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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Eleventh Session
Geneva, June 7 to 9, 2004

REPORT

adopted by the Committee

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee” or “SCCR”) held its eleventh session in Geneva from June 7 to 9, 2004.
2. The following Member States of WIPO and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Australia, Austria, Barbados, Belgium, Benin, Bosnia and Herzegovina, Brazil, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Croatia, Czech Republic, Denmark, Democratic Republic of Congo, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Germany, Ghana, Guatemala, Guinea Bissau, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Japan, Jordan, Kazakhstan, Kenya, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Mexico, Mongolia, Morocco, Mozambique, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Serbia and Montenegro, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Togo, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela and Zambia (83).
3. The European Community (EC) participated in the meeting in a member capacity.

4. The following intergovernmental organizations took part in the meeting in the capacity of observers: International Labour Office (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Trade Organization (WTO), Organization of the Islamic Conference (OIC), African Regional Industrial Property Organization (ARIPO), Arab States Broadcasting Union (ASBU) and League of Arab States (LAS)(7).

5. The following non-governmental organizations took part in the meeting as observers: Actors, Interpreting Artists Committee (CSAI), *Agence pour la protection des programmes* (APP), American Intellectual Property Law Association (AIPLA), American Libraries Association, American Film Marketing Association (AFMA), Asia-Pacific Broadcasting Union (ABU), Association of Commercial Television in Europe (ACT), *Associação Paulista de Propriedade Intelectual* (ASPI), Brazilian Association of Broadcasting (ABERT), Canadian Cable Television Association (CCTA), Civil Society Coalition (CSC), Copyright Research and Information Center (CRIC), Digital Media Association (DIMA), European Broadcasting Union (EBU), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), Electronic Frontier Foundation (EFF), *Entidad de Gestión de Derechos de los Productores Audiovisuales* (EGEDA), European Digital Rights (EDRI), European Group Representing Organizations for the Collective Administration of Performers' Rights (ARTIS GEIE), International Affiliation of Writers Guilds (IAWG), International Association of Broadcasting (IAB), International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), International Intellectual Property Alliance (IIPA), International League of Competition Law (LIDC), International Literary and Artistic Association (ALAI), IP Justice, Ibero-Latin-American Federation of Performers (FILAIE), International Federation of Actors (FIA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Library Associations and Institutions (IFLA), International Federation of Musicians (FIM), International Federation of the Phonographic Industry (IFPI), International Federation of Reproduction Rights Organizations (IFRRO), International Hotel & Restaurant Association (IH&RA), International Music Managers Forum (IMMF), International Organisation of Performing Artists (GIART), International Publishers Association (IPA), International Video Federation (IVF), Japan Electronics and Information Technology Industries Association (JEITA), Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI), National Association of Broadcasters (NAB), National Association of Commercial Broadcasters in Japan (NAB-Japan), NetCoalition (CNET), North American Broadcasters Association (NABA), Public Knowledge, Union of National Radio and Television Organizations of Africa (URTNA), Union for the Public Domain, Union Network International–Media and Entertainment International (UNI-MEI) and World Blind Union (WBU) (54).

6. The session was opened by Mrs. Rita Hayes, Deputy Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO. She indicated that two issues topped the agenda of the Standing Committee, the protection of non-original databases and the protection of broadcasting organizations. It was agreed in the last session of the SCCR that a Consolidated Text for a Treaty on the Protection of Broadcasting Organizations (SCCR/11/3), based on the proposals from Member States and discussions in the SCCR, would be prepared by the Chairman in cooperation with the WIPO Secretariat. That document had been made available on April 1, 2004, and translated into the five other official languages. Its purpose was to indicate clearly areas where there was a high degree of agreement between the proposals that Member States had submitted and other areas where

there were important differences among those proposals. She said that the Consolidated Text covered all the necessary articles for a possible new treaty on the protection of broadcasting organizations, and that it was a balanced text that reflected the discussions that had taken place in the previous sessions of the SCCR. As such, it represented a sound basis for making headway in the present meeting as well as for clarifying outstanding issues on which agreement did not exist.

ELECTION OF OFFICERS

7. The Standing Committee unanimously elected Mr. Jukka Liedes (Finland) as Chairman, and Mr. Shen Rengan (China) and Mr. Abdellah Ouadrhiri (Morocco) as Vice-Chairmen.

ADOPTION OF THE AGENDA

8. Upon the proposal of the Chairman, the Standing Committee adopted its Agenda, as contained in document SCCR/11/1.

PROTECTION OF NON-ORIGINAL DATABASES

9. The Chairman opened the floor on the protection of non-original databases, recalling that in the June 2003 meeting of the 9th session of SCCR, it had been decided that the issue would not be revisited in each subsequent meeting and, thus, that it had been omitted from the Agenda of the 10th session of SCCR but included in the Agenda of the present session of the Committee. The Chairman opened the floor to government Delegations.

10. The Delegation of the United States of America indicated that, since the last meeting of the Standing Committee, there had been developments regarding the protection of non-original databases in its country. Two Bills had been proposed in the House of Representatives, each providing a different level of protection and different means of enforcement. In one Bill, known as the "Database and Collections of Information Misappropriation Act", non-original databases would be protected from misappropriation rather than under a specific intellectual property right. That Bill would provide a private cause of action against misappropriation for entities that create databases. In the other proposed bill, known as the "Consumer Access to Information Act", databases and collections of information would be protected only through an action by an administrative agency, the Federal Trade Commission. That Bill also established a misappropriation regime. Neither of the Bills had been enacted into law. Both, still under consideration in the Congress, were subject to significant domestic controversy. It was unlikely that any form of database protection would be enacted in the present session of the Congress, which concluded at the end of the year.

11. The Delegation of the European Community and its member States stated that as early as 1996 the copyright community had thought that the issue of protection of non-original databases was sufficiently mature to draft a Basic Proposal and take it to the 1996 Diplomatic Conference. However at the Diplomatic Conference time was too short to embark on that issue, and there was no choice but to concentrate on the WIPO Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT). In the WCT, a provision (Article 5) protected creative databases. Eight years later, the protection of non-original databases was

still an unfinished business at the international level. However, at national or regional levels, protection was amply afforded. The European Community, with its now 25 member States and a market for more than 400 million consumers, had harmonized *sui generis* protection for databases in 1996. Countries associated with the EC and others applied the same or similar regimes. As indicated by the European Community submission made in November 2002 (document SCCR/8/8), the introduction of harmonized *sui generis* protection for databases had been an important incentive for the European database sector. A balanced *sui generis* protection stimulated the availability of non-original databases and safeguarded access to them on appropriate terms, thus benefiting users and investors alike. The European Community and its member States were convinced that balanced and flexible international protection would stimulate the production and use of non-original databases. It would benefit the entire economy, including the scientific community. It was important that the Standing Committee maintained the database issue in its agenda and that it be reexamined as soon as possible, preferably at the next meeting.

12. The Delegation of Brazil indicated that the protection of non-original databases had been on the agenda of the SCCR for some time, without any real substantive discussion taking place. There was no clear understanding of the social and economic impact of such protection. A Study issued by WIPO in 2002 on the protection of non-original databases in Latin America (document SCCR/8/6) seemed to indicate that it was premature to implement that kind of protection. There was growing awareness and fear, in both developing and developed countries, of the potential negative implication of that protection on the public interest, in areas such as academic and scientific research, technological innovation and broader developmental goals. The Delegation questioned the need for retaining the issue on the agenda of the SCCR, as it was a subject in respect of which the Committee did not want to engage further. It proposed that the issue be permanently deleted from the agenda of the SCCR.

