Chapter 9
Future Directions

1.1. From the Past

Broadcasting organisations meet digital technology. Digital technology has brought various new ways of broadcasting while making it possible for more people to exploit broadcasting in more ways. When broadcasting organisations began to claim more protection for their rights in order to prevent people from exploiting their broadcasts, the question arose as to why more protection should be given to broadcasting organisations.

It was assumed that broadcasting organisations required more protection as a result of technological advances after the Rome Convention. However, contrary to this assumption, the Rome Convention, from its outset, has never provided comprehensive protection for broadcasting organisations due to its social-oriented rationale. The reality is that the development of technology did nothing more than merely add to the list of problems by creating new varieties of broadcasting which do not fall within the protection provided under the Rome Convention.

Notwithstanding this, discussions were commenced at WIPO in order to upgrade the protection of the rights of broadcasting organisations for the misconceived purpose of catching up with technological developments. As a matter of course, the proposals for the update of the protection put forward for discussion could not be explained by the social-oriented rationale. Due to this, the rationale has been silently shifting to accommodate the natural rights theory, the creator-oriented rationale. Although having not been overtly perceived,
the transition of the rationale for protection has been taking place and has been causing confusion.

Similar confusion has also been observed at the domestic level. In Australia, the protection of broadcasters’ rights was considered subsequent to the UK Act which had set out the provisions for broadcasters’ rights based on the creator-oriented rationale. However, Australia did not simply follow the UK but introduced protection for broadcasters’ rights based on the social-oriented rationale. The protection worked sufficiently but Australia updated its copyright law in accordance with its policy to maintain the balance between access to copyright material by users and control over copyright material by the rights owners in the digital environment. This update which was based on the social-oriented rationale ended up with the introduction of the creator-oriented rationale, which rationale the highest court in Australia subsequently refused to accept relying on the UK Act which was, however, based on the creator-oriented rationale.

In the case of Japan, the understanding of the rationale for the protection of broadcasters’ rights was, from the start, wrong. The protection was introduced based on the creator-oriented rationale. An influential article which convinced people of the social-oriented rationale for protection had, in fact, been focused on the discussions at the international level, not the Japanese situation. Nonetheless, Japan has adhered to the social-oriented rationale for protecting the rights of broadcasting organisations and the attempts to upgrade its protection of broadcasters’ rights has not been successful. Yet, Japan is pressing for the upgrading of the protection of broadcasters’ rights at WIPO.

Just as Professor Ginsburg proved that the common understanding of the rationale for the protection of copyright in the common law and the civil law approaches was inaccurate, this research may be said to have established that the common understanding of the rationale for the protection of broadcasters’ rights in the common law and the civil law approaches is also inaccurate.

2.2. To the Future

The rationale for the protection of the rights of broadcasting organisations is under transformation to one that is creator-oriented. To date, neither WIPO, Australia nor Japan has positively shown their intention to give up the social-oriented rationale for protecting the rights of broadcasting organisations. However, the rationale for that protection is steadily moving towards a creator-oriented rationale.

The question posed at the outset of this book – What is the rationale for protecting the rights of broadcasting organisations? – can be answered in this way. The rationale for protection is currently transforming and the end result will be a creator-oriented rationale. The research undertaken however does not