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WIPO has spent many years working on a proposed treaty intended to help broadcasters combat piracy of their signals by granting them new copyright-like rights. The treaty was misguided and unnecessary when it was first proposed, and even more so now. The current draft has not addressed the concerns raised by many civil society groups, including signatories to this letter, for decades.

Granting broadcasters novel rights over content they in many cases did not create, and have no intellectual property rights to, is a mistake.

"Signal piracy" in most cases is already unlawful copyright infringement. Copyright law, unfair competition law, and other methods have proved sufficient to prevent it overseas, and in the United States. Where existing law in other countries has proven insufficient to address unlawful conduct, it is preferable to address those obstacles directly in those countries, rather than creating a brand-new international legal regime (that may itself face enforcement challenges).

But the broadcast treaty goes further than making it easier to prevent unlawful signal piracy. It would grant any entity that qualifies as a broadcasting organization a new right, which would last at least 20 years from the date of each broadcast.

It provides for an even worse version of the DMCA's ban on circumventing technological measures, one that lacks even the insufficient safeguards that exist in the United States to protect non-infringing innovation and speech. Some versions of the text grant rights to broadcasters not just to content

that is being broadcast, but had been broadcast, such as programs stored on physical or cloud digital video recorders (DVRs), or even streaming services.

Granting these rights to broadcasters creates confusing and overlapping rights thickets, and enables broadcasters to demand new payments (from ISPs, internet companies, creators, and viewers) for content, even when the copyright rightsholder receives nothing.

Uses of copyrighted content that are allowed under limitations and exceptions to copyright law, or are outside its scope, such as fair use (a constitutional requirement) and private viewing of recorded content may run afoul of this novel regime. Libraries, archives, and cultural institutions that record broadcast content, such as the Internet Archive's collection of 9/11 footage, could come under a legal cloud that makes it difficult for them to perform their indispensable mission.

A broadcast treaty is not necessary. Nevertheless, if the US delegation continues to work on this matter, it should work to narrow the treaty's focus to real-time signal theft, and include mandatory exceptions and limitations to ensure that all uses of content protected by copyright or in the public domain that is currently lawful remain that way.

Signed,

Public Knowledge
American Library Association
Association for Recorded Sound Collections
Association of College and Research Libraries
Association of Research Libraries
Authors Alliance
Electronic Frontier Foundation
Fight for the Future
Knowledge Ecology International
Niskanen Center
Organization for Transformative Works
Society of American Archivists