13. The representative of the Civil Society Coalition (CSC) expressed his support for the statement by the Delegation of Brazil, and stated that time was not ripe for an international treaty on the legal protection of non-original databases. He recalled that during the Diplomatic Conference that took place in 1996, broad opposition had been expressed to an international instrument on the issue. Such protection could have an impact on the free flow of information and innovation. He drew attention to issues related to the implementation of rules on the protection against unfair competition of data used in the registration of agricultural chemicals and medicines. The Free Trade Agreements negotiated by the United States of America with third countries provided exclusive rights for data compiled in the agricultural chemicals and medicines sectors and the protection granted was of ten years' duration for the first and five years' duration for the latter. That regime of protection had attracted criticism from public health organizations. Some members of his organization opposed any trade or intellectual property regime that would force developing countries to compensate the producers of data used for registration of medicines. Other members of his organization favored a compensatory liability approach but were opposed to any exclusive rights approach. The representative underlined that any protection of non-original databases could result in limiting access to medicines.

14. The representative of the International Publishers Association (IPA) recalled that since 1996, its organization had been part of the international process in favor of the legal protection of non-original databases. As the information age was developing, the need for protection of such databases had become even more urgent. High quality information regularly accessible to scientists and students would become even more pressing. His

organization could not comment on the impact of the protection on the accessibility of data in pharmaceutical products, but it was of the opinion that those difficulties existed even in the absence of such protection of non-original databases. Many developed and developing countries, such as Australia, Mexico, Republic of Korea and South Africa and to some extent Canada, had also embraced such protection at national level. His organization was fully committed to the development of balanced protection at international level, that could be based either on a misappropriation approach or on a system of full proprietary exclusive rights. There was a need to maintain the topic on the agenda of the next Standing Committee meetings to achieve further common understanding on the issue. WIPO was the most appropriate forum for such discussions.

15. The representative of the American Library Association (ALA) supported the statement by the Delegation of the United States of America indicating that the topic remained a subject of significant controversy in his country, and that it was not likely that any legislation would be adopted by the Congress before the end of the year. His organization also expressed support for the statement by the Delegation of Brazil and questioned whether the topic should remain on the SCCR agenda. The database industry was growing rapidly all over the world and there was no need for additional level of protection for databases above what already existed.

16. The Delegation of Ecuador, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC), did not consider that it was the right time to address the issue at the international level.

17. The Delegation of India believed that no allegation of widespread copying of non-original databases had been verified. The fundamental issue was whether the issue of the protection of non-original databases that did not embody creativity was a topic to be addressed in the framework of WIPO's work. The Delegation believed that such databases could be protected under misappropriation regimes, however the topic would be better addressed in a different forum. Many entities had requested protection of their sweat of the brow assets but not all of them should have approached WIPO. The European Community and its member States had taken a proactive position on that issue that was well suited for that region of the world. The Delegation was interested in creating the conditions for the Indian database industry to expand and flourish but would need to go through a careful learning process. The development of laws could have the effect of inhibiting rather than facilitating the growth of the industry. The Delegation was of the opinion that any protection at the international level would be premature and even in the long term it would not be appropriate to keep the item on the agenda since those assets did not have to do with the protection of creativity. The item should be deleted from the agenda of the SCCR.

18. The Delegation of the Russian Federation recalled that its country was conducting work for the protection of non-original databases at the national level. The issue should remain on the agenda for future discussions under WIPO auspices. Although the issue could not be treated as a matter of priority, there was no doubt that it required further discussion. The present SCCR session had to focus on the protection of broadcasting organizations but the Delegation considered it clear that the topic had to be maintained on the agenda of future sessions.

19. The Delegation of the United States of America stated that there were different ways to approach the issue of the protection of non-original databases but that it considered it important to keep the topic on the agenda of the next SCCR sessions with a view to facilitating a regular exchange of information.

20. The Delegation of China was of the opinion that the issue had to be dropped from the agenda, and supported the statements made by the Delegation of India. Some issues required further clarification. The protection of non-original databases should be compatible with the framework of intellectual property and protection of intellectual creation. That protection could amount to protection of material in the public domain, which would not be compatible with WIPO's mandate. Recent international treaties such as the WCT and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) limited protection to creative works. Most national laws only protected creative databases. Protection of non-original databases was designed to protect the labor of compilers or the profits of operators. There was no intellectual creation on the operators' side. Some countries had enacted specific legislative measures to resolve this issue, but unfair competition mechanisms could also be used to this end. There was no urgency to settle this issue, whereas the protection of audiovisual performances, broadcasting or folklore could be seen as political priorities.

21. The Representative from the Union for the Public Domain (UPD) noted that the protection of databases had its justification in the idea that proprietary rights were the optimum way to foster innovation. Others thought that openness was the best way to foster innovation and was a valuable asset for civil society. WIPO should hold an information session on the best way to foster innovation, whether under a closed model or an open model.

22. The Chair stated that due note would be taken of the suggestion made by the representative of the Union for Public Domain. National developments were taking place in several countries in relation to the protection of non-original databases. WIPO had commissioned several studies on the issue. An appropriate solution for addressing this issue would be proposed at the end of the Committee meeting.

23. The Delegation of Egypt, on behalf of the African Group, noted that the protection of non-original databases was not ripe for consideration by the Committee in the near future. More time was needed to understand the social and economic implications of protection of such databases from a development perspective. The priority of the Committee should be to focus its deliberations on issues where progress could be achieved.

PROTECTION OF BROADCASTING ORGANIZATIONS

24. The Chair referred to the decision of SCCR/10 relating to the preparation of a Consolidated Text based on proposals submitted by governments and discussions in the SCCR. The Text had been released at the beginning of April. It reflected all proposals submitted by governments, though some minor aspects could have been streamlined. When two or several solutions were found in the proposals, these were presented as options. The Consolidated Text was intended to facilitate the discussion in substance and only limited treaty language elements had been added. One of the most important tasks of the meeting was to reduce the number of options presented in the Consolidated Text, currently between 20 and 30, and to establish common ground. More attention should be paid to articles, whereas explanatory comments were to be considered as interpretative elements for the articles. The Chair was appreciative of the WIPO technical background document "Terms and Concepts"

(SCCR/8/INF/1) that provided a valuable source of information. The Consolidated Text made reference to the delegations that had submitted proposals. A revised version of the Consolidated Text could take into account any misunderstanding or errors that had been made. In no case the Consolidated Text should be regarded as a basic proposal or a basis for negotiation. It was only a facilitating tool for exploration of common grounds concerning substance and political questions. A basic proposal for a diplomatic conference could be prepared at a later stage.

25. The Chair noted that, after an assessment process, the SCCR would then decide whether to recommend to the General Assembly meeting in 2004 that a diplomatic conference be convened. If the SCCR so recommended, the next steps in a normal procedure would be: (i) to prepare a basic proposal to form the basis of discussion and preparations by governments and stakeholders; (ii) to convene a preparatory committee to determine the necessary modalities of a diplomatic conference, including rules of procedure and lists of invitees; (iii) to convene regional consultations if required; and (iv) to allow for consultations to be held immediately prior to the commencement of the Diplomatic Conference. It was open to Member States to decide upon that procedure, and timing was very important if a decision was to be reached at the WIPO General Assembly. Time at the present session was limited, and sufficient time needed to be reserved for assessment at the end of the meeting.

