

SEPTEMBER 5, 2006

**STATEMENT CONCERNING THE WIPO BROADCAST TREATY PROVIDED BY
CERTAIN INFORMATION TECHNOLOGY, CONSUMER ELECTRONICS AND
TELECOMMUNICATIONS INDUSTRY REPRESENTATIVES, PUBLIC INTEREST
ORGANIZATIONS, AND PERFORMERS' REPRESENTATIVES**

The undersigned represent a broad and diverse group, united in a common belief that the WIPO Treaty on the Protection of Broadcasts and Broadcasting Organizations, as currently drafted, would harm important economic and public policy interests. This Statement offers comments on several key aspects of the treaty.

No justification for treaty. We remain unconvinced that a treaty is necessary at all. We note with concern that treaty proponents have not clearly identified the particular problems that the treaty would ostensibly solve, and we question whether there are in fact significant problems that are not addressed adequately under existing law. Further, we are concerned that the current treaty approach differs radically from U.S. legal traditions, and, if implemented, would require substantial and unnecessary changes to current U.S. law.

Scope. If the treaty moves forward in any form, we believe that the current rights-based approach of the treaty must be abandoned. Creating broad new intellectual property rights in order to protect broadcast signals is misguided and unnecessary, and risks serious unintended negative consequences. We recommend instead a signal protection-oriented approach, ideally focusing narrowly and specifically on protecting signals from intentional misappropriation or theft. We note that most of the concerns expressed in this Statement would be rendered moot by a treaty and associated implementing legislation that narrowly addressed signal theft.

Limitations and exceptions. To the degree that the treaty leaves room for implementing states to create broader rights or protections beyond protection against intentional signal theft, then we believe 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.

Home and personal networking. Under the current draft of the treaty, the broad scope of the proposed rights, combined with proposed additional rights regarding technological protection measures (TPMs) in connection with these rights, raises questions about whether “casters” 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 or personal network. Further, we should note that many of our group believe that TPM provisions are inappropriate in connection with this treaty and should be excluded from the treaty entirely.

Intermediary liability. We have serious concerns that network intermediaries would face the threat of direct or secondary liability for infringement of the broad rights granted under the

current treaty draft. The exceptions from liability afforded under the current text of the treaty only apply to broadcasters, not to intermediaries. Further, 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. We believe that the treaty should 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 by actions of their customers.

Computer networks. The current treaty draft includes protection for Internet simulcasts made by traditional broadcasters and cablecasters, but otherwise excludes computer networks from its scope. While 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-based approach, we oppose the treaty's application to the Internet.

Please note that issues identified in this Statement do not represent a comprehensive list of the concerns of all members of our group. Individual group members intend to independently raise other issues of serious concern, and to further discuss the issues identified here.

SIGNED:

American Association of Law Libraries

American Library Association

Association of Research Libraries

AT&T

Broadband Service Providers Association

Center for Democracy & Technology

Cingular Wireless

Computer and Communications Industry
Association

Consumer Electronics Association

Consumer Project on Technology

CTIA - The Wireless Association

Dell Inc.

Electronic Frontier Foundation

FreePress

Hewlett Packard Company

Home Recording Rights Coalition

Intel Corporation

International Music Managers Forum

Internet Society

IP Justice

Media Access Project

Medical Library Association

National Association of State PIRGs

Panasonic Corporation of North America

Public Knowledge

RadioShack Corporation

Special Libraries Association

Sony Electronics Incorporated

TiVo Inc.

Union for the Public Domain

U.S. Internet Industry Association

U.S. Music Managers Forum

U.S. Public Interest Research Group

USTelecom

Verizon Communications Inc.

Verizon Wireless

Yale Information Society Project