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March 31, 2006

The Honorable Lamar Smith, Chairman
House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property
Rayburn House Office Building, Room B-351C
Washington, DC 20515-6219

Re: WIPO Broadcast Treaty

Dear Chairman Smith:

On behalf of Carnegie Mellon University, I write to express our growing concern about the proposed World Intellectual Property Organization (WIPO) Broadcast Treaty and to request that oversight hearings be held on the U.S. government position on this increasingly controversial matter. After careful review of the draft treaty, we have the following questions:

- Precisely what problem is this treaty intended to solve?
- Why is the U.S. government participating in negotiations to give broadcasters 50 years of protection when the U.S. has not ratified the 1961 Rome Convention, which gives broadcasters 20 years of protection?
- What adverse consequences have U.S. broadcasters suffered from the U.S. not joining the Rome Convention?
- The proposed treaty appears to grant "sweat of the brow" protection, which is contrary to traditional U.S. intellectual property principles. Does U.S. participation in these treaty negotiations signal a shift in our thinking about sui generis rights?
- If the broadcast treaty is extended to include webcasting, what activities would be considered "webcasting"?
- What changes to U.S. law would be necessary to implement the treaty?
- What exceptions and limitations would apply?
- Would the new broadcast right apply to material that is in the public domain?

Neither the U.S. government nor the broadcasters have stated what sort of exceptions and limitations they would support in domestic law. Article 14 of the treaty permits contracting parties to **"provide for the same kinds of limitations or exceptions with regard to the protection of broadcasting organizations as they provide for, in their national legislation, in connection with the protection of copyrights in literary and artistic works, and the protection of related rights."** We do not know if the U.S. government and U.S. broadcasters would endorse exceptions and limitations similar to those found in the U.S. Copyright Act. Without knowing the scope of the exceptions, we have no way of assessing the likely impact of

U.S. implementation on the fair use of broadcast material. Whether this new broadcast right is benign or malevolent to user interests turns largely on the extent of the exceptions.

To date, we have seen no evidence that U.S. broadcasters have any economic need for this treaty. We request an oversight hearing to address our questions and concerns. At a hearing, members of the Committee can require representatives of the U.S. government and the U.S. broadcast industry to explain in detail under oath precisely what exceptions and limitations they would support. Specifically, Committee members can require the government and the industry to commit on the record to fair use exceptions and to strict limitations on protection for public domain material.

Committee members can also require government and industry to commit on the record not to expand the scope of webcasting beyond the streaming of content to multiple viewers simultaneously. A broad definition of webcasting, combined with narrow exceptions, can sharply limit the ability of students, professors, businesses, and ordinary individuals to make creative use of material found on the Internet.

Please let us know if you have any questions. We would be happy to work with the Committee on an oversight hearing.

Sincerely,

Gloriana St. Clair, Ph.D.
Dean, Carnegie Mellon University Libraries

cc: The Honorable Howard Berman, Ranking Member