

July 14, 2006

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Dear Jule and Ann,

Thank you for the opportunity to meet last week to discuss concerns related to the World Intellectual Property Organization's proposed "Treaty on the Protection of Broadcasting Organizations" (the "Treaty"). We also appreciate the opportunity to provide comments regarding continued strong concerns that the undersigned consumer electronics companies, computer companies, communications companies, and trade associations have about the Treaty as it is currently drafted. We have several recommendations about how the Treaty must be changed, and narrowed in scope, in order to gain our support. We offer below minimal changes that we consider necessary. We understand that in some instances, new language or further changes to the existing text are needed to accomplish this narrowing, and we are prepared to work further with you and with others in industry and the NGOs to provide further language edits.

- **Scope of the Treaty Must Be Limited to Signal Theft.** We believe the scope of the proposed Treaty is too broad. The Treaty currently grants broadcasting organizations broad intellectual property rights in the signals that they transmit, regardless of whether they hold copyrights for the underlying contents of these signals. The protection granted under the Treaty should be extended only to intentional theft or misappropriation of signals used for transmissions by the Treaty's beneficiaries. The Treaty accordingly should not provide beneficiaries with protection beyond adequate and effective legal remedies to prevent signal theft or misappropriation.
- **Term of Protection Not Needed in Signal Theft Treaty.** Following the approach of limiting the scope of the Treaty to intentional signal theft or misappropriation, the Treaty should not include a term of protection.

- **Network Intermediary Liability.** We are concerned that even if the scope of the Treaty is narrowed, and given the nature of network services, intermediaries would face the threat of significant liability for violation of the Treaty's provisions. Such liability would be based on alleged customer violations of the rights provided to beneficiaries by the Treaty. As the Treaty is currently drafted, exceptions from such liability only apply to broadcasters, cablecasters, and IPcasters, but not to intermediaries. We accordingly believe that express language should be included in the Treaty to ensure that intermediaries are not exposed to such liability.
- **Limitations and Exceptions Shall Be Symmetrical to Those Provided by Contracting Parties in Their National Law.** The Treaty must include mandatory broad limitations and exceptions that permit, among other things, personal use of broadcast content. At a minimum, limitations and exceptions must match those that exist in national copyright law.
- **A TPM Provision May Have Unintended Consequences.** We are concerned that the obligations of the Contracting Parties related to the circumvention of technical protection measures will have unintended consequences, and are not convinced that the inclusion of such obligations is appropriate or necessary. If a technical protection measures provision ultimately remains in the treaty, we believe that such obligations should be limited to adequate legal protection and effective legal remedies to prevent the intentional theft or misappropriation of signals used by beneficiaries for the first transmissions of broadcasts. Further, in accordance with the approach taken in the Brussels Satellite Convention, the Treaty should make clear that it may not be interpreted as limiting the right of any Contracting Party to apply its domestic law in order to prevent abuses of monopoly and other anticompetitive conduct.

As a baseline, we want to ensure that the Treaty not cover broad Internet activities that are not the equivalent of traditional broadcasting and cablecasting. In accordance with our commitment in our meeting with you, we are providing the following language to replace the term 'webcasting' on what we will refer to as "IP casting." We are supplying it on the clear understanding that we only support this definition if the Treaty is sufficiently narrowed to signal protection:

"'IP casting' means the transmission to the subscribers of fixed, commercial prepackaged linear programming or real time programming delivered by organizations using Internet Protocol, performing the functional equivalent service of a broadcasting or cablecasting organization. 'IP casting' does not include a service that merely provides access to audio or video content that does not constitute prepackaged linear programming."

Again, we would like to emphasize that our support of the Treaty is contingent upon acceptably narrowing its scope. We are prepared to work with the US PTO and Copyright Office in ensuring a treaty that provides effective and adequate protection against signal theft without conveying the unnecessarily broad rights that are contained in the current draft.

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We look forward to meeting with you to discuss these matters further. Please let us know with whom we should schedule a next meeting. Please contact, Jim Burger ((202) 776-2300, [jburger@dowlohnes.com](mailto:jburger@dowlohnes.com)). Thank you for your attention to this matter.

AT&T Inc.  
BellSouth Corp.  
Broadband Service Providers Association  
Consumer Electronics Association  
Computer and Communications Industry Association  
Dell Inc.  
Intel Corporation

RadioShack Corporation  
Panasonic Corp. of North America  
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United States Telecom Association

cc: Marybeth Peters  
Marla Poor