

AMD

ADVANCED MICRO DEVICES

AmericaFree.TV

AT&T

BSPA

BROADBAND SERVICE PROVIDERS
ASSOCIATION

CC

CREATIVE COMMONS

CCIA

COMPUTER AND COMMUNICATIONS
INDUSTRY ASSOCIATION

CDT

CENTER FOR DEMOCRACY &
TECHNOLOGY

CEA

CONSUMER ELECTRONICS ASSOCIATION

CFA

CONSUMER FEDERATION OF AMERICA

CILIP

THE CHARTERED INSTITUTE OF LIBRARY
AND INFORMATION PROFESSIONALS

CIPPIC

CANADIAN INTERNET POLICY AND
PUBLIC INTEREST CLINIC, FACULTY OF
LAW, UNIVERSITY OF OTTAWA

CPSR-Peru

CPTech

CONSUMER PROJECT ON TECHNOLOGY

CTIA

THE WIRELESS ASSOCIATION

DELL

DELL INC.

EBLIDA

EUROPEAN BUREAU OF LIBRARY,
INFORMATION AND DOCUMENTATION
ASSOCIATIONS

EFF

ELECTRONIC FRONTIER FOUNDATION

EDRI

EUROPEAN DIGITAL RIGHTS

eIFL

ELECTRONIC INFORMATION FOR
LIBRARIES

FSFE

FREE SOFTWARE FOUNDATION
EUROPE

Joint Statement of Certain Civil Society, Private Sector and Rightsholders Representatives for the First Special Session of the SCCR

The undersigned organisations represent a broad set of constituencies with a direct interest in the discussions underway regarding an international instrument relating to broadcasting.

Whilst we remain unconvinced that a treaty is necessary at all – and note that no convincing evidence has been presented that new international norms are required in this area – we do believe that a focussed, signal-protection-based Instrument to prevent piracy could be valuable. In the spirit of constructive engagement, we therefore submit the following for consideration of delegations:

1 If the treaty moves forward in any form, we believe that the current rights-based approach of the treaty must be abandoned entirely. We understand that some parties to these negotiations have equated ‘signal protection’ with granting ‘rights to prohibit’ certain uses of broadcasts. **We believe that rights in any form are not signal protection, or signal-based protection, and we cannot support their inclusion in any potential new Instrument in connection with Broadcasting.**

2 We submit that this Instrument should not be negotiated in either a ‘Rome+’ or ‘Rome–’ context. The TRIPS Agreement, The Brussels Satellite Convention and the Phonograms Convention are all ‘Rome–’ as regards the rights granted to various Rome beneficiaries and all postdate the Rome Convention. Further, **we believe that strong signal protection provisions, such as those we have recommended and continue to recommend as an alternative to the current Draft Basic Proposal, are entirely congruent with the Rome Convention.**

3 To the degree that the treaty allows for Contracting Parties to create broader rights or protections beyond protection against intentional signal theft, then **we submit that a mandatory set of limitations and exceptions must be included in the treaty in order to ensure that uses of broadcast content that are lawful under copyright law are not inhibited by the treaty.** At a minimum, limitations and exceptions under the treaty should be equivalent to those that an implementing state provides under its copyright laws, and should provide flexibility for additional limitations and exceptions that are appropriate in a digital network environment.

HP

HEWLETT-PACKARD CORPORATION

HRRC

HOME RECORDING RIGHTS COALITION

IFLA

INTERNATIONAL FEDERATION OF LIBRARY ASSOCIATIONS AND INSTITUTIONS

IMMF

INTERNATIONAL MUSIC MANAGERS FORUM

Intel

IPJustice

LIBER

ORGANISATION OF EUROPEAN RESEARCH LIBRARIES

LCA

LIBRARY COPYRIGHT ALLIANCE

MAP

MEDIA ACCESS PROJECT

OKF

OPEN KNOWLEDGE FOUNDATION

Panasonic

PANASONIC CORPORATION OF NORTH AMERICA

PK

PUBLIC KNOWLEDGE

RadioShack

SCONUL

SOCIETY OF COLLEGE, NATIONAL AND UNIVERSITY LIBRARIES

TiVo

TACD

THE TRANSATLANTIC CONSUMER DIALOGUE

U.S. PIRG

US PUBLIC INTEREST RESEARCH GROUP

USTelecom

UPD

UNION FOR THE PUBLIC DOMAIN

Verizon

YISP

YALE INFORMATION SOCIETY PROJECT

4 Under the current Draft Basic Proposal, the broad scope of the proposed rights, combined with proposed additional rights to use technological protection measures (TPMs) in connection with these rights, raises questions about whether the beneficiaries would gain the ability to control signals in the home or personal network environment. Such control is without precedent and would interfere with the rollout of broadband and home and personal networking services and limit the development of innovative devices that provide home and personal networking functionality. Accordingly, **the treaty should include a provision excluding coverage of fixations, transmissions or retransmissions across a home network or personal network.** Further, we should note that many organisations within our group believe that TPM provisions are inappropriate in connection with this treaty and should be excluded from the treaty entirely.

5 The inclusion of ‘by any means’ in important elements of the Draft Basic Proposal clearly provides for control over Internet retransmissions of broadcasts and cablecasts. Whilst members of our group do not share a common view about the best approach to addressing Internet-related issues, **we are united in our belief that the current approach is unacceptable.** Further, **to the extent that the treaty continues to take a rights-based approach rather than a signal theft or signal protection approach, we oppose the treaty’s application to the Internet.**

6 To the extent that the Treaty continues to include Internet transmissions in its scope, we wish to make clear our serious concerns that **network intermediaries would face the threat of direct or secondary liability for infringement of the broad rights granted under the current Draft Basic Proposal.** The limitations of liability afforded to intermediaries today under existing national laws would only protect against copyright infringement, not against a violation of these broad new rights. Should a new Instrument result from these negotiations that includes any protection of Internet transmissions of any kind, **we submit that the treaty must ensure that network intermediaries do not face liability for alleged infringement of rights or violations of prohibitions by virtue of actions they take in their normal course of business or as a result of the actions of their customers.**

We wish to draw to distinguished delegates’ attention that the issues identified in this Statement do not represent a comprehensive list of the concerns of all the undersigned. Individual organisations intend to independently raise other issues of serious concern.

We are at the disposal of the distinguished delegates to the SCCR to discuss these views.