

BROADCASTING COPYRIGHT & A NEW BROADCASTERS

TREATY Caribbean Broadcasting Union

On 4-6 July 2005, the diplomatic representatives of W.I.P.O member countries are expected to meet in Cartagena, Colombia to consider the issue of a new Broadcasting treaty, which will hopefully lead to the convening of a Diplomatic Conference on this new Broadcasters Treaty.

Existing international protection of broadcasters is now about 44 years old, and dates back to when the Rome Convention was adopted. This protection reflects the technical, regulatory and competitive situation of 1961. The landscape of 2005 has changed dramatically since then, rendering the Rome Convention totally inadequate today.

In seeking to address the question " Why do Broadcasters need a new Treaty?" we focus attention on 5 elements:

- Treaty Modernization
- Economic Loss
- Property Protection
- Technological Change
- Structural Industry Change

Today, we see a multiplicity of new broadcasters and specialist programme channels, some local, some national and some transnational or transborder in character. Their sources of funding are also diverse; ownership structures are often complex; but the fact that a particular local broadcaster may have as its ultimate owner a large corporate player makes no difference to the common obligation for all broadcasters to provide services that satisfy their own viewers and listeners, to generate income in order to finance these services and to invest in content/infrastructure according to objectives set at the local level and a business plan specific to their own particular market.

Technological developments over the last decades have increasingly exposed broadcasting organizations to misappropriation of their signals both within and, in particular, across borders. Their daily programme output must be planned, produced and/or acquired, scheduled and transmitted. The infrastructure resulting in the ability of the general public to receive broadcasters' programme-carrying signals requires major technical, organizational and financial investment by broadcasters. In today's competitive world, broadcasters have demonstrated how they need as never before to have proper means to protect and build on this investment, enabling them to decide when and how they wish to authorize or prohibit use by others of their signals in upstream or downstream markets. Continued provision by broadcasters of programming to ensure a content-rich Information Society, including information for the general public on facts and

events from all spheres of public life, is endangered as long as protection of signals is insufficient.

In 1996 the WC 'I' and WITT updated rights of authors, as well as performers and producers of phonograms. Since then, thorough discussion on updating broadcasters' rights has taken place in 11 sessions of the WIPO Standing Committee on Copyright and Related Rights (SCCR) and in regional consultations. Over 7 years, more than 10 governments from both developed and developing countries in different parts of the world have submitted proposed treaty texts for discussion. The overwhelming majority of governments agree that it is now high time to adopt a new Treaty to update broadcasters' protection.

Inadequate protection means that others may freely profit from a broadcaster's substantial and costly organizational and technical investment in its signal. In Canada it is estimated that the loss of revenues to the TV industry is \$400 million per year from satellite signal theft alone. A study by the Cable and Satellite Broadcasting Association of Asia has found that signal theft is increasing at a rate of 11% a year in Asia. Of course, these examples only represent the tip of the iceberg, and the overall losses worldwide are impossible to estimate.

To appreciate the enormous implications of lack of proper protection for broadcasters' signals, just look at the example of broadcasts of sports events, when broadcasters acquire exclusive rights from event organizers. Such rights can easily cost millions, in any currency. When such broadcasts are taken without authorization and shown on other channels, this unfairly reduces the value of the broadcaster's rights, its advertising revenue (and reputation) will be substantially reduced, and income from sublicensing will no longer be a feasible prospect. In the extreme, if misappropriation of signals were to become generalized due to a lack of sufficient legal remedies against it, this could even lead to broadcasters giving up making major investments in sport.

The world of broadcasting has fundamentally changed since 1961. Then, in most countries there was only one TV broadcaster indeed in the Caribbean there were none. Since then, technology has provided so many innovations: e.g. FM, stereo, audio and video recorders, colour, satellite, cable, digital, on-line delivery. Governments' proposals for the new Treaty, reflected in the consolidated text now under discussion, therefore seek to build on the existing rights of broadcasters so as to extend protection to deferred (not just simultaneous) transmission to the public by any type of technical means (not just wireless), communication to the public in places accessible to the public, a broad reproduction right, distribution, making available on-demand. Adequate and effective protection is foreseen for pre-broadcast programme-carrying signals (i.e. signals sent via a telecommunications link, e.g. a news exchange feed, to broadcasters for use in their broadcasts). Provision is also made for obligations concerning technical measures and rights management information.

