

EFF Statement on the Broadcasting Treaty WIPO 24th SCCR Geneva, 16-24, July 2012

EFF welcomes the opportunity to deliver a statement on this 24th Session of the Standing Committee on Copyright and Related Rights (SCCR) of the World Intellectual Property Organization (WIPO).

Longtime followers would remember that EFF has opposed the WIPO Broadcasting Treaty since 2004 because it would harm consumers, citizen journalists, innovation, and the free flow of information on the Internet. Since 2006, EFF and a broad coalition [PDF] of public interest groups, libraries, creative industry members, as well as telecommunications and technology companies have explained how granting broadcasters and cablecasters the intellectual property rights envisaged by the draft Treaty would wreak havoc on the future of the free and open Internet. Specifically, we continue to believe the preferable model for addressing these issues through the narrower signal-based approach outline in the Brussels Satellite Convention.

Broadcasters claim that a treaty is needed to protect against signal piracy, and that the Broadcasting Treaty is simply "updating" their rights for the digital age. But what's really at stake here is something more far-reaching: this Treaty will set the legal rules that will govern the distribution of information on the Internet. The current draft Treaty would grant exclusive, 50-year intellectual property rights to the content distributors that apply in parallel with copyright protections, even when the transmitters have had no role in creating the content being distributed. Although it's not entirely clear, the new South African proposal [PDF] and the "Non-Paper" [PDF] on elements for a new treaty also seem to contemplate intellectual property rights for broadcasters and cablecasters. This move raises the same set of public policy concerns brought up by the existing draft Treaty, which threatens to stifle innovation and the creative freedom of anyone working with audio or visual content on the Internet.

Granting broadcasters and cablecasters certain intellectual property rights that apply independently from the copyright over the broadcast content and combining them with legally enforceable technological protection measures, raises significant concerns for access to public domain works. These measures would add a whole other layer of complexity to copyright clearance regimes for creators, and further interfere with consumers' ability to make full use of rightfully purchases content as permitted under national copyright laws. Granting broadcasters and cablecasters exclusive rights to authorize retransmissions of broadcasts over the Internet will allow them to block

competition and innovation by allowing broadcasters and cablecasters to control the types of devices that can receive transmissions. Furthermore, it will create new liability risks for Internet intermediaries that retransmit information on the Internet.

On top of the problems posed by the current draft Treaty, there's now a move to expand the scope of the Treaty to webcasting. The recent South African proposal [PDF]¹ and the new Non-Paper [PDF]² both advocate the need to account for "technological developments" and propose a so-called "technology-neutral" approach. This sounds innocuous, but should be understood in the context of the history of the WIPO negotiations. "Technology-neutral" is code for extending new rights to transmissions over the Internet. This is a brazen effort to re-open a long-standing agreement that the Treaty would only give rights to "traditional" broadcasters and cablecasters. Many countries objected to expanding the Treaty to Internet broadcasters because of the aforementioned harm it could cause to other Internet communications. This move is also inconsistent with the 2007 mandate given by the WIPO General Assembly—to finalize a treaty for broadcasting "in the traditional sense."

The key issue here is the scope of the treaty. Broadcasters claim that they need a new treaty to deal with "signal piracy." The question is how this problem can be addressed in a way that does not infringe on citizens' rights and all other stakeholders in the Internet economy. No empirical evidence has been presented that demonstrates what exact harm is not already being addressed by the existing copyright regime and remedies in national laws, and why broadcasters need intellectual property rights to deal with signal theft.

We continue to believe the preferable model for addressing these issues is the narrower signal-based approach in the Brussels Satellite Convention³. But broadcasters continue to push for intellectual property rights that would overlap with copyright. This would trigger unintended consequences for freedom of expression and stakeholders in the Internet economy at a time when the future of broadcasting is already unclear.

Giving broadcasters an unprecedented set of legal privileges is a sure-fire way to damage speech and innovation on the global Internet. Again, granting broadcasters and cablecasters exclusive rights to authorize retransmissions of broadcasts over the Internet will allow them to block competition and innovation by allowing them to control the types of devices that can receive transmissions, and it will create new liability risks for Internet intermediaries that retransmit information on the Internet. If "signal piracy" is the concern, then a narrow, signal-focused approach is what is needed, not a global replication of the existing copyright regime.

Thank you.

¹ http://www.wipo.int/edocs/mdocs/copyright/en/sccr 22/sccr 22 5.pdf

² http://www.wipo.int/edocs/mdocs/copyright/en/sccr_22/sccr_22_11.pdf

³ http://www.wipo.int/treaties/en/ip/brussels/