26. Referring to the Consolidated Text, the Chair explained that it reflected the 16 proposals received from Member States, and one additional proposal received from Singapore. He noted that the meeting offered insufficient opportunity to examine the Consolidated Text article by article, and proposed two main rounds of discussion: (1) on the scope of protection, and (2) on the substance of protection (i.e., on rights and limitations, obligation of national treatment, relation to other treaties, etc.).

27. The Delegation of Ecuador, speaking on behalf of GRULAC, noted the need to agree on a framework for the final treaty, and identified a number of issues for debate. Webcasting was a complex matter from both technical and legal viewpoints, and as recent technological developments were not sufficiently developed to be regulated, that issue should not be included in the Text of any draft treaty for the protection of broadcasting organizations. More time was required to analyze the economic and social implications of a specific protection for webcasters. Simultaneous broadcasting over the Internet could, in principle, be considered as part of broadcasting and therefore suitable for legal protection. Further analysis was required on the issue of cablecasting, and with further study that issue might be considered for possible inclusion in an agreement on the protection of broadcasting organizations. The Delegation expressed concern about the impact of provisions relating to technological measures, and their connection with the operation of limitations and exceptions. It was also important not to impede access to public domain material. The Delegation stated its concern, with respect to the pending discussions on an instrument for the protection of audiovisual performers, that it had to date not been possible to resolve debate concerning a single outstanding article. In that connection, the Delegation urged the International Bureau to hold *ad hoc* informal consultations, such as those held in November 2003, to promote quick progress on resolving difficulties. The Delegation emphasized the importance of ensuring the protection of audiovisual performers as quickly as possible, without prejudice to progress on both topics before the SCCR. The Delegation reserved the right of each member States of GRULAC to make its statements with respect to individual items in the Consolidated Text.

28. The Delegation of Egypt, speaking on behalf of the African Group, expressed hope that there would be further exchange of views among all stakeholders and information on the implications of the issues under consideration, and progress in resolution of areas of disagreement, for example, on the exact scope of the possible future instrument for the protection of broadcasting organizations. Member States needed more time to understand the scope and elements of protection of the possible future instrument for the protection of broadcasting organizations. The African Group had, in the past, given its support for the scope of protection to include, in order of priority, signals and broadcasting transmissions. It would not be appropriate to include webcasting in a possible instrument, as this raised complex issues with technical and legal implications under constant change, and their impact was therefore not yet fully understood by many Member States. Any discussions on a possible instrument for protection of broadcasting organizations should take account of the development implications of intellectual property, access to knowledge, and the dissemination of information, which were considerations of great importance in the digital environment. The Delegation underlined the great importance of the unfinished work of the SCCR concerning the protection of audiovisual performers, and urged the Committee to intensify that work and to strike the appropriate balance between all stakeholders in the digital environment.

29. The Delegation of the Russian Federation noted that a regional seminar had been organized in Moscow prior to the present meeting, with the International Bureau's guidance, and in which Governments of the Commonwealth of Independent States (CIS) countries, non-governmental organizations and broadcasting specialists had participated. Most participants at that seminar had noted the significance of the Consolidated Text. The discussions on a future instrument for the protection of broadcasting organizations were timely and important, and the Delegation agreed with the need to find a common understanding to protect traditional broadcasting organizations, thereby opening the way to a diplomatic conference.

30. The Delegation of the European Community, speaking also on behalf of its member States, emphasized the importance of the Consolidated Text, which it believed would be a step forward towards the updating of the international protection of broadcasting organizations. It noted that its member States were party to the Rome Convention, a Convention that should be taken into consideration as the basis for the new treaty. The issues of webcasting, the definitions, the scope, national treatment and other issues that were considered in the Consolidated Text all merited a thorough debate, and with the proper guidance from the Chair, progress could be made. The Delegation endorsed the outline proposed by the Chair regarding the structure of the debate.

31. The Delegation of Mexico thanked the Chairman and the Secretariat for the preparation not only of the Consolidated Text, but also of the explanatory notes. It noted that the Text allowed the different issues to be considered and analyzed clearly. It looked forward to seeing the conclusion of the discussions and if possible the birth of an international treaty that would update the rights of broadcasting organizations in the near future.

32. The Delegation of the United States of America expressed its gratitude for the inclusion in the Consolidated Text of the proposals that were submitted by the different delegations, including the one presented by its country. The Consolidated Text reflected the many points where the delegations agreed on certain issues, but also reflected the divergence. The Delegation looked forward to a positive and constructive discussion.

33. The Delegation of Norway noted that it had always been supportive of the need to update the protection of the three groups of holders of related rights in view of the technological progress. It was regrettable that there had not been a solution regarding the protection of performers of audiovisuals works and it was its sincere hope to develop consensus on this issue. It was pleased to see major progress with respect to the protection of broadcasting organizations and even though it was seeking to update audiovisuals performers' rights and broadcasting organizations' rights together, it would not be fair now if broadcasters were to suffer for the unsuccessful efforts regarding audiovisual performers. The issue of webcasting should be left out of the instrument, in order to focus on the imminent needs of traditional broadcasting organizations and the issue should be further analyzed. The Delegation looked forward to concluding with a recommendation to the WIPO Assembly that a diplomatic conference be convened to adopt an instrument for the international protection of broadcasting organizations.

34. The Delegation of Japan stated that the Consolidated Text prepared by the Chairman and the Secretariat was a good response to the challenges posed by new digitized technologies in the field of broadcasting. It was ready to contribute to the deliberations in the forthcoming days so as to convene a diplomatic conference in the near future. That decision should be a priority for the Standing Committee.

35. The Delegation of Morocco noted that the Consolidated Text summarized the different proposals made in the previous sessions in order to grant a correct protection to broadcasting organizations. At a later stage, the Delegation would present few comments on different aspects of the Text. However, it wished to state that the time for negotiations on the protection of webcasters was not ripe. Although it was an important issue that needed deeper analysis, Member States needed to analyze the economic impact of that protection and, perhaps, WIPO should move in that direction. The Delegation was in favor of holding a diplomatic conference, provided that complete success was guaranteed.

36. The Delegation of Mexico pointed out that the Consolidated Text was in accordance with most of the standards of protection granted by its national legislation to broadcasting organizations. It supported the inclusion of particular provisions to fight against piracy of signals, if necessary. The protection of webcasters had to be in a separate document for subsequent discussions.

37. The Delegation of Singapore considered the Consolidated Text a very positive and excellent contribution for the current discussions. It hoped to explain in detail its own proposal at a later stage.

38. The Delegation of Kenya expressed its willingness to contribute to the discussions in order to convene a diplomatic conference in the not distant future.

39. The Delegation of China congratulated the Chairman for the Consolidated Text and the Secretariat for providing it in Chinese. The Text made the upcoming work much easier. When discussing the protection of broadcasters, the Committee needed to pay full attention to the interests of other stakeholders. A balance among them, as well as with the public interest had to be struck. Education, technology and information were important factors to take into account. One question to be solved was the proper size of the piece of the pie to grant to each stakeholder. In that respect, there were several aspects to deal with: the impact of new technologies on broadcasting organizations, webcasting and the rights of performers and producers of phonograms and the audio-visual programs. While its country was not ready to

grant protection to webcasters at present, it considered that the protection of audiovisual performers was a pending matter in determining the shape of the above-mentioned balance. For updating the protection of broadcasters, the Delegation proposed to keep the Rome Convention as the starting point of negotiations and requested WIPO to organize regional consultations for subsequent in-depth analysis.

