



WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

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**JOINT STATEMENT by eIFL: Electronic Information for Libraries &
IFLA: International Federation of Library Associations**

**Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcast
Organizations including a Non-Mandatory Appendix on the Protection in
Relation to Webcasting**

It is essential that any draft treaty on the Protection of Broadcast Organizations limits itself to its intent, i.e. to prohibit **signal piracy**, and that it does not contain sweeping new powers for non-creative endeavors which encroach unnecessarily on a multitude of sectors, activities and communities. These include creators and rightholders of copyright protected content, innovative technology companies, and millions of users of protected and unprotected content.

We therefore support the **NGO joint statement** containing Recommendations of Certain NGOs Regarding the Draft Basic Proposal which is available on the table outside this room. We recommend that Member States give full consideration to it since it has many good ideas and makes a constructive contribution to the debate.

As stated by the delegation of Chile (PCDA/1/2) in the First Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), the **public domain** provides a fertile source of content on which creators can build new works, therefore it must be protected from erosion especially in the digital environment. The NGO Joint Proposal for Article 3(1) achieves this by the following wording:

“The protection granted under this Treaty extends only to signals used for the transmissions by the beneficiaries of the protection of this Treaty, and not to works and any other subject matter carried by such signals.”

We welcome the statement in the Preamble to the draft Basic Proposal for the need to maintain a balance between the rights of broadcasting organisations and the larger public interest as is reflected in Article 12 on Exceptions and Limitations. However, the wording of Article 12(1) does not preclude the situation that the signal gains more protection than the content, in particular public domain content. It seems to us to be unreasonable and unjustified that the vehicle for the content should gain more protection than the content itself. We must ensure that the exceptions and limitations concerning the content always take precedence over the protection of the signal. Equally licences granted by content owners for beneficiaries such as libraries, cultural and educational institutions etc. must not be prevented by signal protection

or blocked by technological protection measures (TPMs) protecting the signal as this would create huge problems for libraries and archives. These problems were elaborated in IFLA's intervention during the First Session of the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) of February 20-24, 2006, which is recorded in paragraph 76 of the Revised Draft Report (PCDA 1/6/Prov.2).¹ An extract is quoted below:

“...Libraries had already experienced how TPMs in e-books, e-journals, databases and multi-media products, such as film, broadcasts and sound recordings, removed users' rights to avail themselves of statutory exceptions and limitations to copyright, that included the rights of visually impaired people to have accessible copies made for them or to deploy read-aloud software. The Representative further stated that the worlds' great research libraries needed to keep digital works in perpetuity and be able to transfer them to other formats and platforms, in order to preserve them for the public domain, and make the content fully accessible and usable after the rights had expired. The Representative said that if the product was no longer made, there would be no new TPMs compatible with new operating systems and no facilities available to allow libraries to migrate content to new platforms. The Representative added that TPMs did not cease upon expiry of copyright, so the content could remain locked, even when no rights subsisted. By then the ownership of the rights might be impossible to trace, rendering the product orphaned and without a key. The Representative stressed that obsolete TPMs rendered digital content inaccessible to future generations of researchers, and that for libraries charged with creating and maintaining a patrimony of public domain works in the digital environment, that was serious. The Representative suggested that a low cost solution would require the publishers, who digitized public domain works, to furnish the library which provided the material with clean digital copies, so that not only would the library preserve the digitized works for prosperity and migrate them to new platforms, but could also make those public domain works freely available on an “as-is” basis to the public on library servers...”

Finally, we warmly welcome the proposals by Brazil, Chile and Peru concerning exceptions and limitations for libraries, archives, cultural institutions such as museums and for educational purposes. We recommend that they are included in the Treaty or in an Agreed Statement but not as an exhaustive list. Their inclusion would remind the Contracting Parties of the importance of implementing them in their national legislation.

We are asking Member States to adopt our suggestions so that libraries and archives can fulfill the role entrusted to them, which is to preserve and make available our cultural heritage to facilitate creativity, education and economic growth.

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¹ http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=59752