

SUBMISSION OF THE UNITED STATES OF AMERICA TO THE
WIPO STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

The United States is pleased to make this submission of proposed definitions to cover broadcasting-like activities over computer networks, together with an Explanatory Memorandum. This is the third submission the United States has made to the Standing Committee on Copyright and Related Rights on the protection of the rights of broadcasting, cablecasting and webcasting organizations. In October 2002, the United States submitted its first proposal to this Committee (SCCR/8/7, October 21, 2002) which set forth the initial position of the United States on this issue. In June 2003, based on discussions within the prior Standing Committee meetings, the United States submitted a revised proposal (SCCR/9/4 Rev., May 1, 2003). Both of the proposals submitted by the United States have been widely discussed during subsequent meetings of the Standing Committee. During the Fourteenth Session of the Standing Committee in May 2006, the Chair requested new proposals on the issue of “webcasting” to be submitted by August 1, 2006. Since the May Standing Committee meeting, in response to concerns and questions raised at prior meetings and after further consideration of the issues and discussions with interested parties, we have amended our proposal to clarify the meaning and scope of the protection for organizations which transmit signals over computer networks in the same manner as broadcasters and cablecasters. We hope these changes stimulate further discussion and facilitate achieving a broader agreement on the objectives to be attained.

United States of America
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(a) “netcasting” means the transmission by wire or wireless means over a computer network, such as through Internet protocol or any successor protocol, for simultaneous or near-simultaneous reception by members of the public, at a time determined solely by the netcasting organization, of sounds or of images or of images and sounds or of the representation thereof,

- (1) that are of a program or programs consisting of pre-recorded, scheduled audio, visual or audiovisual content of the type that can be carried by the program-carrying signal of a broadcast or cablecast; or
- (2) that are of an organized live event transmitted concurrently where the organizer of such event has granted permission to transmit the event; or
- (3) that are also being cablecast or broadcast at the same time.

If encrypted, such transmissions shall be considered netcasting where the means for decrypting are provided to the public by the netcasting organization or with its consent.

(b) “netcasting organization” means the legal entity that takes the initiative and has the responsibility for the assembly and scheduling of the content of netcasts.

Agreed statement concerning these definitions: The scope of the definition of “netcasting” is intended to be limited to transmissions over computer networks carrying programs consisting of audio, visual or audio-visual content or representations thereof which are of the type that can be, but are not necessarily, carried by the program carrying signal of a broadcast or cablecast, and which are delivered to the public in a format similar to broadcasting or cablecasting. By its terms, “netcasting” does not include merely providing access to audio or video content that is not pre-recorded for purposes of transmission via broadcast, cablecast or netcast.

Explanatory Note of Proposed Definitions

In response to the request from the Chair of the 14th Session of the Standing Committee on Copyright and Related Rights, the United States submits these proposed definitions to clarify the scope of the protection for organizations which transmit signals over computer networks in the same manner as broadcasters and cablecasters. In proposing that the treaty cover “webcasting,” the United States has never intended that protection be afforded to the ordinary use of the Internet or World Wide Web, such as through e-mail, blogs, websites and the like. We intended only to cover programming and signals which are like traditional broadcasting and cablecasting, i.e. simultaneous transmission of scheduled programming for reception by the public. The proposed definitions are intended to make that narrow scope more clear.

The proposed definitions use a new term, “netcasting,” to describe computer-based transmission of signals. This is intended to avoid confusion with the old term “webcasting,” which unnecessarily implied that ordinary activity on the World Wide Web would be covered by the definition. The substance of the definition modifies the definition in the current draft proposal by drawing from the definition of broadcasting over the Internet as used in United Kingdom law protecting broadcasting organizations.

With respect to the scope of protection and other provisions applicable to netcasting, the United States continues to believe that the protection for netcasting should be the same as that provided for traditional broadcasters and cablecasters, and that any such protection should be only what is necessary to protect against signal piracy. To that end, we look forward to discussion of the appropriate level of protection for netcasting with the benefit of the discussions from the next meeting of the Standing Committee that addresses traditional broadcasters.