



**STATEMENT OF THE ELECTRONIC FRONTIER FOUNDATION TO 17th
SESSION OF WIPO STANDING COMMITTEE
ON COPYRIGHT AND RELATED RIGHTS
ON THE PROPOSED WIPO BROADCASTING TREATY
NOVEMBER 6, 2008**

Thank you, Mr. Chair.

I speak on behalf of the Electronic Frontier Foundation and its 13,000 members worldwide. Thank you for the opportunity to present our views to the Member States on the proposed Broadcasting Treaty and the future work plan of this Committee.

We stand at a pivotal moment for WIPO's leadership in the global knowledge economy. As affirmed by the recently adopted Development Agenda, this body should be focused on restoration of WIPO's role in the promotion of creativity and innovation for the global information society, rather than the promotion of new intellectual property rights as ends in themselves. The Development Agenda points the way forward – reorienting WIPO's work towards the preservation of the public domain and stimulation of innovation, creativity and development. The measure of relevance for future work is based not only on whether the Internet or other dynamic technologies are discussed, but about who benefits from the norms generated here.

Member States have been presented with a clear choice: they can start on work to alleviate suffering for the world's citizens and tackle the greatest challenges facing the global copyright regime today, or they can resuscitate discussions on a treaty that, as currently drafted, would protect broadcasters' and cablecasters' investments but cause considerable harm to consumers, citizen broadcasting on the Internet, competition and innovation at a time when it is still unclear whether incumbent broadcasters will be displaced by these new modes of innovative Internet media.

EFF remains concerned about the proposed Broadcasting Treaty, because it would give broadcasters broad intellectual property rights over retransmissions after fixation of signals, rather than providing measures against intentional signal theft. We endorse the joint statement of civil society and industry opposing the current draft, which is available outside. So long as the treaty is not limited to signal protection as mandated by the General Assembly, it imperils the public's access to knowledge and the future of citizen broadcasting and user generated content on the Internet. The inclusion of legally enforced technological protection measures and an overbroad ban on decryption devices is likely to override national exceptions and limitations in copyright law that protect the public interest and preclude access to public domain works. The treaty will also harm competition and innovation by allowing broadcasters and cablecasters to control the market for transmission receiving devices. Finally, it will increase liability for Internet intermediaries and impede Internet innovation.

After 10 years of negotiations without substantial agreement and in the absence of empirical evidence justifying the necessity for a rights-based treaty for broadcasters, we

do not believe that the Broadcasting Treaty proposal should continue to remain a priority item on the work agenda. But at a minimum, any treaty would have to include mandatory exceptions that are at least equivalent in scope to those in the Rome Convention and TRIPs. While TRIPs permits signatories to recognize certain non-exclusive broadcasting rights, it does not condition creation of exceptions on satisfaction of the three-step test and we see no reason to constrain Member States' ability to do so in this treaty.

Meanwhile, exceptions and limitations, a topic of great interest to many developing and developed countries, and of tremendous importance to the visually impaired, libraries, and education communities, and Internet users generally has been supported by the thorough analysis of the experts that enlightened this Committee earlier this week. This is not resolvable by trusted environments and walled gardens for the lucky few; this requires an international agreement on minimum exceptions for socially beneficial uses. There is a high level of urgency about finding solutions to these essential human needs and the degree to which imbalanced intellectual property exacerbate these humanitarian problems. The Standing Committee should direct this institution's valuable resources to make progress for the betterment of *all* humankind.

Thank you for your consideration.

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