

Statement of the German Association for Intellectual Property and Copyright Law on the revised draft basic proposal for the WIPO Treaty on the Protection of Broadcasting Organizations (SCCR/15/2 of 31 July 2006)

The German Association for Intellectual Property and Copyright Law (Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht e.V), also known under its acronym “GRUR”), is a recognized as non-profit making scientific association of all practitioners and scientists active in the field of industrial property and copyright. According to its statutes, it has as its object the scientific further education, the development of industrial property and copyright and the support of the legislative organs and government agencies in matters pertaining to industrial property and copyright.

The German Association for Intellectual Property and Copyright Law (GRUR) welcomes the initiative of the WIPO for the conclusion of a new international treaty on the protection of broadcasting organizations and considers the early convening of a Diplomatic Conference to be necessary. After the protection of authors, performing artists and recorded music media manufacturers in the digital age was already improved in 1996 through the WCT and the WPPT, a corresponding protection also of the broadcasting organizations is necessary for the effective fight against worldwide piracy. At the same time, the German Association has no reservations about restricting the protection to broadcasting and cable organizations in the traditional sense in the Treaty now envisaged and regulating the protection of the broadcasts circulated over the Internet (webcasting) at a later date.

The following statement is concentrated on a few fundamental aspects:

1. Relation to Other Conventions and Treaties

In the view of the German Association, the relationship of the new Treaty on the protection of broadcasting organizations to the Treaty of Rome and to copyright protection should be regulated in accordance with Art. 1 of the Rome Convention (1961) and Art. 1 WPPT.

2. Defense of Competition

The German Association considers a separate regulation in the new Treaty to prevent the abuse of intellectual property rights or the recourse to restrictive trade practises to be unnecessary. For this, it would be sufficient to point out in the preamble of the new Treaty that Art. 40 of the TRIPS Agreement shall remain unaffected.

3. Scope of Application

The Scope of Application of the new Treaty should be in accordance with the Rome Convention and the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, i.e. the signal of the broadcasting organization. In this regard, it is important, as proposed in Art. 16 of the draft, also to include in the protection those signals used by broadcasting organizations that are not intended for direct reception by the public (so-called “pre-broadcast signals”).

4. National Treatment

The national treatment principle should apply for the protection of broadcasting organizations under the new Treaty in the same way as under Art. 4 WPPT. The obligation of national treatment should however be restricted to the exclusive rights specifically granted in the new Treaty. Further rights that Contracting Parties do now or may hereafter grant to their nationals are thus not intended to be covered by the obligation of national treatment.

5. Scope of protection

In the view of the German Association, the scope of protection of the broadcasting organization should encompass the Right of Retransmission, the Right of Communication to the Public, the Right of Fixation, the Right of Reproduction, the Right of Distribution and the Right of Transmission Following Fixation. Furthermore, broadcasting organizations shall enjoy the exclusive right of authorizing the making available to the public of their broadcasts from fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

6. Limitations and Exceptions

The limitations and exceptions in the new Treaty should be regulated in accordance with Art. 16 WPPT, also taking into account the three-step test. An individual enumeration of the limitations permitted is not recommended.

7. Term of Protection

The German Association considers a term of protection of 50 years under the new Treaty to be adequate even for the protection of the broadcasting organizations, in conformity with the corresponding provision in Art. 17 of the WPPT concerning the term of protection of performer's rights.

8. Obligations Concerning Technological Measures

The obligations concerning technological measures should be regulated as in Art. 18 WPPT.

9. Obligations Concerning Rights Management Information

These obligations should also be regulated in accordance with Art. 19 WPPT.

10. Provisions on Enforcement of Rights

The German Association would welcome it if in the same way as under Art. 23 WPPT

the obligation of the contracting parties on the regulation of the law enforcement were also to be included in the new Treaty on the protection of the broadcasting organizations.

11. Reservations

No reservations to the Treaty by the Contracting Parties should be permitted.

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