40. The Chairman explained that the Consolidated Text presented four candidates for protection: (i) transmissions initiated by broadcasters; (ii) transmissions initiated by cablecasters; (iii) transmissions initiated by webcasters; and (iv) pre-broadcast signals. The Chairman suggested that the work be organized in two packages. The first package encompassed the scope and object of protection as well as rightholders. On the one hand, the object of protection involved the notion of broadcasting, used in Article 3(1) and the definition in Article 2(a); the notion of cablecasting, used in Article 3(2) and the definition in Article 2(c); and finally, the notion of webcasting used in Article 3(3) and the definition in Article 2(g). Those notions were not defined in the Text or in any other existing instrument. In addition, there were two exclusions from the scope in Article 3(4): mere retransmissions and transmissions on-demand. Finally, the object of protection also involved Article 13 regarding the protection of pre-broadcast signals. On the other hand, the issue of rightholders involved the definition of broadcasting organizations in Article 2(b). The second work package referred to the rights to be granted, their limitations, the beneficiaries of national treatment, the relation with other treaties and the eligibility for becoming party to the treaty. These two packages covered 25 of the most important political clauses of the Consolidated Text.

41. The Delegation of Brazil sought clarification regarding whether Article 16 of the Consolidated Text, concerning technological measures of protection, was actually included in the work packages.

42. The Chairman explained that Article 16, together with the clause referring to rights management information, had the same wording as similar provisions of the WCT and WPPT, and was almost identical in the 17 proposals of Member States received. Discussion on this provision could take place at a later stage.

43. The Delegation of Brazil considered that Article 16 was very controversial and, therefore, thorough discussion on that subject matter would also be necessary.

44. The Chairman agreed to include Article 16 in work package 2.

45. The Delegation of Kazakhstan, on behalf of the CIS countries, stated that a future treaty had to encompass adequate protection for traditional broadcasting organizations and cablecasters. Webcasting was a very important issue that required further examination. The Delegation pointed out that traditional broadcasting, satellite broadcasting, cablecasting and simultaneous webcasting (Alternative E of Article 3) of the Consolidated Text should be included in the scope of application. In addition, the group of definitions proposed should not contradict the existing definitions in other international instruments. As regards the eligibility for becoming party, the Delegation was of the view that any WIPO Member State should be eligible, regardless of its membership in WCT and WPPT. It also supported the clarification made by the Delegation of Brazil on the inclusion of technological measures of protection in the discussion packages. In that regard, it agreed with the content of Article 16 of the Consolidated Text.

46. The Delegation of India said that the Consolidated Text ignored the consensus reached by many delegations in previous sessions with regard to the inopportune inclusion of webcasters in a future treaty. Protection for webcasters as well as cablecasters was far beyond the necessary legal protection needed for neighboring rights holders. In addition, there was not conceptual clarity in the objective of the proposed treaty. Copyright had to address the delicate balance among the interests of different rightholders, and between them and the legitimate right of society for access to information. The proposed treaty might tilt the balance in favor of broadcasters to protect their business interests at the cost of society at large and copyright holders specifically. It pointed out that many countries had not reached the same level of development as industrialized countries regarding cablecasting and webcasting technologies. Granting protection to cablecasters and webcasters would affect adversely the spread of technologies and widen the digital divide.

47. The Delegation of the United States of America disagreed with the statements of previous delegations regarding the premature protection of webcasters. It recalled that the Rome Convention had been a pioneer convention concluded before many countries had embraced modern technologies for radio and television transmissions. A new treaty had to respond to the new challenges regarding piracy of signals, including the Internet. When seeking an adequate balance of rights at international level, the Committee could not ignore technological progress. The Delegation saw no reason to differentiate between the protection of simulcasting, proposed in Alternative E of Article 3 and supported by the European Community; and webcasting, proposed in Alternative F of the same Article. If webcasting was not encompassed in the scope of application, then simulcasting should be excluded as well.

48. The Delegation of the European Community, speaking also on behalf of its member States, shared the opinion expressed by the Delegation of India regarding the need to grant the necessary protection while avoiding tilting the balance in favor of other organizations to the detriment of rightholders and interests concerned. The future treaty should cover traditional broadcasting, cablecasting, simulcasting and pre-broadcast signals, and should not cover webcasting or interactive transmissions. It proposed that Article 2(a) of the Consolidated Text, on a separate definition of “broadcasting”, refer to wireless or wired means. In its view, the definition of cablecasting in Article 2(c) was not necessary. Also, it wondered if there was added value in Article 2(b) regarding the definition of “broadcasting organizations.” That definition might even amount to a Rome Convention *minus* as it created uncertainty regarding the responsibility for the transmission, such as in the case of the transmission of sport events. The definition of “retransmission” in Article 2(d) included the notion of another broadcaster. In that regard, the Delegation proposed to refer to the broadcasting made by the originating broadcaster and to the retransmission made by the other broadcaster. Article 3(g) of the Rome Convention could serve as a guideline in that respect. It also stated that Alternative C of Article 2(g) of the Consolidated Text was not necessary, as webcasting should not be covered by the treaty. As regards Article 3 on the scope of application, the Delegation wondered why there was a need for paragraphs (1) and (2), as it was clear that the Treaty should refer to broadcasting organizations. In addition, it suggested that paragraph (2) referred to the “protection of cablecasting organization” instead of the “rights of cablecasting organizations.” Alternative E of Article 3(3) was welcome in itself, but it referred to “webcasting”, a term that had not been defined in the Text. In that regard, the Delegation proposed to replace that term by a more neutral term such as the “transmission on computer networks.” In addition, the Delegation was not in favor of Alternative F of Article 3(3). Furthermore, Article 3(4) referred to “retransmissions”, a term defined in Article 2(d), and the

Delegation wondered if that definition resulted in too narrow a protection. With respect to Article 13, the Delegation appreciated the need for some protection for pre-broadcast signals.

49. The Delegation of the Russian Federation referred to the term “piracy” in the preamble. That term was linguistic rather than legal. The Delegation preferred to change to “illegal use of rights.” As for the definitions, it believed that a definition of cablecasting organizations was necessary. In addition, it pointed out that such organizations sometimes ignored the rights of copyright and related rights holders.

50. The Delegation of Egypt stated that it was very flexible regarding the various proposals of other delegations, and was ready to join a general agreement on the matter of discussion. Nevertheless, there were certain issues on which the Delegation had very firm positions. One of them was the scope of application. The Delegation was against the inclusion of webcasters in the treaty.

51. The Delegation of Brazil expressed reservations over the wording of Article 2 of the Consolidated Text. While it did not oppose the inclusion of cablecasting in a future treaty, it recognized that the protection of that activity, similar to that granted to traditional broadcasting organizations *mutatis mutandis*, was a matter under current examination in Brazil. Therefore, the Delegation was not in a position to comment on the aforesaid Article. It found that the inclusion of webcasting in the Consolidated Text was unacceptable. It recalled that the level of opposition among delegations in previous SCCR sessions had been overwhelming. Excluding webcasting from debate would be a significant contribution. It urged the Committee to resolve that matter quickly.

