

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

EUROKINEMA**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

IFTA

The Independent Film and Television Alliance

IMPALA

The Independent Music Companies Association

UNI-MEI

The Media, Entertainment and Arts Section of Union Network International

Joint Position of Right Holders on the Revised Consolidated Text for the Protection of Broadcasting Organisations

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

November 2004

The undersigned organisations represent authors, music publishers, performers, phonogram producers and film producers. The right holders represented are directly affected by the proposed Treaty on the Protection of Broadcasting Organisations currently under discussion under the WIPO auspices. The undersigned organisations welcome the revised Consolidated Text ("Text") prepared by the Chairman for discussion in the 12th session of the Standing Committee. We highlight below our appreciation of the Text and we emphasise those areas of the Text which continue to be of some concern to us.

The beneficiaries of the possible new treaty

The consolidated text continues to mention — now in brackets — protection for webcasts and webcasting organisations. The undersigned organisations welcome the bracketing of the protection for webcasting organisations. We see this as a positive first step towards recognition of the near-unanimous view of Committee members that the subject of webcasting should not be included in the Treaty. To fully re-

flect this near-unanimous view, we would submit that these webcasting provisions should be deleted from the Consolidated Text.

- **To this effect, we propose the deletion of Article 2(g) (Alternative C) and Article 3 par. (3), as well as references in the text to Art. 2(g).**

The scope of protection of the possible new treaty

Right holders have jointly and consistently expressed concerns about the rights proposed for the protection of broadcasters. While the general lines have been picked up and confirmed by delegations in the Standing Committee, they do not appear to be completely reflected in the Text. Changes made in comparison to the initial Text, and now proposed in footnotes to Art. 9, 10, 11, and 12, do not address these concerns and do not constitute a workable compromise.

In order to address the concerns of the undersigned rightsholders, we believe that the provisions should have the following three characteristics:

(i) Provisions tailored to protect against signal piracy

The protection granted should be drafted to create the basis to prevent and fight signal piracy. **To this effect, a number of the listed rights (for example the making available right as well as the distribution right) are not required.** Granting such rights cannot contribute to achieve protection of broadcasts against signal piracy.

- In the light of the above, we would propose that Art. 10 and 12 be deleted.*

Moreover, none of the rights provided should extend to the exploitation of fixations that have been authorised by the broadcaster itself. In this context, the new options added in the Consolidated Text as footnotes to Art. 9, 10, 11, and 12 are not helpful. The 'two tiers' proposed for these rights do not in effect 'combine the approaches of the two alternatives' – as stated in the explanatory text – but rather, are in direct conflict with one another. Based on such 'two-tier' rights, the international network of protection and the requirement to provide national treatment would potentially extend to the conferring of full exclusive rights. Providing a full exclusive right to authorize as an alternative to a right to prohibit meets the same concerns as merely providing a full exclusive right to authorise.

- Accordingly, the proposals found in the footnotes to Articles 9, 10, 11 and 12 should, in our respectful opinion, be rejected.*

If it is proven absolutely necessary to grant rights which are linked to fixations, then we believe that only the use of unauthorized fixations should be covered.

As a consequence of the above, we suggest the following:

- For Article 9 an amended version of Alternative O that would read: "Broadcasting organisations shall have the right to prohibit the reproduction of unauthorized fixations of their broadcasts."*
- If article 10 and 12 are retained at all they should be phrased in the manner suggested in Alternative Q and S respectively.*
- If Article 11 were retained at all, it would read: "Broadcasting organisations shall have the right to prohibit the transmission from unauthorized fixations of their broadcasts."*

(ii) Provisions proportional to the stated need

The undersigned right holders' organisations note with continuing concern that Article 6 and 11 still give broadcasting organisations sweeping exclusive transmission rights that are in most cases not even enjoyed by holders of rights in the transmitted content. We submit that such an unbalanced standard of rights will create a situation where broadcasters alone dictate the rules and set the scene, in most cases in the absence of equivalent rights for holders of rights in the content.

- ***As a consequence, we would urge governments to reconsider Art. 11 and to explore for Art. 6 mechanisms other than an exclusive transmission right to protect broadcasting organisations against signal theft through retransmission.***

updated protection for holders of rights in the content at national level would lead to an unacceptable and unprecedented situation.

- ***As a consequence we would welcome Alternative AA of Article 24 and Alternative CC of Article 26.***

(iii) Provisions which recognise existing Treaty obligations

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It would appear to us that the Text repeats rights already provided in the Rome Convention (1961) and draws additionally from the rights provided in the WCT and WPPT. ***In particular the rights in Art. 6, 10, 11 and 12 that are additional to those already provided under the Rome Convention, raise grave concerns.***

We remain at the disposal of any member of the SCCR to further explain and elaborate the views contained in this paper.

- ***The approach of providing a catalogue of additional exclusive rights should be resisted and, instead, different ways for providing protection should be explored.***

Relations with other right holders

The undersigned organisations have stressed consistently the need to avoid provisions that would prejudice or compromise the recognition and protection of the position of other right holders.

We reiterate that it is essential to include the link to the WPPT and the WCT in Article 24, alternative AA. Many countries around the world have not yet acceded to the WCT and WPPT. Updated protection for broadcasting organisations without