



The Center for International Environmental Law

WIPO Standing Committee on Copyright and Related Rights (SCCR-18) – May 25th-29th, 2009

Issue 1: Broadcast Treaty

The debate/negotiations have spanned ten years in the SCCR. Proponents are arguing that a Treaty covering Broadcasting, Cablecasting and Webcasting is necessary in order to prevent piracy and/or the theft of signals. No consensus was reached on a proposal by the Chair at SCCR-17. Monday of the five-day SCCR was devoted to an information session on the need for a broadcast treaty, with the vast majority of the agenda devoted to industry perspectives.

Opponents of the treaty are concerned about the creation of a new set of IPRs for merely packaging and distributing content. There is a concern that the creation of this new IPR would, broadly speaking, hinder access to information. In particular, there is concern that access to information and competition levels would be negatively impacted by the creation of new commercial rights for broadcasting. Moreover, the provision of these new rights is not congruent with the underlying purpose of IPRs: stimulating innovation, encouraging creativity, and/or providing consumer protection. Questioning its necessity, some commentators have pointed to the US, who, despite never ratifying the 1961 Rome Convention (the first agreement to establish, *inter alia*, international minimum standards of protection for broadcasting organizations), has enjoyed tremendous success in TV and other forms of broadcast media.

At SCCR-18, the Committee reaffirmed its willingness to work on the protection of broadcasting organizations on a signal-based approach. The EU continued to display strong support for the creation of a broadcast treaty. The US, recognizing and apparently frustrated by the lack of progress on the broadcasting component, had previously pushed for a webcasting treaty that is not linked to IPRs over broadcasting content. In addition, the US and several other Member States emphasized the need for agreement on the scope of the broadcast treaty, before the convening of a proposed high-level diplomatic conference on the issue. India, while having previously voiced opposition to the inclusion of webcasting, does support the creation of right in broadcasting both prior to and during transmission.

Given that the objectives, scope, and object of protection need to be agreed-upon before a high-level diplomatic conference is convened, the likelihood of a future political agreement does not appear likely. However, the failure to reach any agreement after ten years on the SCCR agenda will not reflect well on WIPO. Thus, it appears unlikely that the issue will disappear from the SCCR agenda anytime soon.

Issue 2: Exceptions and Limitations

At the 2008 General Assembly, the issue of Exceptions and Limitations to Copyright was elevated in importance, rising to the level of two perpetual issues before the SCCR: AV and Broadcast protection. Emphasized at previous sessions of the SCCR was the lack of Exceptions and Limitations (Ex-Lim) for the disabled, in particular to provide the visually impaired and otherwise reading disabled persons (VIP) cross-border access to material that is copyright protected. Also raised at previous sessions was the need to have international minimum Exceptions and Limitations for Education, Libraries, Research, and Technology Transfer.

Some developing countries do not have Ex-Lim for educational or disabled-access purposes. The US expressed its belief that the three-step test of the Berne Convention offers sufficient protection and flexibility, and that a new treaty or norm-setting activities by WIPO are not required. Rather, the US

encouraged the exchange of national experiences by Member States, providing the US Copyright Law's "fair use" provision as an example.

A treaty proposed by the World Blind Union at SCCR-17 (WBU Treaty) was supported by several developing nations, although it was not formally tabled by those who expressed support. Some industrialized nations expressed concern over the WBU's proposed treaty and/or expressed the need for additional time for analysis. The publishing industry, in particular, is concerned about the potential leakage of unprotected content from non-profit to for-profit markets.

However, at SCCR-18, the WBU Treaty was officially proposed by Brazil, Ecuador, and Paraguay. The African Group, while sympathetic to the needs of the VIP, expressed its strong desire to see the broader Exceptions and Limitations – Education, Library Access, Research, and Technology Transfer – included in any proposed Treaty. Industrialized Nations stated that they still needed additional time for national consultation on the WBU Treaty.

The Secretariat is undertaking several studies and/or analyses with respect to Exceptions and Limitations. A study on Exceptions and Limitations for the benefit of education is forthcoming. The Committee also requested an analytical document identifying the most important features of Exceptions and Limitations identified in previously studies, such as the Report by Ms. Judith Sullivan (SCCR/15/7), with the hope of categorizing national solutions. Chile, Argentina, the Russian Federation, and Greece provided additional information to the Committee on their latest domestic legislation in order to update these previous WIPO studies. Also, Colombia and Ecuador presented information on their exceptions-limitations to copyright, emphasizing the Berne Convention and TRIPS, respectively.

Moreover, SCCR-18 also discussed the draft survey on Exceptions and Limitations to be completed by Member States. The draft survey lacked follow-up inquiry, especially regarding the application of Exceptions and Limitations in domestic activity. In addition, many questions would not give a clear yes/no answer, and a means of elaboration needed to be provided. Given the vast range of Member State suggestions for the survey, comments will be collected and the draft survey revised prior to the next session of the SCCR. It was noted that the 52 question draft survey was disproportionately distributed into four topics: (1) general questions on limitations-exceptions; (2) educational activities; (3) libraries and archives; and (4) disabled persons. A fifth topic, "the implications of digital technology in the field of copyright, including as they relate to social, cultural and religious Exceptions and Limitations," is to be added to the revised draft survey. In addition, several Member States sought to have technology transfer and cross-border implications included in the revised draft survey.

Issue 3: Audiovisual (AV) Performance Protection

The issue stems from the 1996 WIPO Performances and Phonographs Treaty's failure to harmonize the rights of AV performers. There is some degree of overlap with the other two issues before the SCCR-18, discussed above.

Both the US and the EU support a treaty on the international protection of AV. However, the EU has recognized moral rights in artists, whereas the US does not. Additional issues between the two parties are: (1) national treatment; (2) the scope of the right over public broadcasts; and (3) the transfer of rights. This latter was the only article of 20 on which parties did not reach consensus in a diplomatic conference held on AV protection in 2000.

In hopes of reaching a compromise, intersessional consultations and seminars took place between interested parties. The Committee asked for AV performance protection to remain on the agenda for the next SCCR, asking the Secretariat to prepare to a background document on the main issues/positions, and to hold additional consultations with Member States.