52. The Delegation of Argentina supported the statements of previous delegations regarding discussing protection of webcasters. It pointed out, however, that simulcasting was one of the activities of traditional broadcasting organizations. The Delegation was therefore in favor of Alternative E of Article 3. As regards Paragraph (d) of Article 2 in the Spanish version of the Consolidated Text, it suggested that the definition of “redifusión” be replaced by “retransmisión.” Finally, the Delegation had no objection regarding Article 13 of the Consolidated Text, due regard being had to the opinion held on Article 12.

53. The Delegation of Australia supported the application of the treaty to broadcasting and cablecasting. It also supported the definition of “broadcasting organization”, subject to clarification regarding the meaning of “responsibility for the transmission.” It understood that the organization responsible was the one arranging for the transmission and not necessarily the one owning the facilities for the transmission, if they happened to be different entities. The Delegation was not in a position to support the protection of webcasters. The treaty needed to be forward-looking, but the design of that specific protection needed further consideration. It cited as an example the exact object of protection of webcasting in Alternative C of Article 2(g). The first sentence seemed to indicate that it could be characterized as an act of making available on-line, while the second sentence seemed to refer to a transmission. That was not a drafting issue, but a real uncertainty to be resolved. Another issue that needed further discussion was the application of the definition of broadcasting organizations *mutatis mutandis* to webcasters as the latter were by and large unregulated and unlicensed. It was prepared to consider the protection of pre-broadcast signals, understood to be signals intended for transmission to the public and generated by broadcasting organizations. It referred to the remarks made by the Delegation of the European Community regarding the mere retransmissions in Article 3(4)(i) and the definition

of retransmission in Article 2(d). It was not clear if the former referred to deferred as well as simultaneous retransmissions.

54. The Delegation of the Islamic Republic of Iran was in favor of the inclusion of broadcasting and cablecasting and opposed to the inclusion of webcasters in the future treaty. In arrangement of the articles of the treaty, the procedural principle of contract law should be regarded. The last sentences of paragraphs (a) and (c) of Article 2 should be deleted and transferred to other sections of the treaty. Finally, it agreed with Articles 2(b) and 24(z) of the Text.

55. The Delegation of Chile said that some of the fundamental pillars of copyright were its limitations and exceptions, as well as the public domain. It was of the view that the protection of cablecasters and webcasters, apart from being a serious risk for the protection of other stakeholders, might cause considerable damage to the aforesaid pillars. It noted that the impact that such additional protection could have in developing countries had not been sufficiently analyzed by the Committee.

56. The Delegation of Egypt clarified what might have been a misinterpretation of its previous statement. It said that it fully supported what the Delegation of Brazil had stated regarding the protection of webcasters. The Delegation of Egypt was opposed to the inclusion of that category of beneficiaries in a future treaty too.

57. The Delegation of Singapore clarified that webcasting had not been included in its proposal. Also, the term “cablecasting” in its proposal included broadcasting by wire, and excluded any transmission over computer networks or interactive transmissions. As regards pre-broadcast signals, it explained that Article 10 of its proposal differed from Article 13 of the Consolidated Text, as the former proposed just a mechanism to avoid piracy of those kinds of signals and did not aim at establishing any kind of exclusive right. That provision was based on the Satellite Convention with some slight modifications.

58. The Delegation of Morocco highlighted the suitability of the reference to “piracy” in the preamble. Granting protection to organizations other than traditional broadcasters was not necessary. Furthermore, there were certain beneficiaries of related rights, namely audiovisual performers, with whom the balance of protection should also be struck. In that regard, it expressed its full support of the Director General of WIPO for continuing discussions on the pending issues.

59. The Delegation of Benin pointed out that broadcasters were motors of social and economic development. It was, therefore, in favor of the protection of only traditional broadcasting.

60. The Delegation of Togo applauded the positive developments towards the adoption of a new instrument for the protection of broadcasting organizations. The instrument should maintain the balance of the rights of other stakeholders, and exclude webcasters from the scope of protection. The Delegation declared itself in favor of the protection of pre-broadcast signals.

61. The Chairman invited the delegations to make useful remarks about what they did not wish to see in the Consolidated Text. Silence was interpreted as non-opposition to the provisions of the Text.

62. The Chair opened discussions on the substantive articles in the Consolidated Text which could be divided into five categories: (i) rights (Articles 6 to 13); (ii) limitations (Article 14); (iii) the framework of protection (Articles 4 and 5); (iv) eligibility and relation to other treaties (Articles 1 and 24); and (v) technological protection measures and rights management information (Articles 16 and 17). The first category included the rights of retransmission (Article 6), communication to the public (Article 7), fixation (Article 8), reproduction (Article 9), distribution (Article 10), transmission following fixation or ‘deferred broadcasting’ (Article 11), making available on demand of fixed broadcasts (Article 12), and protection of signals prior to broadcasting (Article 13).

63. The Delegation of Barbados identified Article 24 as pivotal to the future participation of Barbados in any future instrument. As with other English-speaking Caribbean countries, Barbados was not yet party to the WCT and the WPPT, although accession was envisaged once other development imperatives had been addressed. In that light it was not justified to exclude countries from joining any future instrument on protection of broadcasters, on the basis of non-accession to other WIPO treaties. The independence of national legislatures to determine questions of accession could be undermined if Article 24, Alternative AA of the Consolidated Text were adopted, and therefore the Delegation could not support the second alternative in the Text.

64. The Delegation of the European Commission, speaking also on behalf of its member States, stated that, with respect to Article 7 of the Consolidated Text, it could support Alternative L. Alternative M, which, in Article 7(2) and (3), left it to a high degree to domestic law to determine conditions of protection, exercise and notification, and had implications for national treatment obligations, could not be supported. Article 9, Alternative O, did not grant exclusive rights to authorize reproduction, but only the right to prohibit certain conduct. The Delegation questioned why the system of exclusive rights granted under the Rome Convention had been downgraded to an indirect system of protection in Alternative O. Similar objections were raised to Article 19, Alternative Q, and Article 12, Alternative S, which likewise proposed a right to prohibit instead of a right to authorize. The flexible formula found in Article 13 was considered necessary to deal with that new area of protection. Article 14 (1) and (2) were equivalent to other treaties, but Alternative T (Article 14(3)), resembled a grandfathering clause and was not convincing or beneficial. With respect to Article 4(2), which created a ‘fiction’ of nationality, it was difficult to determine the nationality of broadcasting organizations and it was questionable whether the reference to nationals was necessary. Whereas that concept was derived from the WPPT (Article 3), that Treaty referred to the nationality of two categories of rightholders, i.e., performing artists and producers phonograms, where determination of nationality was straightforward. With respect to Article 5, the Delegation stated that obligations of national treatment could only be considered at the conclusion of negotiations, once the content of the new instrument and any such obligations became clear. Article 5, Alternative J was preferred, because it used the formula agreed in other contexts concerning related rights. With respect to Articles 24 and 26, the Delegation was not convinced that parties to the new instrument should fulfil the precondition of accession to the WCT and WPPT, as proposed by Alternatives AA and CC. Some, but not all, the Member States of the European Community had ratified the WIPO treaties. With respect to Article 1, there was a definite need to include non-prejudice clauses with respect to the Rome Convention, although Alternative B was less convincing in that respect. The Delegation expressed serious concern that Alternative V granted self-standing protection for decryption, which was not recognized as a technological protection measure in the WIPO treaties. Recalling the protracted negotiations on the issue of technological

protection measures in the WIPO treaties, the Delegation supported Article 16(1), which mirrored the WPPT.

