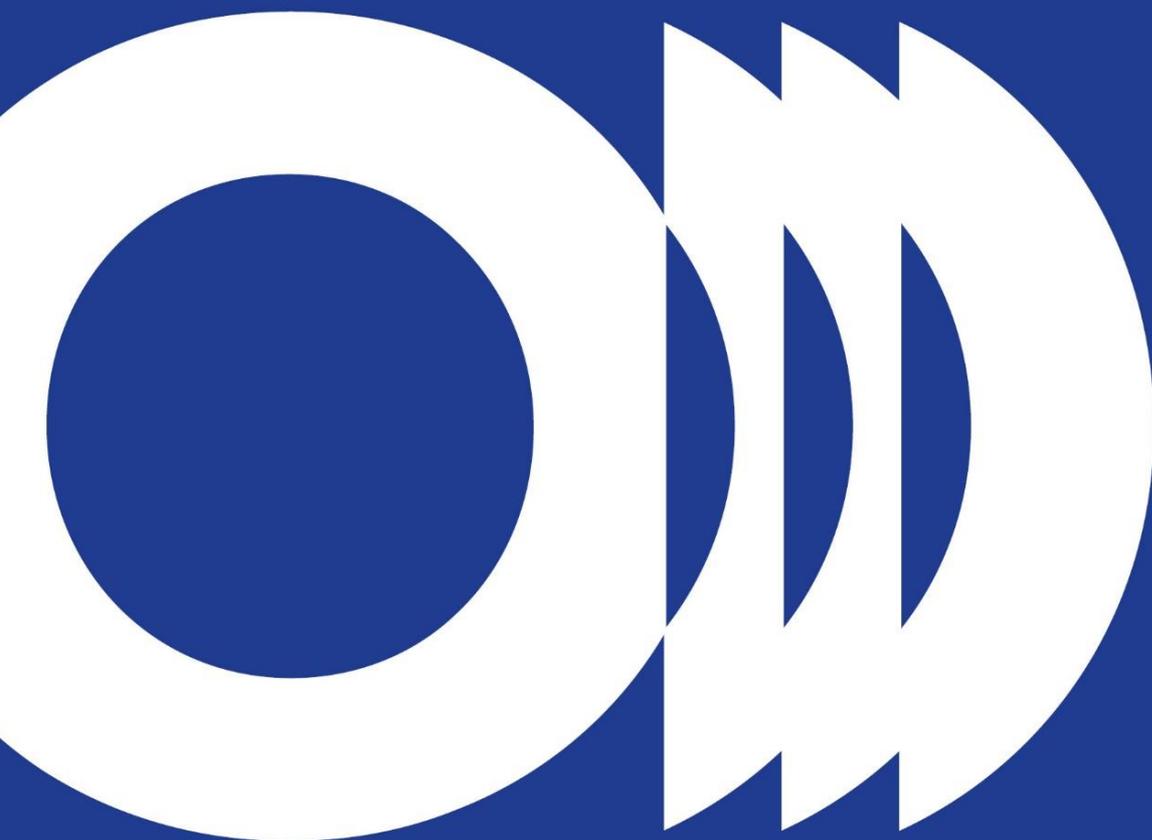
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

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

7 MARCH 2023



European Broadcasting Union position paper on the Second 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.

Protecting broadcasting organizations from illegitimate actors has never been more important: global piracy significantly undermines the commercial value and exploitation of live and premium content. This content is a core pillar of Public Service Media (PSM) programmes, so they must be able to act quickly and efficiently to fight piracy worldwide.

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

As such, the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty (SCCR/43/3) is a balanced instrument aimed at protecting the programme-carrying signal. The amendments made to text allow for a common understanding of the scope of protection and take into account the various legal traditions to provide efficient tools to fight piracy, both on domestic and international levels.

The EBU and its Members are of the opinion that the Second 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 – should it be necessary, to finalise the Second Revised Draft Text for the WIPO Broadcasting Organizations Treaty in dedicated meetings, and (ii) to recommend the WIPO General Assembly to convene a Diplomatic Conference for the adoption of the WIPO Broadcasting Organizations Treaty.

Broadcasting is a fast-moving sector: technologies evolve, leading to a change in the distribution methods and the way in which audiences consume broadcasting services. For these reasons, the WIPO Broadcasting Organizations Treaty must have the ambition to protect broadcasting organizations in the future, for example by ensuring that both online (*i.e.*, online first, catch-up, and online only) and traditional broadcast distribution (*i.e.*, terrestrial, cable, satellite, and IP-TV) are covered.

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

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

Article 2 – Definitions

1. Broadcasting

The EBU and its Members are pleased to see that the definition of 'broadcasting' now covers the "*transmission by 'any means, including' by wire or wireless*". This amendment makes the definition of 'broadcasting' completely technology neutral, which is paramount considering the rapid technology developments.

2. Broadcasting organization

The new definition of 'broadcasting organization', which emphasises the financial and organisational aspects related to broadcasting activities, is welcome.

This will ensure that broadcasting organizations can still benefit from the protection granted under the WIPO Broadcasting Organizations Treaty if they move their distribution online, which for many is likely to be the case in the not-too-distant future.

3. 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, and to exclude programmes which are only available online or are available on-demand first on broadcasting organization's own video-on-demand (VOD) services. Some broadcasters are already adopting this form of distribution.

While the EBU and its Members are pleased to see that catch-up services are protected under the proposed WIPO Broadcasting Organizations Treaty, the proposed scope of protection would in the future be limited in comparison to the operation and distribution of content by many broadcasting organizations.

Article 3 – Scope of Application

The reserve provided for in Article 3(1)(b), which allows Contracting Parties to exclude programme-carrying signals transmitted by means of computer networks from the scope of application of the treaty, creates uncertainty as to the level of protection granted and may substantially limit the scope of protection.

For this reason, one recommends limiting the possibility to exclude specific actors, such as ‘webcasters’, to ensure that traditional broadcasting organizations remain protected.

Article 10 – 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 9. However, the possibility to offer alternative adequate and effective means of protection should remain balanced to ensure a minimum standard of protection in all Contracting Parties.

This provision should not become a means of circumventing the protection granted by the WIPO Broadcasting Organizations Treaty. It should reflect different legal traditions to allow more WIPO 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.

The addition of “*other effective legal provisions or legislation on administrative means*”, under Article 10(2)(iv), may lead to the application of indeterminate solutions, which would create uncertainty. Therefore, one suggests restricting the alternative means of protection to Article 10(2)(i)-(iii).

Article 11 – Limitations and Exceptions

The EBU and its Members would favour this provision to follow the corresponding provisions in other WIPO treaties (e.g., WIPO Performances and Phonograms Treaty (WPPT), and Beijing Treaty on Audiovisual Performances (BTAP)).

Former Article 11 – Term of Protection

The EBU and its Members call for clarification of the removal of the term of protection. In their view, it is recommended that the time limits for the exercise of rights in the Contracting Parties be clarified.

Article 14 – Formalities

The identification of the source of the programme-carrying signal is crucial to show standing to claim protection under the WIPO Broadcasting Organizations Treaty. However, Contracting Parties wishing to take advantage of this option should be cautious not to impose superfluous requirements or technical standards to identify broadcasting organizations' programme-carrying signal.

The European Broadcasting Union (EBU) is the world's leading alliance of public service media. The EBU has 115 member organisations in 56 countries who operate nearly 2 000 television, radio and online channels/services, reaching an audience of more than one billion people in 160 languages.

EBU Legal & Policy
skrebers@ebu.ch | sneed@ebu.ch
[@EBU_Policy](#) | [website](#)