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Joint Statement of Certain Civil Society, Industry and Rightsholders Representatives Regarding the Draft Basic Proposal for SCCR 15

The undersigned organisations represent a broad set of constituencies with a direct interest in the discussions underway regarding an international instrument relating to broadcasting. **We submit that the Draft Basic Proposal for a WIPO Treaty on the Protection of Broadcasts and Broadcasting Organizations, as currently drafted, would harm important economic and public policy interests.**

Fundamentally, we remain unconvinced that a treaty is necessary at all. We note with concern that treaty proponents have not clearly identified the particular problems that the treaty would ostensibly solve, and we question whether there are in fact significant problems that require a multilateral solution. However, in the spirit of constructive engagement, we submit the following for consideration of delegations:

1 If the treaty moves forward in any form, we believe that the current rights-based approach of the treaty must be abandoned. We submit that creating broad new intellectual property rights in order to protect signals is fundamentally flawed and, in any case, unnecessary, and risks serious unintended negative consequences. We recommend instead a signal protection-oriented approach, which we submit should focus, to the greatest extent possible, narrowly and specifically on protecting signals from intentional misappropriation or theft. **We submit that this Instrument need not be negotiated in either a ‘Rome+’ or ‘Rome-’ context. The TRIPS Agreement, The Brussels Satellite Convention and the Phonograms Convention are all ‘Rome-’ as regards various Rome beneficiaries and all postdate the Rome Convention.**

2 To the degree that the treaty allows for Contracting Parties to create broader rights or protections beyond protection against intentional signal theft, then we submit that a mandatory set of limitations and exceptions must be included in the treaty in order to ensure that uses of broadcast content that are lawful under copyright law are not inhibited by the treaty. At a minimum, limitations and exceptions under the treaty should be equivalent to those that an implementing state provides under its copyright laws, and should provide flexibility for additional limitations and exceptions that are appropriate in a digital network environment.

3 Under the current draft of the treaty, the broad scope of the proposed rights, combined with proposed additional rights to use technological protection measures (TPMs) in connection with these rights, raises questions about whether the beneficiaries would gain the ability to control signals in the home or personal network environment.

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MLA

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NATIONAL ASSOCIATION OF STATE
PIRGs

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RADIO SHACK CORPORATION

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SONY ELECTRONICS INC.

TiVo

TIVO INC.

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UNION FOR THE PUBLIC DOMAIN

USIIA

U.S. INTERNET INDUSTRY
ASSOCIATION

USPIRG

US PUBLIC INTEREST RESEARCH
GROUP

USTA

US TELECOM

Verizon

VERIZON COMMUNICATIONS
INC./VERIZON WIRELESS

YISP

YALE INFORMATION SOCIETY
PROJECT

Such control is without precedent and would interfere with the rollout of broadband and home and personal networking services and limit the development of innovative devices that provide home and personal networking functionality. Accordingly, **the treaty should include a provision excluding coverage of fixations, transmissions or retransmissions across a home network or personal network.** Further, we should note that many organisations within our group believe that TPM provisions are inappropriate in connection with this treaty and should be excluded from the treaty entirely.

4 Whilst we understand that SCCR 15 is to be devoted to discussing the protection of broadcasting and cablecasting, the inclusion of 'by any means' in important elements of the Draft Basic Proposal clearly provides for control over Internet retransmissions of broadcasts and cablecasts. Whilst members of our group do not share a common view about the best approach to addressing Internet-related issues, **we are united in our belief that the current approach is unacceptable.** Further, to the extent that the treaty continues to take a rights-based approach rather than a signal theft or signal protection approach, **we oppose the treaty's application to the Internet.**

5 To the extent that the Treaty continues to include Internet transmissions in its scope, we wish to make clear our serious concerns that **network intermediaries would face the threat of direct or secondary liability for infringement of the broad rights granted under the current Draft Basic Proposal.** The limitations of liability afforded to intermediaries today under existing national laws would only protect against copyright infringement, not against a violation of these broad new rights. Should a new Instrument result from these negotiations that includes any protection of Internet transmissions of any kind, **we submit that the treaty must ensure that network intermediaries do not face liability for alleged infringement of rights or violations of prohibitions by virtue of actions they take in their normal course of business or as a result of the actions of their customers.**

We wish to draw to distinguished delegates' attention that the issues identified in this Statement do not represent a comprehensive list of the concerns of all the undersigned. Individual organisations intend to independently raise other issues of serious concern. **We also refer delegations to the treaty language proposals many of the undersigned have provided separately.**

We are at the disposal of the distinguished delegates to the SCCR to discuss these views.