65. The Delegation of the United States of America, referring to Article 7, stated that Alternative M should be included to ensure that rights and protection granted to broadcasters were not more extensive than those granted to rightholders under the WPPT, and was necessary to maintain the balance described in subparagraphs (2) and (3) and Alternative L. The proposed instrument had a balanced two-tiered structure for granting specific rights, and many states, including its country, were concerned to ensure that broadcasters were protected against unauthorized use of signals, without thereby causing conflict with underlying rightholders and the public interest. The right to prohibit certain activities was preferred, in lieu of the right to authorize, so as not to expand proprietary rights set out in the Rome Convention in a manner that would adversely affect content owners' rights. With respect to Article 24, the precondition of accession to the WCT and the WPPT had been proposed to ensure a balance between the rights of broadcasters and rightholders, but not to exclude countries from participation in any proposed instrument. However, the Delegation considered that the WCT and the WPPT provided the necessary infrastructure to protect content in the digital age. Any instrument on the protection of broadcasters should emphasize protection of content and signals, while alleviating concerns of prejudice to other rightholders. With respect to Article 1, Alternative B was supported as the broadest statement on non-interference with rights granted by other treaties. With respect to Article 16, the Delegation agreed with the Delegation of the European Community that paragraph (1) was sufficient.

66. The Chair clarified that the legal fiction concerning the nationality of beneficiaries was derived from the TRIPS Agreement, and also included in the WPPT. It had been included in the Consolidated Text because there was a need to define "nationals" as used in subsequent articles. If Member States so preferred, however, the more direct formula of nationality used in the Rome Convention could be employed.

67. The Delegation of the Russian Federation, with respect to Article 1, supported Alternative B because contracting parties could be linked with existing obligations under other treaties. Support was given for Article 4, Alternative H, because it corresponded with Article 2(6) of the Rome Convention. Support was given for Article 5, Alternative G, as well as Articles 6, 8, 11, 13, 15, 16, 18, 20, 23, 25, 27 and 31. With respect to Article 7, depending on the outcome of discussions, support was given for Alternative M, because it corresponded more closely with Article 13 of the Rome Convention. The Delegation referred to the rights that could bar the exercise of third parties' rights, and noted specifically that Articles 9, 10 and 12 should be in line with rights in the content. The proposed instrument should not include a condition that would force parties to accede to the WCT and the WPPT in order to become members. The treatment of technological protection measures in Article 16 should follow that established in the WPPT.

68. The Delegation of the Islamic Republic of Iran supported Article 6, and clarified that "any means" of communication referred to rights of retransmission of broadcasts and cablecasts. Support was given for: Article 7, Alternative M; for the entire Article 8; for Article 9, Alternative O; for Article 10, Alternative P; for Article 24(z) and for Article 1, Alternative B.

69. The Delegation of China suggested that, the treaty should grant the right to authorize or prohibit, as did the Rome Convention. With respect to Article 24 of the Consolidated Text, it

supported Alternative Z, and it supported Alternative A of Article 1. The Delegation reserved its right to comment on other provisions at a later stage of the discussions.

70. The Delegation of India reserved its right to comment further at a later stage of the discussions. It noted that the exclusive rights granted in the proposed treaty went beyond the WCT and the WPPT and the exclusive rights granted to authors in other international agreements. Therefore, those dispositions appeared like a WCT and WPPT *plus* agreement. Indeed, many provisions proposed in the Consolidated Text went beyond the provisions in the Berne Convention and the minimal provisions of the TRIPS Agreement. Article 13 relating to protection of signals prior to broadcasting did not define what was a pre-broadcasting signal. Pre-broadcasting signals should not be included under copyright and the article should be deleted from the proposal. The Delegation expressed its concern with respect to the term of protection established in Article 15 of the Consolidated Text, stating that there was no reason or justification to extend the term to 50 years. The term should rather be reduced to 10 or 15 years.

71. The Delegation of Brazil reserved its rights to revert later to the provisions on the rights granted in the Consolidated Text and at present concentrate on other provisions. It expressed its support for Alternative J of Article 5. The provisions regarding technological measures in Article 16 should not be included in a treaty regarding broadcasting organizations, even if similar provisions were included in the WCT and the WPPT. Those similar provisions were included at a different time when there was little awareness of the negative impact which technological measures could impose on the general public's right to access information that is already in the public domain. Article 16 should therefore be deleted. The Delegation supported Alternative Z of Article 24, regarding eligibility for becoming party to the treaty, and consequently it supported Alternative BB of Article 26 regarding signature of the treaty.

72. The Delegation of Mexico stated that with respect to the rights granted to broadcasting organizations in the Consolidated Text, there should be a balance between the rights of the broadcasting organizations and the owners of other rights. It supported: Alternative B of Article 1, regarding the relation to other conventions and treaties; Article 8 regarding the right of fixation, a provision that was in accordance with its national legislation; Alternative L of Article 7; and Alternative P of Article 10.

73. The Delegation of Chile reserved its right to revert later to the different provisions that were proposed, but wished to comment on Article 16 concerning technological measures. If such a provision were to be included, it should clearly establish the rights of the users and the relationship to limitations and exceptions. Article 14 of the Consolidated Text should clarify that limitations and exceptions should satisfy the three step test, but in accordance with other international obligations limitations should explicitly be allowed for private use, reporting of current events and use for the purposes of teaching or scientific research.

74. The Delegation of Australia reserved its position, but wished to support Alternative M of Article 7, because it offered some latitude for developing domestic legislation and followed the Rome Convention; Alternative N of Article 9; and Alternative R of Article 12. Paragraph (1) of Article 14 should be modified by adding at the end of the sentence "and related rights." It preferred Alternative Y of Article 19 and reserved its position for later comments on Articles 24 and 26 and other provisions.

75. The Delegation of Argentina noted that the translation into Spanish of the retransmission right established in Article 6 was not precise and should be changed from

‘redifusión’ to ‘retransmisión.’ It supported Alternative M of Article 7; Alternative O of Article 9; Alternative Q of Article 10; Alternative H of Article 4; Alternative J of Article 5; Alternative AA of Article 24 – in order to ensure a balance between copyright and related rights; and Alternative V of Article 16. It reserved its right to express its position further in the coming discussions. With regard to Article 14, it suggested inclusion of the Argentine proposal recorded in Explanatory Comment 14.05 in the Consolidated Text. It also suggested the deletion of Article 12, and the inclusion in its place of an agreed statement concerning Article 9 (in the sense of WPPT Articles 7, 11 and 16) with the following wording: “The storage of a broadcast in digital form in an electronic medium shall constitute reproduction of the said broadcast”.

76. The Delegation of Benin preferred Alternative K of Article 5. It also supported Articles 6 to 13, but it would be crucial to strike a balance between the rightholders and the public. It did not see any justification for including Alternative AA of Article 24, which consequently should be deleted.

77. The Delegation of Morocco supported Alternative B of Article 1; paragraphs (1) and (2) of Article 3; Alternative Q of Article 10; and Alternative G of Article 5. It reserved its position for further comments later. The wording used in Article 6 that referred to “by any means” was very broad and should be modified. The Delegation supported the first paragraph of Article 16 and Alternative Z of Article 24, as the treaty should be open to all parties with no restrictions.

