

March 31, 2006

Senator Arlen Specter
711 Hart Building
Washington, DC 20510

Re: WIPO Broadcast Treaty

Dear Senator Specter:

On behalf of Carnegie Mellon University, one of your constituents, 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's position on this increasingly controversial matter. I have written separate letters detailing our concerns to the House and Senate Subcommittees responsible for addressing issues related to intellectual property rights.

Our primary concerns are ambiguity and lack of transparency. We are not aware that U.S. broadcasters suffered any adverse consequences from the U.S. not ratifying the 1961 Rome Convention, which gave broadcasters 20 years of protection, and therefore do not understand why the U.S. government is participating in negotiations that would extend the protection to 50 years. Frankly, we do not understand what problem the proposed WIPO treaty is intended to solve. Furthermore, the terms in the draft treaty have not been clearly defined (for example, what activities would be considered "webcasting"?), and the exceptions and limitations that would apply if the United States signed the treaty have not been articulated.

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.

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?

Please let me know if you have any questions. We would be happy to work with you to convene an oversight hearing.

Sincerely,

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