



**EFF STATEMENT ON THE PROPOSED BROADCASTING TREATY
TO THE WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED
RIGHTS, 1- 5 MAY 2006**

Mr. Chair, congratulations on your re-election as Chair and thank you for the opportunity to present our organization's views to this meeting.

The Electronic Frontier Foundation believes that the key issue that must be addressed is ensuring that the proposed treaty focuses on its intended purpose of protecting against signal theft, and does not create broad new intellectual property rights that would endanger technological innovation, fundamentally alter the Internet as a medium of communication, and reward non-creative activities at the expense of the public's access to knowledge. Accordingly, EFF supports the Joint NGO Statement on Recommendations for limiting the Draft Basic Proposal to signal protection, which is available on the table outside.

While we are heartened by many Member States' references to signal protection this week, we believe that several major issues still need to be addressed before the treaty can move to a Diplomatic Conference. We have prepared briefing papers for Member States on webcasting and technological protection measure issues, which are available on the table outside. We now wish to highlight several concerns in relation to the technological protection measure provision and the proposed extension of the treaty to webcasting and simulcasting.

Article 14 raises new concerns for innovation and the public interest, despite the fact that it is based on similar language in the WCT and WPPT. Legally-enforced copyright technological protection measures (TPMs) adopted under the 1996 WCT and WPPT have had unintended consequences. In the United States, the Digital Millennium Copyright Act has overridden national copyright law exceptions and limitations that protect consumers, harmed scientific research and created monopolies over uncopyrightable technologies. At the same time, these measures have not been effective at stopping or slowing copyright infringement on the Internet. There is no reason to think that legally-enforced broadcaster TPMs would be any more effective.

However, there is more reason to be concerned about a broadcaster TPM regime. Wherever broadcaster TPMs are used, Article 14 is likely to lead to extensive national technology mandate laws over the design of televisions and radios, and if webcasting is included, personal computers. This will stifle technological innovation and competition on the Internet and in home entertainment technologies.

Broadcaster TPMs have little relevance to signal protection. Many nations already have conditional access signal protection regimes that protect against unlawful reception of cable and satellite transmissions. By comparison, the treaty's combination of technological protection measures and the broad post-fixation rights that restrict uses after lawful reception, is entirely new and is directed at control over the devices on which transmitted content can play inside a consumer's home, rather than signal theft.

In addition, broadcaster and webcaster technological protection measures are likely to create a far greater restriction on the public's access to information than the parallel copyright TPM regime in the WCT and WPPT because they will restrict access to transmissions of works that are not copyrightable, licensed permissively, or are in the public domain.

For these reasons we support the proposal from the delegation of Brazil to delete this provision. EFF also welcomes the proposals of the delegations of Brazil, Chile, and Peru for exceptions that would allow Member States to regulate the potentially anti-competitive impact of such an extensive broadcaster TPM regime.

Finally, we believe that it is imprudent to create broad new post-fixation rights over transmissions on the Internet without a comprehensive analysis of the impacts of these proposals on all members of the Internet community, including potential new liability for Internet intermediaries, and restricted access to public domain information for libraries and the global educational community. For this reason, we oppose the inclusion of webcasting in this treaty, and the extension of the transmission rights granted by Articles 6 and 9 to computer networks.

EFF supports the requests of the many Member States who have called for further studies to be undertaken of the likely impact of the new rights regime before a revised treaty text is considered at the next session of this committee in September.

Thank you for your consideration.

Gwen Hinze
International Affairs Director