

AEPO

**The Association of European Performers' Organisations**

ARTIS GEIE

**The European Group of Performers' Collecting Societies**

BIEM

**The International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction**

CISAC

**The International Confederation of Societies of Authors and Composers**

EUROCOPYA

**The European Federation of Producers Collecting Societies for Audiovisual Private Copying**

FIA

**The International Federation of Actors**

FIAPF

**The International Federation of Film Producers Associations**

FIM

**The International Federation of Musicians**

ICMP/CIEM

**The International Confederation of Music Publishers**

IFJ

**The International Federation of Journalists**

IFPI

**The International Federation of the Phonographic Industry**

IMPALA

**The Independent Music Companies Association**

UNI-MEI

**The Media, Entertainment and Arts Section of Union Network International**

## Joint Recommendation of Rights Holders on the Protection of Broadcasting Organisations

Discussions in the WIPO Standing Committee on Copyright and Related Rights (SCCR)

June 2003

The undersigned organisations represent authors, music publishers, performers, phonogram producers and film producers. The right holders that these organisations represent have a direct interest in the discussions currently underway in WIPO regarding the protection of broadcasting organisations. They have closely and actively participated in the work that, on this subject, has been undertaken by the SCCR, and have already submitted a first joint position paper during the 7<sup>th</sup> Session of the SCCR (May 2002).

After the discussions that took place at the 8<sup>th</sup> Session of the SCCR, we remain strongly concerned with regard to the lack of clarity surrounding the most fundamental aspects of the possible new treaty: beneficiaries, scope of protection (object of protection and catalogue of rights) and relations with other right holders.

The beneficiaries of the possible new treaty

Clarity on this point is of fundamental importance to ascertain the commitments involved in any new treaty, including the national treatment obligation, and its effects on the whole system of copyright and neighbouring rights.

Some of the proposals on the table advocate an extension of the protection of a possible new treaty beyond broadcasting organisations to cover new players such as Webcasters (this is done either explicitly by defining a new category of right holders or implicitly because of the lack of clarity in the definitions used). We believe that these proposals have no justification and are particularly dangerous, as they have no clear boundaries and could cover numerous and different players, including

private individuals transmitting content from their homes.

We therefore support the wide consensus that emerged during the last SCCR meeting in favour of avoiding the creation of any new category of neighbouring right holders beyond the Rome Convention.

Thus, the undersigned organisations would like to stress once more that **a possible new international instrument in this area should be confined to the protection of broadcasting signals and of broadcasting organisations.** New services such as those based on the Internet are totally different in their nature and effect from the broadcast services of broadcasting organisations and cannot be addressed in the same context.

### The scope of protection of the possible new treaty

Consensus has emerged as regards two fundamental points: (i) the object of protection of the possible new treaty should be **the signal**, and (ii) the rights to be granted should be those required to **fight signal piracy**.

Meanwhile, discussions continue to drift towards rights that clearly do not protect the signal anymore (e.g. a right over the distribution or rental of fixations)

or that are not required to fight piracy but to exploit the content used by the broadcasting organisation (e.g. sweeping transmission and communication to the public rights).

This is at the origin of considerable confusion and seems to be partly based on the misconception that the possible new treaty should be parallel to the most recent WIPO Treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty). There is no justification or international precedent for such an assumption. Indeed, existing international instruments establishing the protection of broadcasting organisations (the Rome Convention, the Brussels Satellite Convention and the WTO-TRIPs Agreement) have never established a parallelism of rights between broadcasting organisations and other right holders and have clearly granted different forms and levels of protection. This is logical in view of the differences in the object of protection (signal versus content) and the required rights (protection of the signal versus protection of the content). It is also supported by the fact that broadcasting organisations are asking for a specific set of protection designed to meet their specific needs.

Thus, the undersigned organisations would like to stress

again that **new international standards of protection for broadcasters should only consist of carefully crafted provisions addressing the serious issue of signal piracy.** Bearing in mind the specifics of the object of protection and the nature of the main piracy threats that are put forward as reasons for updating protection, we would suggest to build upon the logic of Article 13 of the Rome Convention, that is the protection of the signal and of the unauthorised fixations of the signal.

#### Relations with other rightholders

The need to **ensure that new levels of protection for broadcasting organisations do not prejudice the recognition and the protection of the rights of authors, performers –including in their audiovisual performances - and producers** has been raised during the discussions at the SCCR.

This is a fundamental principle that cannot be ensured by means of a simple declaration in the preamble of the text or by the inclusion of a provision of a general nature. It has to be reflected in the definition and the scope of the rights contained in any possible new treaty.

Discussions cannot proceed without a serious examination of the effects that some of the new

proposed rights would have on the exploitation and licensing practices of the underlying content. It is essential to do so and, above all, to avoid the creation of cases where works, performances and phonograms can be exploited or controlled by broadcasters to the prejudice of those that create, perform, and produce them.

**The undersigned organisations therefore strongly urge the members of the SCCR to concentrate on these issues on the basis of the reasoning detailed above before seeking or assuming any agreement on the need for a new treaty or on its specific content. We remain at the disposal of the members of the SCCR to further explain and elaborate the views contained in this paper.**