

Statement by NGOs Concerned with the Protection of Broadcasts and Broadcasting Organisations

The undersigned organisations represent a broad cross-section of NGOs representing constituencies with a direct interest in the discussions currently underway in the Standing Committee on Copyright and Related Rights regarding a possible international instrument protecting broadcasts and the rights of broadcasting organisations.

All of the undersigned have in the past expressed reservations about the discussions on a possible new Instrument in many respects. After closely examining the Chairman's Text – and the rights-based formulation which it centred on – we would submit for the consideration of delegations that the following fundamental principles should be at the heart of further discussions, and of any new Instrument which might proceed from them:

1 Any new instrument relating to broadcasting should protect the signal used to carry broadcast programmes only.

We note that there is effectively universal agreement with this concept amongst participating delegations, judging by previous meetings of the Standing Committee;

2 Copyright and/or neighbouring rights protections should be reserved to protect creativity – not signals. We are also encouraged by the many

delegations who have expressed this view;

3 As has been expressed by many delegations, **signal protection language, not that of copyright or neighbouring rights, is the most appropriate to protect the signals of broadcasters.** We note that

several delegations have put forward language along these lines, using formulations inspired by Article 2 of the Satellites Convention – a number of NGOs have used this same Convention as the basis for several modifications and additions to the Chairman's Text, which has been provided to delegations for their consideration separately;

4 It is essential that balance be maintained in the international copyright system – and that broadcasters' rights should not surpass those of other rights-holders, or those of the public.

We do understand that Contracting Parties to the Rome Convention might be concerned that a fundamentally signal-protection-based Instrument would leave them in violation of Article 22 of the Rome Convention – that Article 22 obliges Contracting States to Rome to use a rights-based formulation to provide greater rights – however we do not

believe this is the case. It would be very easy to argue that very comprehensive protection of signals based upon a *mutatis mutandis* use of Article 2 of the Satellites Convention language would constitute considerable further protection than Rome provides, were an instrument based upon such a structure to provide no further exclusive rights at all.

We are troubled by the number of minor reservations and notifications which the Chairman's Text provides. We would submit that this simply illustrates once again how little agreement on many points of significant substance exists, and as a result how much more consultation is required in order to move to the next stages of this process, if such stages are to be reached at all.

Perhaps more fundamentally, we support legal protection for broadcast signals until the point of reception and their initial fixation. We understand that the signals used to carry broadcasting content cease to exist upon reception by the receiver as the receiver renders the signal perceivable by viewers. Article 1(2) of the Chairman's Text recognizes that the Treaty is intended to cover only broadcasters' signals, and is not intended to provide rights that might conflict with copyright and related rights in program material incorporated in broadcasts. However, many of the rights provided in the draft Text, including the rights to reproduce (Article 9), distribute (Article 10), deferred transmission following fixation (Article 11) and make available to the public (Article 7), are not rights that can exist in signals per se, but are instead predicated on granting exclusive rights in downstream uses of the fixations of

signals. We believe that the Treaty is not intended to, and should not, extend to subsequent uses of fixed signals, because these may interfere with the overlapping copyright and related rights that already exist in the content of previously fixed broadcast signals.

The signal-protection-based approach that we recommend has further benefits:

1. It allows for a much simpler, and much shorter, Instrument to be developed whilst providing greater protection than a rights-based formulation – greater protection against piracy can be provided more comprehensively, and more fairly;
2. The interpretation of the new Instrument, and the provision into national law of Contracting Parties, should be much simpler, as there is no need to reconcile overlapping similar rights for the same beneficiaries which are embodied in the provisions of separate Treaties when giving force to the provisions of the new Instrument.

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