STATEMENT BY PUBLIC KNOWLEDGE ON CONTINUING BROADCAST TREATY DISCUSSIONS

WIPO has spent many years working on a proposed treaty intended to help broadcasters combat piracy of their signals. However, to date, proponents of the treaty have not shown that existing copyright law is not adequate to protect their rights. Actual signal piracy is copyright infringement, and existing legal processes should be enough to protect any legitimate interests. (To the extent that they are not, this demonstrates a broader issue with the enforcement of rights, particularly in an international context.)

In addition to being unnecessary, some treaty proposals have been harmful, not just to the interests of the public, but to existing rightsholders. Some proposals would have given broadcasters rights to the underlying programming they broadcast, merely by virtue of their having broadcast it. This family of proposals would layer an additional layer of rights on top of existing copyrights, or even on public domain material, and it would add considerable uncertainty to the use of programming. For instance, even the owner of the copyright in a program might infringe a "broadcast right" if it records a telecast of its own. Some proponents support a narrower, "signal-based" approach—though this could still give broadcasters the right to control the recording and other use of programming they broadcast, and not just protection against real-time signal piracy. Policymakers and stakeholders to be cautious when considering creating new rights that would benefit intermediaries rather than creators.

The "rights layering" problem is not the only potential problem with a broadcast treaty. Existing legal systems in member states are incompatible with several anticipated treaty proposals. For example, in the United States, the carriage and retransmission of broadcast signals by cable and satellite TV systems in the US is governed by statute and FCC regulation. While television broadcasters must give their consent to be carried on cable systems, Congress directs the FCC to "govern the exercise by television broadcast stations of the right to grant retransmission consent." 47 U.S.C. § 325(b)(3)(A). A treaty could therefore be inconsistent with existing U.S. law. Additionally, it could prevent legal reform. The FCC is currently revisiting its retransmission consent rules in the "Good Faith" proceeding. (MB Docket 15-216.) An international agreement should not be an obstacle to telecommunications policy reforms.

While a broadcast treaty is probably unnecessary altogether, if discussions continue it would be best if they focus on the real-time unlawful retransmission of broadcast signals to the public. No treaty should go further than copyright law, and any treaty must be subject to all the same limitations and exceptions as copyright law (e.g., the fair use of home recording). Additionally, no treaty should not restrict the development of telecommunications and intellectual property policies or limit the authority of communications regulators.

Public Knowledge is a Washington, D.C. based not-for-profit public interest advocacy and research organization. It promotes promotes open and balanced telecommunications and intellectual property policies.