78. The Chair opened the floor to intergovernmental organizations.

79. A representative from the African Regional Industrial Property Organization (ARIPO) stated that it was the first time that ARIPO participated in the SCCR. Necessary reforms were being undertaken within that organization, which grouped 16 African countries and was devoted to industrial property issues, in order that it can also deal with copyright matters. ARIPO supported Article 24 of the Consolidated Text, paragraph 2 of which contemplated the eligibility of intergovernmental organizations to adhere to a possible future treaty.

80. A representative of the Arab States Broadcasting Union (ASBU) commended the Consolidated Text, which set out a framework for balanced and objective protection with many positive implications for public broadcasting. The protection envisaged would update the protection of broadcasting organizations, helping them to fight piracy while enabling them more effectively to promote the diffusion of universal values such as peace and culture. He considered that for the time being it was better to exclude webcasting from the scope of protection. Furthermore the ASBU believed that a diplomatic conference should be convened in 2004, or, at the latest, in the following year.

81. A representative of the European Group Representing Organizations for the Collective Administration of Performer’s Rights (ARTIS GEIE) stated that in protecting intellectual property WIPO should accord priority to the rights of creators over holders of derivative rights such as broadcasters. Protection of broadcasters should be based on fighting signal-theft, and should not include exclusive rights but only rights to prohibit certain non authorized uses of broadcasts. Granting exclusive rights to broadcasters would amount to according rights over the content included in broadcasts. This would not be acceptable as broadcasters did not create such content and because not all creative, initial right owners, notably audiovisual performers, currently enjoy those rights.

82. A representative of the Actors, Interpreting Artists Committee (CSAI) complained that a debate on the protection of broadcasting organizations was taking place before a treaty on the protection of audiovisual performances had been adopted. Before engaging in discussions on the protection of broadcasters it was necessary to meet a number of conditions, including the completion of the international framework of protection for all initial, creative right owners. The protection of broadcasters should not be modeled on the protection that creators enjoyed. It was necessary to define a restrictive scope of protection, justifying each of the rights accorded. Appropriate studies should be commissioned on the economic impact of that protection. Moreover it would be necessary to assess what means of protection could be granted by legislation other than copyright, such as competition law. Finally, the international protection of all initial, creative right owners should be completed.

83. A representative of the Ibero-Latin-American Federation of Performers (FILAIIE) agreed with previous speakers on the need to complete the protection of performers before engaging in discussions on the rights of broadcasters. It was also unreasonable that countries that had not yet ratified the Rome Convention were requesting new protection for broadcasters.

84. A representative of the Electronic Frontier Foundation (EFF) signaled that the technological measures in Articles 16 and 17 were not required for the protection of broadcasters' signals and should not be incorporated in the proposed treaty, for four reasons. First, Article 16 required Member Countries to adopt extensive mandates over everyday technologies like televisions, and radios, thus constraining technology development. Article 16 envisioned broadcasters "marking" broadcasts, cable transmissions and webcasts with something like the "broadcast flag". Secondly Article 16 was not a good way to protect the rights of broadcasters, as technological protection measures similar to those proposed had not succeeded in protecting intellectual property rights in other cases. Rather, such measures had imposed punishing collateral costs on the public interest that outweighed any benefit to rights holders. Thirdly, technological measures for broadcasts were unnecessary as there was no evidence that broadcasters had inadequate incentives for investment in broadcast technology. Rightsholders could already use technological measures to protect their copyrighted content in broadcast signals as a result of the 1996 Internet Treaties. Fourthly, Article 16 would harm the dissemination of information in the public domain, as broadcasters would be able to restrict the distribution of content that was not copyrightable, was not in the public domain or was made available for distribution by its creator. Finally Alternative V in Article 16(2) posed additional threats to consumers, scientific research and technological innovation, by creating a strict liability offense for the public and imposing a technology mandate for encrypted signal receiving devices.

85. A representative of IP Justice supported the remarks made on Articles 16 and 17 by the representative of the EFF. She stressed the negative implications that those provisions could have on freedom of expression. She urged delegates to adopt Alternative W, which amounted to the deletion of any technological protection measures. She further questioned Articles 8 to 12, which established rights for broadcasters that were based upon the fixation of a broadcast signal. However, a broadcast signal existed only in the air and disappeared upon reaching receiving devices, so it was impossible to "fix" a broadcast signal. Moreover by including Internet transmissions in its scope, the treaty went beyond its stated objective and proposed to regulate an enormous breadth of ordinary consumer activity, endangering freedom of expression on the Internet.

86. A representative of the Civil Society Coalition (CSC) signaled that there was no demonstrated evidence of the need for a treaty, as the existing laws could resolve the problem of piracy. The real objective of the treaty was to allow broadcasters to benefit economically from exploitation of the public domain and the rights of other right owners. The fifty-year term of protection included in the Consolidated Text was excessive, taking into account that the reason for protection was simply investment. It also set a negative precedent for other investment based regimes, and could pave the way for requests for similar lengthy terms of protection in areas such as database protection. The Text did not distinguish between copyright material and the public domain, risking harm to the free flow of information. If that were not the purpose, it would suffice to make clear that technological protection measures and the term of protection did not apply to broadcasts containing public domain material.

87. A representative of the Union for Public Domain (UPD) stated that a balance had to be established between society's interests and creativity. The treaty could be combined with the use of material that by nature should be accessible to the public, after the period of protection had expired. Broadcasting did not necessarily require creativity as criteria for protection and this entailed the risk that protection could be granted without limits. The UPD opposed any inclusion of webcasting in the scope of the new treaty, as well as Article 16 of the Consolidated Text relating to the protection of technological measures. Article 18 relating to formalities was also of concern. The adoption of the new treaty was not in the interest of society and the organization of a diplomatic conference was premature and undesirable.

88. A representative of the International Federation of Actors (FIA) stated it understood the needs of traditional broadcasters and cablecasters as far as cable originated programs were concerned, to fight against the illegal use of signals. It believed that the Consolidated Text had streamlined some of the most significant proposals put forward by the Member States. However the Consolidated Text did not make any attempt to define either broadcast or content-carrying signals. Such definitions were indispensable to clarify the scope of the new treaty. An important number of the economic rights claimed by broadcasters related to the commercial exploitation of content rather than protection of signals against piracy. The representative stressed the need to carefully separate the protection of signal and content and to grant only the rights that broadcasters needed to fight against signal piracy and to keep a strict balance between different rightholders. It was important to avoid a situation where broadcasters would collect and benefit from revenues generated from exploitation of the work of performers that were key content contributors. It would compromise the already unfair balance between related right owners. Any new treaty updating the rights of broadcasting organizations had to be linked to existing international conventions such as the WCT and the WPPT, making the ratification of these treaties a condition for any ratification of the new instrument on broadcasting. It was grateful for the statements made by the African Group, the Group of Latin American and Caribbean countries and China that in case a diplomatic conference on the protection of broadcasting organizations was convened, it should also deal with the rights of audiovisual performers.

