

WIPO BROADCAST TREATY

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Webcast Protections' Relationship to Proposed Broadcast Treaty

- The Treaty and an accompanying alternative paper apply to communications transmitted over the Internet.
- The proposed treaty's protections for broadcasters, through Art. 6 (retransmission), Art. 11 (retransmission of fixations) and Art. 12 (making fixations available), among others, apply to the Internet.
- There is an additional webcasting proposal that would add two things:
 - 1) An explicit directive to cover “webcasts” in addition to “broadcasts” and “cablecasts”.
 - There is little practical distinction between simulcasts and webcasts.
 - 2) Adds a category of beneficiaries: “webcasters”

Context and Stated Goal of Treaty

- The new Broadcast Treaty is described as an update to the Rome Convention in order to prevent signal theft.
- However, the treaty grants a separate layer of rights to broadcasters/cablecasters in their broadcasts/cablecasts, and extends it to webcasts by proposed alternative.
- Term of protection is 50 years.
- The proposed rights create no incentive for the production of creative works. Rights are for dissemination only.
- These rights would not provide additional incentives to invest in the dissemination of the information.
 - European Database Directive took effect in 1990; recent study by EU indicated no beneficial increase in db creation; US is ahead and pulling away.

ISP Concerns

- Internet intermediaries: what is the liability for transmitting a protected webcast? Additional costs?
- Technology producers: what is the liability for creating software or a device that intercepts a protected webcast or can be used for prohibited acts? Acts as a technical intermediary?
- Effect on research and development of new technologies is unclear.
- Content on the Internet is not passively received; technically, dissemination is different from broadcasting.
- The public's rights (our customers) in access to information would be affected.
- What happens to fair use and open domain rights?
 - No current rights in factual material.
 - No current rights in public discussion/fair use surrounding newsworthy broadcasts, such as those surrounding world events.

ISP Concerns (cont.)

- Unclear how broad “webcasting” is.
 - Does it cover static web pages? Or only streamed material?
 - Intention appears to be streamed material, but the definition is not clear.
- What is “retransmission”? Does it cover:
 - Linking?
 - Caching?
 - BitTorrent-like dissemination methods that rely on copying by intermediate nodes?
 - Podcasting?
 - Search capabilities?

Effect on Internet Community

- Appears not to solve stated problem.
- No clear economic justification.
- Not clear how it would map to rapidly-changing technology, and new applications being developed.
- Extra layer of rights that creates more hurdles for rights-clearance.
- Lack of explicit limitations and many ambiguities.
- Shift of balance from creators and follow-on users to disseminators.
- New version of Treaty moves issue to the Appendix.