

Table of Contents

Key words:.....	2
Abstract	3
List of abbreviations	5
Introduction	10
Chapter one	17
Conceptual and functional evolutions of broadcasting	17
Part One. Genesis and concepts.....	17
I. The origin.....	17
II. Definitions and concepts	19
III. Public missions and economic significance.....	23
1. Public missions.....	23
2. Economic significance of the industry	25
Part Two. Functional evolutions in the industry.....	28
I. Broadcast platforms.....	29
1. Terrestrial	29
2. Satellite.....	30
3. Cable.....	31
4. Internet	32
I. Closed broadband-based networks	33
II. Open broadband-based network (Internet).....	34
5. Mobile	37
II. Broadcaster's new media services.....	38
Part Three. Broadcast piracy.....	42
I. Definition of piracy	43
II. Stages of broadcast piracy	46
III. Methods and means of broadcast piracy	48
1. Unauthorized interception/access.....	49
2. Unauthorized rebroadcasting.....	51
3. Unauthorized retransmissions	52
4. Unauthorized communication to a new public.....	56
5. Unauthorized reproduction and distribution of fixed broadcast.....	56
6. Unauthorized making available of fixed broadcast.....	58
IV. Challenges of broadcast piracy	58
1. Inefficiency of the technological solutions	59
2. Legal challenges.....	63
3. Economic impact of broadcast piracy	64
Chapter Two.....	67
Justification for protection of broadcasting organizations	67
I. Origin of the related rights.....	68
II. Nature of the related rights.....	71
III. Justifications for protection of the related rights.....	73
IV. Justifications for protection of broadcasting organizations.....	78

1. Economic justification.....	80
2. Socio-cultural justification	82
3. Legal justification.....	84
3.1 Justification by natural justice argument.....	85
3.2 Justification by private property rights argument	86
3.3 Justification by reason and equity argument	86
4. Creativity and innovations	88
i. Creativity in the programming.....	90
ii. Creativity in the production and editing process	91
iii. Creativity in the broadcast services	92
iv. Creativity in production of the program-carrying signal	92
Chapter Three	95
International and regional instruments	95
Part One. International instruments.....	95
1. The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)	95
I. The origin and history	95
II. Analysis of the broadcaster's rights and protections	99
1. The right to rebroadcast.....	101
2. The right of fixation	102
3. The right to reproduction of the fixation.....	103
4. The right of communication to the public.....	103
III. New broadcasting platforms and the Rome Convention.....	104
2. The Convention Relating to Distribution of Program-Carrying Signals Transmitted by Satellite (1974).....	106
3. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), (1994)	108
4. The European Agreement on the Protection of Television Broadcasts 1961 (EAT).....	111
5. The European Convention Relating to Questions on Copyright Law and Neighboring Rights in the Framework of Trans-frontier Broadcasting by Satellite (European Satellite Convention) (1994)	113
Part Two. Regional instruments.....	114
1. The Cartagena Agreement Decision No. 351 (1993).....	114
2. The North American Free- Trade Agreement (NAFTA) (1993).....	115
3. The European Union Directives	116
3.1. Rental and Lending Rights Directive (1992)	117
3.2. Satellite and Cable Directive (1993)	118
3.3. Term Directive (1993).....	120
3.4. Information Society Directive 2001	121
Chapter Four	126
WIPO and a new broadcasting treaty	126
Part one.....	128
I. Initiatives for a new treaty in WIPO.....	128
II. Overview of activities and negotiations in WIPO.....	131
1. First period	131
2. Second period	132
3. Third period.....	137
Part two.....	141
Determination of fundamental elements.....	141
I. The objectives of protection	141

II. The scope of treaty (beneficiary of protection).....	142
III. The object (subject-matter) of protection.....	156
IV. The scope of application	166
Chapter Five.....	176
Proposals on new rights and protections	176
Part one.....	176
Identification of ‘signal-based’ and ‘right-based’ approaches	176
1. Signal-based approach.....	177
2. Right-based approach.....	181
Part two.....	185
Possibility of recognition of new rights	185
I. Right of fixation of broadcast	187
II. Right of reproduction of fixation of broadcast	192
III. Right of distribution of fixation of broadcast.....	199
IV. Right of rebroadcast	207
V. Right of retransmission to the public.....	215
VI. Right of communication to the public	230
VII. Right of making available of fixation of broadcast.....	246
Part Three.....	259
Other protections	259
I. Protection of pre-broadcast signals	259
II. Protection of ‘technological protection measures’	266
III. Protection of rights management information	279
Conclusion	284
Bibliography	302
WIPO documents.....	311
International and regional instruments.....	316
Table of cases	317