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Broadcasters' Treaty: A *Perspective from the Philippines*

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Genesis of the Broadcasters' Treaty



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- ❖ **International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)**
 - **Administered jointly by the World Intellectual property Organization (WIPO), the International Labor Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO)**
 - **Adopted in October 26, 1961**
 - **Entered into force in May 18, 1964**

Genesis of the Broadcasters' Treaty



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- Provides protection for owners of related or neighboring rights: performers, phonogram producers, broadcasting organizations
- Broadcasting organizations – right to authorize or prohibit the rebroadcasting and fixation of their broadcasts; reproduction of such fixation; and communication to the public of their TV broadcasts
- Duration – 20 years from the end of the year in which the broadcast took place

Genesis of the Broadcasters' Treaty



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- ❖ **Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement, Annex 1C to the WTO Agreement, effective 1 January 1995)**
 - **Under Article 14.3, Broadcasting organizations have the right to prohibit, when done without their authorization:**
 - **Fixation**
 - **Reproduction of fixations**
 - **Rebroadcasting by wireless means of broadcasts**
 - **Communication to the public of TV broadcasts**

Genesis of the Broadcasters' Treaty



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- ❖ **WIPO Performances and Phonograms Treaty, or WPPT (together with the WIPO Copyright Treaty, or WCT, collectively known as the WIPO Internet Treaties)**
 - **Adopted: December 20, 1996**
 - **Entered into force: May 20, 2002**
 - **Updates the existing treaties on copyright and related rights (Berne and Rome Conventions) in order to address the challenges posed by digital technology and the Internet**
 - **WPPT only covers the rights of performers and phonogram producers**

Genesis of the Broadcasters' Treaty



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During the sessions of the two WIPO Committee of Experts preparing what became the WCT and WPPT, several delegations expressed preference for extending the coverage of the new norms to the rights of broadcasting organizations. However, majority of the delegations did not support the proposed extension.

The Delegation of the Philippines was among those which were in favor of the consideration of new international norms on the rights of broadcasting organizations, and its Government invited WIPO to organize a world symposium in Manila on the rights of broadcasting organizations.

- Preface by Kamil Idris, former WIPO Director General, WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property

WIPO Symposium in Manila



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- ❖ **WIPO World Symposium on Broadcasting, New Communication Technologies and Intellectual Property**
 - **Organized by WIPO, in cooperation with the Government of the Philippines, and with the assistance of the Kapisanan ng mga Brodkster ng Pilipinas (KBP), or the National Association of Broadcasters of the Philippines**
 - **Held in Manila from 28 to 30 April 1997**

WIPO Symposium in Manila



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- ❖ **Topics of the Panel Discussions:**
 - **Broadcasters as owners of neighboring rights**
 - **The legal status of broadcast programs at the borderline of copyright and neighboring rights**
 - **Broadcasters as “users”**
 - **Convergence of communication technologies: terrestrial broadcasting, satellites broadcasting and communication to the public by cable**
 - **Digital transmission in the Internet and similar transmissions**

WIPO Symposium in Manila



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There was an agreement among the participants that WIPO should deal with the issues of the protection of the rights of broadcasting organizations with the objective of international harmonization. At the same time there was no agreement concerning the ways and means of achieving such harmonization.

The results of the Symposium were duly taken into account for the preparation of the draft program and budget of WIPO for the 1998-1999 biennium which includes sub-program 10.4 on the updating and harmonization of the rights of broadcasting organizations.

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WIPO Symposium in Manila



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The December 1996 WIPO Diplomatic Conference adopted two new and important treaties bringing rights up to date in the information society, but those treaties do not deal with the rights of broadcasters in their broadcasting activities... the discussions have confirmed that the existing international instruments are sadly outdated with regard to broadcasters' rights, and are not capable of coping in the present situation.

- Closing Statement of then Undersecretary Honesto Isleta, Department of Trade and Industry

WIPO Symposium in Manila



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It is therefore the intention of my Government, as the host of this Symposium, to communicate this sentiment to WIPO... At the same time, we will express the hope that the competent Governing Bodies of WIPO will take the necessary steps to ensure that the present, unsatisfactory situation will be addressed and remedied in due course.

- Closing Statement of then Undersecretary Honesto Isleta, Department of Trade and Industry

Journey at the WIPO SCCR



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- ❖ **Discussions on updating of broadcasting organizations' rights held at the WIPO Standing Committee on Copyright and Related Rights (SCCR) since November 1998.**

- ❖ **At the 2006 WIPO General Assembly, member states decided that 2 special sessions of the SCCR would be convened to clarify outstanding issues:**
 - **Agreeing on signal-based approach**
 - **Objectives**
 - **Specific scope**
 - **Object of protection**

Journey at the WIPO SCCR



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- ❖ **No consensus during the special sessions (January and June 2007). Hence, at the WIPO General Assembly (34th Session), it was decided that the issue of broadcasters' rights will be retained on the agenda of the SCCR for its regular sessions.**
- ❖ **Informal sessions were held during the subsequent SCCR meetings, which were instrumental in clarifying various technical issues and positions in order to arrive at a common understanding of the issues.**

Journey at the WIPO SCCR



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- ❖ **Consequently, the Chair prepared the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues.**
- ❖ **During the 36th Session of the SCCR held last May 28 – June 1, 2018, the member states agreed to recommend to the next WIPO GA to consider the appropriate action towards convening a Diplomatic Conference for the adoption of a Treaty, subject to reaching consensus on fundamental issues.**

Journey at the WIPO SCCR



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- ❖ **The earliest possible date for a Diplomatic Conference is 2020.**
- ❖ **The 38th meeting of the SCCR in April 2019 will continue discussions on the key outstanding issues and make recommendation to the WIPO General Assembly in October 2019 about the possibility of convening a Diplomatic Conference.**

Role of the Philippines at the SCCR



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- ❖ **The Philippines, during the WIPO GA in October 2018, manifested its desire to host the Diplomatic Conference for the proposed Treaty.**
- ❖ **In view of this manifestation, the Department of Foreign Affairs, the Intellectual Property Office of the Philippines and the Department of Information and Communications Technology are already conducting preparatory meetings with the relevant sectors.**

Role of the Philippines at the SCCR



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Some 20 years have passed since this Committee began norm-setting discussions on the intellectual property landscape for broadcasting organizations, not long after the Philippines hosted the WIPO World Symposium on Broadcasting, New Communication Technologies, and Intellectual Property in Manila in 1997. Squarely within this remit is the challenge of striking a balance among a diversity of views, and it is in this regard that we hope for the next session to profit from the same level of positive engagement demonstrated this week as we reflect on an appropriate recommendation regarding the convening of a Diplomatic Conference.

- Statement of the Philippine Delegation during the WIPO 37th SCCR Meeting in November 2018



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Thank you!

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