Thanks, Thiru.

I will attempt to address some of these questions that Thiru has flagged off for this session, over the next few minutes.

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Broadly, there is one of two possible scenarios to view the Broadcast Treaty, given the way these negotiations are shaping up.

One- that the Broadcast Treaty is intended to be narrow, confined to a signals based approach, in line with the 2007 mandate of the General Assembly, and is intended to find a solution to a very specific problem- that of signal piracy.

Two- that the Broadcast Treaty is intended for and will in effect create an extra layer of right for those entities that distribute information that they did not create and do not own.

In BOTH situations, the problem purportedly sought to be addressed is that of signal piracy. Now, if that is indeed the case, Scenario 1 is something that we could all possibly work with. Scenario 2 is problematic right away, and is on the face of it, against the 2007 mandate of the GA.

Where it begins to get complicated however, is when we have Scenario 3; which takes everything that Scenario 2 has to offer and wants to create special rights broadcasters and justifies it under Scenario 1- essentially Scenario 2 masquerading as Scenario 1. Then, we have a serious problem-solution mismatch; and this does in fact lead us to a treaty that is trying to define a problem statement tailored to a basket of solutions that it has pre-defined, instead of the other way around.

With the manner in which discussions have been unfolding in this Committee, especially with a renewed vigor in the past couple of sessions, as well as looking at proposed treaty language in Working Document SCCR 27/2/Rev. (**"Working Document"**), the scenario I see most clearly unfolding is Scenario 3.

Besides the fact that there is a problem-solution mismatch, actually, *given* the fact that there is a problem solution mismatch, broader principles and objectives informing these discussions as well as the proposed treaty language in the Working Document are fraught with inconsistencies.

The *first*, of course, is the intent of the treaty, even where it is one of attempting to address signal piracy. Two distinct aspects need to be considered in this scenario- the first, why existing mechanisms in treaties such as the Rome Convention for one, are inadequate to address the issue of signal piracy; and second, when the Rome Convention itself has only 92 signatories (and the US for one is not of them- and has a flourishing, very profitable broadcast industry), where is the demonstrable need for such protection to begin with?

The *second* is on the scope of the treaty. This Working Document, in Articles 1, 3 and 6 illustratively, spells out an intention to protect only the signal, and not grant the broadcasters any right in the underlying content. When, however, the rights under Article 9 are examined, including (and this is not an exhaustive list)- the right to authorize public performance of broadcast signal, fixation, reproduction (and so forth)- the effect will, in fact, be the opposite of the purported intention as well as scope. This WILL create an additional layer of rights for broadcasters over and above existing mechanisms in copyright law. What is done AFTER the signal is fixed and is already covered by copyright law; and it makes little sense to us (as I was also saying in the Plenary) to provide two sets of incompatible, independent and overlapping rights- copyright and para copyright for the same content. Not only does this give broadcasters rights in content that already enjoys copyright protection, but also proprietary rights in content that was in the public domain or openly licensed to begin with.

The *third* (very quickly) on the intended beneficiaries under this treaty. The rationale, presumably, is the protection against signal piracy, so as to protect the underlying investment. Loss of revenue has been stated to have been felt, most acutely in the context of broadcasting sporting events. What would be logical, then, would be to discuss a treaty narrow in scope that makes an explicit reference of sporting events. Additionally, there is no rationale for the inclusion of subscriber channels or services over cable/satellite since these are services that have been paid for in the first place, and are as a result of a direct contract between the subscriber and the company. Piracy of any of these services already constitutes theft, and would also be considered an infringement of copyright on the underlying content layer.

The *fourth* area that I wanted to talk about was the effect of this treaty; but I'll be very brief, given as Jeremy has already spoken about this in great detail. What this treaty will in effect do, is create an additional layer of rights to those that neither created, nor have rights in the underlying content; has the potential to lead to excessive litigation with permissions for use having to be sought from two different sets of rights holders; and a possible slippery slope-

where we have to begin to question where we stop granting ‘related rights’ to other distributors/entities playing a role in the sharing of information. A direct consequence of all of this being a chilling effect on access to knowledge and information.

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