

TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE
CONSUMER DIALOGUE DES CONSOMMATEURS

Michael S. Keplinger
Senior Counsellor
Office of Legislative and International Affairs
Patent and Trademark Office
Box 4
Washington DC 20231
USA
Mike.Keplinger@uspto.gov

Jörg Reinbothe
Head of Unit E3
DG Internal Market
European Commission
Rue de la Loi 200
B-1049 Brussels
Belgium
Joerg.reinbothe@cec.eu.int

October 30, 2003

Dear Mr Keplinger and Mr Reinbothe

We are writing on behalf of the Special Group on Intellectual Property of the Transatlantic Consumer Dialogue (TACD) concerning the WIPO Treaty for the Protection of the Rights of Broadcasting, Cable-casting and Web-casting Organizations.

This treaty will be further discussed in the Standing Committee on Copyright and Related Rights on November 3-5. Some of the developments concerning the development of a treaty-test, the proposals of the EU and the US governments in particular, raise questions among consumer groups represented in TACD.

TACD has 65 member organizations in the United States and Europe, and is a consultative forum to the European Commission and the US Government. To be able to evaluate the issues in this treaty that concern consumers we would appreciate your answers to the following questions concerning Article 14.3 of the TRIPS Agreement.

Our understanding is that Article 14.3 grants broadcasting organizations a negative right to prohibit the fixation, the reproduction of fixations, and the re-broadcasting by

wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. The proposed WIPO treaty seeks to expand the mentioned right and confer it upon cable-casters and web-casters.

1. Does the proposed treaty seek to confer upon broadcasters, cable-casters and web-casters the positive right to authorize fixations, the reproduction of fixations, and the re-broadcasting by wireless means of broadcasts?

As we understand it, in addition to the rights conferred under Article 14 of the TRIPS Agreement, the proposed treaty seeks to grant broadcasters, cable-casters, and web-casters additional rights including the distribution of fixations, cable retransmission (simultaneous), retransmission over the Internet (simultaneous), deferred broadcasting/cable/Internet transmission based on fixation, making available of fixed broadcasts, communication to the public, obligations regarding technological measures of protection and rights management information, decryption of encrypted broadcasts, rental of fixations and, making available of unfixed broadcasts.

2. Does the right to prohibit or authorize the "distribution of fixations" protect copyright content? If it does, does the proposed WIPO treaty seek not only the protection of signals but the expanded protection of content?

3. Could you provide us with a tangible example of what would constitute the "distribution of fixations"?

4. What safeguard measures, if any, does the WIPO treaty provide for the protection of the public domain which is encroached upon by the new rights afforded to web-casters?

5. What would be your definition of "web-casting"?

6. Would Internet activities (such as the operation of listserves, peer to peer networks, the distribution of text documents or more generally posting materials that are available for download and then archived) be covered by the treaty in any way?

7. What is the rationale for seeking a full 50 years of protection for broad-casts, cable-casts and web-casts?

8. How does the proposed WIPO treaty affect a private individual's right to record a broadcast, cablecast or webcast for her own private use?

9. Do the EU or US government seek to introduce "broadcast flag" provisions into the proposed treaty with respect to the obligations regarding technological measures of protection?

We do hope for a timely response to our questions.

With kindest regards,

James Love, US co-chair, TACD Special Group on Intellectual Property
Machiel van der Velde, EU co-chair, TACD Special Group on Intellectual Property