



**EFF STATEMENT AT EUROPEAN COMMISSION CONSULTATION ON
PROPOSED WIPO BROADCASTING TREATY
Brussels, 19 February 2007**

Thank you for the opportunity to present my organization's views to the Commission and to Member States on appropriate elements of a signal-based treaty.

The Electronic Frontier Foundation is an international non-governmental organization dedicated to protecting consumer rights, freedom of expression and innovation in the digital environment, with hundreds of donors and thousands of active supporters in the 27 Member States. EFF has been participating in WIPO meetings on the proposed Broadcasting Treaty over the last three years and is one of the signatories of the Joint Statement of 41 companies, industry groups and civil society organizations in support of a signal-based approach to a treaty, which was presented to WIPO Member States at the First Special Session of the WIPO Standing Committee on Copyright and Related Rights in January 2007. Copies of EFF's position paper on the treaty are available outside and on our website.

Today, EFF wishes to make three comments on the specific scope and object of protection of a signal-based treaty. First, EFF believes that the treaty's object of protection should be the live signal, not the content transmitted by the signal, which is already protected by national copyright laws. Second, the treaty's scope of protection should be up to the point of fixation of a transmission. Third, the treaty should focus on providing measures against signal theft - meaning intentional acts directed at misappropriation or unlawful interception of broadcast and cablecast signals – rather than the creation of broad intellectual property rights that are likely to have unintended consequences for consumers and other stakeholders.

In light of the WIPO General Assembly's decision, we remain concerned that both the current WIPO treaty draft and the non-papers discussed at the January WIPO meeting are premised on the creation of intellectual property rights that apply after signals are lawfully received and recorded in a consumer's living room, and thus are no longer "live". The inclusion of legally enforced technological protection measures to enforce such broad rights introduces new issues not found in the 1961 Rome Convention, and raises fundamental concerns for the public interest and innovation policy.

The combination of broad post-fixation rights with the ability of broadcasters and cablecasters to use legally-enforced technological protection measures would have two undesirable impacts:

First, it would restrict the public's access to information in the public domain and preclude uses of works permitted under national copyright law exceptions and limitations. Since existing copyright law exceptions would not apply to broadcasting rights, certain uses of information may be restricted in the transmitted form, even where they might be lawful under Community and Member States' national copyright laws. In

addition, access to transmitted works that are in the public domain or not subject to copyright might be restricted, particularly where they are subject to legally-enforced technological protection measures. As currently drafted, the treaty may also restrict freedom of expression of bloggers and other Internet communities because it gives broadcasters and cablecasters exclusive rights to control Internet retransmission of any part of their transmissions.

Second, the combination of post-fixation rights with legally-enforced TPMs would allow broadcasters and cablecasters to control the use of a signal within a consumers' home, once it has been lawfully received and recorded. This is likely to curtail consumers' current lawful use of programming after reception in their home. It is also likely to impede innovation, because it raises secondary liability issues for device manufacturers, and will impose an additional rights clearance burden on technology developers that need lawful access to transmitted content to develop interoperable technologies. This will limit competition in the market in innovative new devices such as digital video recorders and networked in-home entertainment devices.

All of these concerns, and the protection of broadcasters' legitimate interests against free-riding, could be addressed by a treaty focused on signal protection, following the approach of the 1974 Brussels' Satellite Convention, to which several Member States are parties. For this reason, we urge the Commission and Member States to consider supporting an alternative treaty draft focused on protection against intentional theft or misappropriation of broadcast signals at the June WIPO SCCR Special Session.

We would welcome the opportunity to discuss elements of a signal theft-based approach in more detail with the Commission and Member States.

Thank you for your consideration.

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