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Subject: ESOA Comments on ITU and UNIDROIT

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N

Summary:

ESOA comments on ITU and UNIDROIT.

Proposal:

For consideration.

Background:

5th September 2011

Anders Jönsson
CEPT COM-ITU
Chairman

Dear Mr Jönsson,

The European Satellite Operators Associations (ESOA) understands that CEPT Com-ITU will consider an ITU SG proposal that the ITU take on the "SUPERVISORY AUTHORITY OF THE FUTURE INTERNATIONAL REGISTRATION SYSTEM FOR SPACE ASSETS UNDER THE DRAFT SPACE ASSETS PROTOCOL" (ITU Council Doc 0026).

ESOA, the Satellite Industry Association (SIA) and other entities have consistently expressed serious concerns to UNIDROIT about the potential damage to the satellite industry that could be caused by the proposed Space Assets Protocol. It is important to note that the Space Assets Protocol has not yet been adopted. Attached for your consideration are two documents on the subject. Even if the Space Assets Protocol is adopted, it is questionable whether many States will ratify it.

ESOA respectfully requests the CEPT Administrations not to support the ITU proposal to act as the supervisory authority for the Space Assets Protocol. Taking on the role of the supervisory authority would be inappropriate because such a role falls outside the ITU's mandate which is limited to the use of telecommunications and in particular to the management of radio frequencies. Moreover, such a role could be interpreted as conferring an undue level of support from the ITU to the proposed Space Assets Protocol - one which may not be warranted particularly given the serious concerns expressed by satellite operators and other members of the satellite insurance, financial and manufacturing sectors.

Sincerely,



Aarti Holla-Maini

Giuliano Berretta
CEO of Eutelsat
Chairman of the Board of ESOA
chair@esoa.net

Bp_Office/2008/ 91/gb

Paris, 10th October 2008

Mr Martin J. Stanford
Deputy Secretary-General
International Institute for the Unification of Private Law (UNIDROIT)
Via Panisperna 28
00184 Rome, Italy

Proposed Draft Space Assets Protocol to the Cape Town Convention

Dear Mr. Stanford

I write to you on behalf of the members of the European Satellite Operators' Association "ESOA" of which I am presently Chairman. ESOA represents all European satellite operators.

ESOA members appreciate the work of UNIDROIT in seeking to facilitate space financing through the formulation of the Space Assets Protocol and in particular in working towards the harmonisation of private law between states.

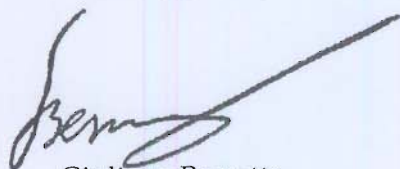
However, the members of ESOA are concerned by the proposed draft Space Assets Protocol to the Cape Town Convention.

It is the members' view that given that asset-based satellite financings are infrequent compared with other high-value assets such as aircraft for example, present legal regimes in place are sufficient for the granting of security in space assets. Moreover, satellite operators are concerned by the prospect of a new layer of law that may be vague and broad in terms of

its rules on ownership and security interests in certain undefined types of space property. For these reasons, already when contacted a few years ago, ESOA members were largely unwilling to devote time and resources to assisting in the preparation of this new proposed regime.

The satellite operator members of ESOA would therefore like to urge UNIDROIT and the Committee of Governmental Experts to review the activities and reconsider whether it should proceed with the Space Assets Protocol, as we do not see the benefits for our sector but rather, are concerned by the burden it may result in.

Sincerely yours,



Giuliano Berretta
Chairman of the Board

ESOA's Consideration of the UNIDROIT Space Assets Protocol

ESOA commends the work of Unidroit in the fields inter alia of railway rolling stock and aircraft equipment, where the applicable Conventions may add value to uncertainties surrounding the financing of these assets.

ESOA believes however that the situation in the space industry is different, with no known examples of projects with a valid business plan failing to attract investment. Indeed within the ESOA membership, there are several companies, who are modest start-up businesses about to launch their first satellite who have successfully raised finance without such a Protocol being in place. These companies also subscribe to the ESOA view that the proposed Space Assets Protocol would in fact have hindered the raising of this financing. Equally examples of developing countries such as Vietnam and Kazakhstan who recently procured and launched satellites, demonstrate that ample satellite financing is available. These examples demonstrate that the proposed regime of new supranational law, however well intended, may only serve to create confusion, uncertainty and potential conflicts that will *deter* the very capital flows to the space industry that the Space Assets Protocol aims to facilitate.

More specifically, several issues under the proposed Space Protocol listed below are of particular concern to us:

- ***Unclear Sphere of Application of the Protocol***
- ***Potential Conflicts regarding Priority of Competing Rights Regarding Components***
- ***Public Service Exemption from Default Remedies would deter bank financing***
- ***Risks related to Recognizing Salvage Interests in Space Assets create undo risk***
- ***Uncertainty regarding Identification of Space Assets for Registration Purposes***
- ***Confusing Provisions regarding Debtor's Rights & Assignment of Debtor's Rights***

The statements of other satellite industry associations concur with ESOA's assessment and together, we believe that the concerns expressed above justify taking a step back to reassess the need for the Protocol in order to make sure that the law of unintended consequences does not create unanticipated and undesirable outcomes in an already complex environment of satellite financing. ESOA therefore asks UNIDROIT to undertake a process of review as to whether this Protocol should go forward, or as a minimum, substantially improve the issues that have been raised by industry. Individual ESOA members may choose to work with Unidroit on this last goal.

October 2010