

Whilst we do compliment the Chairman of the SCCR on the work he is doing to achieve consensus on a text which is compliant with the decision of the WIPO General Assembly in September 2007, we believe that version 1.0 of his Non-Paper, dated 8th March 2007, remains a long way from achieving either objective.

In an effort to remain constructively engaged in the negotiations, and in order to help facilitate a consensus between the very widely differing views of SCCR member-states, we submit the following summary of our initial concerns on the non-paper for your consideration:

- 1. The text remains very strongly based around the use of rights to protect signals, and we do not believe this is either necessary or appropriate, nor congruent with the WIPO General Assembly's decision.** Protecting signals does not require rights at all; other instruments such as the Brussels Satellites Convention demonstrate this point decisively. As has been frequently pointed out over the many years of this negotiation, the entire text, not just certain articles, should be congruent in the use of signal-based conceptions and protection models, which can only facilitate implementation in Contracting Parties' legal systems in ways congruent with the treaty, and as a result help to create a more harmonized international landscape.
- 2. The objective of preventing theft or misappropriation of signals has been stated by many member states, and even by the broadcasters themselves, as the objective of the treaty - yet the draft does not make this clear -** indeed, in many respects, it does the opposite. Again, a congruent approach throughout the draft is essential for producing a harmonized landscape across borders for an increasingly multi-national industry. This is not facilitated by a treaty that lacks clarity on the nature and scope of what it is trying to protect, and the manner of doing so.
- 3. It is essential that the treaty recognize that the simple reception of broadcasts by the public is an inherently lawful activity.** This requires specific recognition in the treaty that the home and personal network is a 'safe space,' and that private uses made of a lawfully-received broadcast irrespective of the nature of that use are automatically lawful.

4. **It is submitted that this treaty must be much more future-proofed than the present draft. It must not inadvertently provide a multiple-decades advantage to one model of transmitting programmes over new entrants seeking to do the same fundamental thing.** Two modifications are essential in order to achieve this: first, an exception to protect intermediaries who are integral to a signal reaching the public and who are performing an essentially lawful activity in doing so. Secondly, the treaty should not extend to the Internet – especially not in the way in which this draft proposes, where in one part of the draft instrument all Internet activities are excluded, and then in another, retransmission over the Internet is covered.
5. **The current draft proposes a protection regime in Article 10 that could literally be used to brand every personal computer in the world as an infringing device.** We do not believe such a provision can be anything but harmful and strongly suggest that it be removed. Further, the other clauses of Article 10 are in our view unnecessary – signals carrying content do not require additional layers of technical protection measures on top of those in use to protect the programmes they carry – and indeed, there are significant costs and risks to doing so. Mandating technical protection regimes is likely to interfere with innovation in a whole range of consumer devices in ways entirely unnecessary to protecting signals from theft or misappropriation.

We remain at the disposal of all interested parties in respect of the ideas we express here. We anticipate developing further views and elaboration on these points as we get closer to the next Special Session of the WIPO SCCR.