



**STATEMENT OF THE ELECTRONIC FRONTIER FOUNDATION
TO THE WIPO SCCR 22nd SESSION
21 June 2011**

Mr. Chair, congratulations on your election and thank you for the opportunity to present the views of our organization and our more than 14,000 members worldwide.

EFF is one of the signatories of the Joint Statement of the many civil society non-governmental organizations, cablecasters and technology companies opposing an intellectual property rights based Broadcasting Treaty that is available outside. As we have noted at previous committee meetings since 2004, protection of signals does not require the creation of intellectual property rights. Granting broadcasters and cablecasters intellectual property rights that apply independently of copyright in the programs being broadcast, together with legally enforced technological protection measures, raises concerns for access to public domain works, will add complexity to copyright clearance regimes for creators of podcasts and documentary films, and interfere with consumers' ability to make in home recordings permitted under national copyright law. Granting broadcasters and cablecasters exclusive rights to authorize retransmissions of broadcasts over the Internet will also harm competition and innovation by allowing broadcasters and cablecasters to control the types of devices that can receive transmissions, and create new liability risks for internet intermediaries that retransmit information on the Internet.

We appreciate the recent efforts to clarify the nature of the problem that we are trying to solve, including the most recent study by Professor Picard et al, the honorable delegate of Switzerland's non-paper on possible elements of a treaty in SCCR/22/11, and the new proposal from South Africa in SCCR/22/5. However, we believe that they only highlight the need for clearer thinking about an approach that is truly signal-based and that does not create overlapping rights in the works being transmitted.

While we welcome the statement in paragraph 13 of the non-paper that protection should extend only to transmissions and not to the copyright-protected works being transmitted, nor works in the public domain, we note that is inconsistent with other elements of the non-paper that require protection of the *content* being transmitted. For instance, paragraph 10 provides that protection would be provided under copyright or related rights, and paragraph 11 would require extending protection to broadcasters of the visual and sound elements of the programs in which copyright owners own the copyright. In addition, paragraphs 14,15 and 16 of the non-paper would indisputably extend the treaty to the Internet, and raise the same concerns about impeding podcasting and citizen broadcasting on the Internet, and creating new liability for Internet intermediaries and consumer electronics device manufacturers, which will have a significant detrimental impact on downstream innovation and competition that are raised by the current treaty draft in SCCR/15/2.

In short, the recent proposals have not resolved any of the concerns that have been raised previously. No one disputes that signal piracy is a serious issue that needs to be addressed; the disagreement is how to address it in a way that is faithful to the 2007 General Assembly's mandate and that does not cause significant harm to citizens, and all the other stakeholders in the Internet economy. We continue to believe that the preferable model for addressing these issues is the narrower signal-based approach in the Brussels Satellite Convention.

We listened with interest to the comments from the honorable delegate of South Africa this morning about whether the treaty is in the public interest. While we welcome the recognition of the need for effective exceptions and limitations to protect the public interest, we respectfully

believe that the correct way to assess this is for Member States to consider the impact of this treaty on the full range of stakeholders who will be affected, including all those who use the Internet.

We strongly support evidence-based policy-making and norm-setting, and were heartened to hear the comments from the honorable delegate of New Zealand on Professor Hargreaves' report on this point. We note that no justification has been provided for granting broadcasters exclusive copyright-like rights for transmitting information in which they have had no role in creating. As noted in both the 2006 UNESCO study and in the recent third study on the socio economic aspects of broadcasting by Professors Picard et al. an intellectual property rights based treaty is likely to disadvantage the public by reducing content currently available, and by increasing costs for acquisition of material.

We also listened with interest to the calls for revising the 2007 General Assembly's mandate to deal with technological developments. In our view, granting incumbent broadcasters rights over Internet retransmissions is likely to add unnecessary complexity to copyright clearance regimes and harm new forms of citizen broadcasting on the Internet, such as podcasting, at a time when it is not clear what the future of broadcasting will be. We note the critical role of citizen journalism on the Internet, as compared to traditional broadcasting, in disseminating information about events in the Arab World this year. We also wish to remind Member States about the Open Letter to WIPO from 20 webcasters in 2004, and the Open Letter to the June 2007 Second Special Session of this committee from over 1500 podcasters from around the world, expressing their concerns about the draft rights-based treaty.

We respectfully urge Member States to consider the impact of a rights-based treaty on consumers, citizen broadcasting on the Internet, competition and innovation, and not just protection of broadcasters' and cablecasters' analog business models in your deliberations on the proposed treaty.

Thank you for your consideration.

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