Broadcasting involves many aspects, of which telecommunications (e.g. allocation of frequencies) and the broadcasters' neighbouring rights (rights related to copyright) are but two. The neighbouring rights protection was recognized internationally for performers, record (phonogram) producers, and broadcasters 43 years ago in the Rome Convention, and national laws all around the world give such protection to broadcasters. The approach of the Brussels Satellite Convention (which anyway addressed only one specific problem) is inadequate notably because it left it open to Contracting States to implement measures under either public or private law. So there has never been any clarity or uniformity in its application, and broadcasters are unable to get an injunction from the court when they urgently need one. You won't get a telecoms authority rushing down to court on behalf of a broadcaster against a foreign telecoms authority because pre-broadcast signals have been taken from a telecoms satellite without authorization of the broadcaster!

The essential purpose of the Treaty is to update the rights of conventional broadcasting organizations in their broadcast signals. A broadcast signal is an electronic signal carrying radio or TV programmes for reception by the public, irrespective of the origin of such programmes or the ownership of the content thereof.

For example, when a radio broadcaster broadcasts a concert given by its own - extremely costly -- internationally renowned entertainer, or top steel bands or other bands representing different styles of popular local music, why should its competitors or anyone else be free, without the consent of the broadcaster, to relay that broadcast, live or deferred, by whatever technical means, and without making any payment? When a TV broadcaster pays a huge sum of money to broadcast a football match, why should its competitors be able to relay that broadcast (or pre-broadcast satellite signal of the match intended only for use in the authorized TV broadcaster's broadcast), live or deferred, in full or in summary form, also by cable, satellite or Internet, without having to ask for permission or to make any payment yet probably also eliminating the broadcaster's original advertising and replacing it with their own'?

Piracy is not a legal term, nor is it precise. It is sometimes used to refer to unauthorized use of protected copyright or neighbouring rights material. Here are some examples of unauthorized use of broadcast signals experienced by broadcasters in various countries:

- retransmission of live or recorded broadcasts by a pirate station operating in a neighbouring country
- commercial sale to the public of videocassettes of unauthorized copies of a sports programme, in the broadcaster's country and abroad
- distribution of copies of broadcast programmes via Internet auction sites

cable distribution of complete broadcast programmes in the broadcaster's neighbouring country or countries within a satellite footprint

sale to the public of records of a music concert derived from an unauthorized reproduction of the soundtrack of a live television broadcast

- rental. of unauthorized recordings of a television broadcast by a video club
- offering the "service" of making an unauthorized copy of a pre-selected television programme with a view to the sale thereof in video form
- commercial use by a business firm of privately-made copies of a radio broadcast
- manufacture, importation and distribution of pirate decoders and/or smart cards specifically designed to permit unauthorized access to encrypted television services
- showing of unauthorized copies of television programmes to customers in various types of shops, or to the public at fairs or exhibitions
- sale to the public of unauthorized recordings of broadcast programmes by a dealer in radio or television equipment

broadcasting or cable distribution of pre-broadcast satellite signals, which carry sports and other types of programmes

- publication in newspapers, magazines and books of still photos taken from the television screen, particularly of broadcasts of news and sports programmes

retransmission of live broadcasts of football matches via the Internet.

in essence, there is a strong and obvious case to be made for the effective protection of broadcasters rights, as contemplated in the New Broadcasters treaty. It is therefore of paramount importance that CARICOM Governments "take their seat at the table" when such a bill is discussed and framed, as well as a presence in the voting for its adoption at the Diplomatic Conference.

the Caribbean Broadcasting Union has held the remit for Caribbean Broadcasters for over ten (10) years, within the \YIP() forum and has been involved in preparing the broadcasters treaty and the language contained therein.

It is now for the leadership in Caribbean countries, to ensure that their representative roles are undertaken when WIPO convenes a diplomatic conference to hear and ratify the new treaty.

The (BU continues to commend our regional attention to the growing importance of Intellectual Property and copyright and the Legal and Economic implication for the development of the creative industries sector without our own economic equation.