89. A representative of the International Federation of Film Producers (FIAPF) informed the Committee that its organization was a signatory to the common position drafted by a coalition of rightsowner organizations. The objective of the new instrument was the fight against piracy, and the rights granted by the 1961 Rome Convention addressed this issue. The objective of an instrument to protect broadcasters' rights should have the sole objective of a fight against signal piracy, and the scope of the instrument and the process of preparation of the Text depended upon a clear focus on that objective. It should not be used as an opportunity to extend the scope of activities of broadcasters and permit them to develop new

services to the detriment of other rightholders. Audiovisual producers recouped their investment by sales to various economic partners including broadcasters, cable operators, satellite platforms, or through video on demand services. The scope and beneficiaries of the new treaty had to be clearly defined to avoid any destabilization of existing business models that enable film producers to market their works. Any protection for broadcasting organizations was based on investment in the production of an immaterial signal. It questioned the appropriateness of granting broadcasting organizations a right of distribution as provided in Article 10 of the Consolidated Text. Such right exceeded signal protection.

90. A representative of the International Federation of Journalists (IFJ) emphasized that any protection granted to broadcasting organizations should be balanced with and not negatively affect the position of copyright and related rights holders. Any protection should be granted only to public service broadcasters or full service broadcasters. Webcasting had to be excluded from the scope of the new instrument. Broadcasters should only be granted the rights necessary for the fight against piracy, and such rights should not hamper rights granted to authors or performers. It would be inappropriate to grant broadcasting organizations protection that was not provided to authors. Priority should instead be given to discussions to protect the rights of performers.

91. A representative of the International Federation of Musicians (FIM) informed the Committee that its organization was also a signatory to the common position of the coalition of rightsowner organizations. It had been unanimously emphasized that extension of protection to webcasters was premature as a consequence of the different levels of technology that existed in the various countries. Alternative C of Article 2 and Alternative E of Article 3 had to be deleted from the Consolidated Text. Confusion existed with respect to the terminology used. The term “broadcast”, which was a core element, had not been defined. Document SCCR 11/3 referred to this concept in its note 2.06 and defined it as the signal transmitting content. However, content and signal could be physically distinct. Performers did not benefit from satisfactory protection in relation to audiovisual performances, and the representative urged that there be no further delay in the adoption of a treaty updating the rights in that respect. Article 24 could only be maintained in its Alternative AA that made as a condition of eligibility to the new treaty, the prior ratification of the WCT and the WPPT. The representative thanked delegations that had expressed support for the updating of audiovisual performers’ rights. The holding of an early diplomatic conference on the rights of broadcasting organizations should not defer the convening of a diplomatic conference on audiovisual performances.

92. A representative of the International Affiliation of Writers Guilds (IAWG) stated there was a clear interest for television screenwriters in the proposed treaty, as their material was a major component of broadcasts. The representative welcomed the intention to address piracy which threatened not only broadcasting organizations, but also writers who were entitled to royalties and residual payments, based on the use of their material in broadcast services. Broadcasting organizations required protection against piracy, not against authors or society at large. It was vital not to create rights for broadcasters that would conflict or override the pre-existing rights of writers, authors and others. This had been recognized by the delegations of many countries. The broadcasting treaty had to be carefully drafted to specifically address the needs of broadcasting organizations. There was no need to grant rights for non-simultaneous retransmissions, nor making available since they referred to the commercial exploitation and did not prohibit piracy. There was a strong logic to a condition preventing countries that had not ratified the existing WIPO treaties from entering the proposed treaty. Otherwise there was a danger of countries being able to pick and choose between elements of

interlocking measures, which could have the effect of granting rights to broadcasting organizations while creators were still waiting for their rights to be recognized. Webcasting was an urgent issue and had to be dealt with separately. The issue had to be resolved before further progress on the treaty could be made.

93. A representative of the International Federation of Producers of Phonograms (IFPI) viewed at the Consolidated Text as a structure for ideas and not as an expression of the various degrees of consensus that had emerged from the past sessions and existing proposals. Many ideas that had been expressed during the discussions had not found a proper place in the Consolidated Text. This was the case for the position expressed by many governments that the treaty should explore alternative ways to protect against signal piracy, rather than to provide an extended catalogue of exclusive rights. The catalogue of rights could not go beyond the rights enjoyed by holders of rights in the content. The Consolidated Text was not yet comprehensive in reflecting the state of debates. The rights of making available and the right of distribution were not required for the fight against signal piracy and would only be used by broadcasters to broaden their existing range of activities and to claim additional rights over the content contained in the broadcast. The consolidated text did not safeguard the interest of other rightholders. It was also important to maintain the balance between broadcasting organizations and the owners of content, but this was not reflected in the proposed scope nor in the rights proposed for broadcasting organizations. It was in favor of limiting the rights accorded to broadcasting organizations to cases where those same rights were also granted to content owners. Articles 6 and 11 were particularly problematic, and it was proposed to redraft the first and delete the latter. There was a lack of consensus on the most fundamental aspects of the treaty. It supported the approach of a right to prohibit adopted in Article 9 Alternative O, and Article 10 Alternative Q, of the Consolidated Text. It stressed the importance of including Article 24 Alternative AA. It attention to the common position drafted by a coalition of rightsowner organizations.

94. A representative of the International Music Managers Forum (IMMF) stated that a signal protection-based instrument was the right approach, and suggested that the best way to protect signals was via signal protection language such as that contained in the Satellites Convention, not by granting related rights to broadcasters since copyright and related rights were designed for the protection of creativity and originality, not signals. Ample reasons had been demonstrated in that direction. It would provide broader protection in a simpler way that would stand the test of time. Its organization, together with other organizations, had drafted an alternative proposal to the Consolidated Text on the basis of Article 2 of the Satellites Convention. Broad signal protection could amount to higher protection than what could be granted on the basis of the Rome Convention or any related rights approach. The IMMF did not believe that a broadcast signal continued to exist upon fixation; a fixed broadcast was simply the program materials being broadcast. It expected delegations to look more closely at the Satellites Convention approach.

95. A representative of the International Organization for Performing Artists (GIART) indicated that protection should be limited to fighting piracy. It would be necessary to exclude webcasting from the scope of protection. The rights granted should not go beyond the Rome Convention, but simply update it. Furthermore they should not be formulated as exclusive rights but as rights to prohibit. Special attention should be given to the avoidance of conflicting effects on the rights of other right owners. Conditions to being party to the new Instrument should include membership of the Rome Convention.

96. A representative of the International Federation of Associations of Film Distributors (FIAD) endorsed the statement made by the coalition of rightsowner organizations, in particular in relation to Articles 6, 9, 10, 11, 12, and 24, and stated that the protection of signals should not disadvantage other protected rightsholders.
97. A representative of the National Association of Commercial Broadcasters in Japan (NAB-Japan) indicated that the Consolidated Text had greatly facilitated the discussion. The issue of webcasting was an important issue, however the issue could be dealt with at a later stage. There were still some outstanding issues, but these would not be an obstacle for moving to a diplomatic conference. Together with other broadcasters, it had been stressing the need for a new treaty for over six years, with a view to fighting new types of infringements taking place in the digital environment. File sharing of moving images and music was occurring on a daily basis, which we could not afford to let go because it threatened the existence of broadcasters as a fundamental social medium of communication. We had to go to a diplomatic conference now.
98. A representative of the Digital Media Association (DIMA) stated that the issue of webcasting was important, and had to be included in the scope of the new instrument. Thousands of webcasters existed all over the world and made significant investments in time and financial resources. Webcasting presented alternative programming that had little exposure on radio. Internet webcasting found audiences all over the world. It was not the instrument of the digital divide but an instrument to bring the world closer. It was the first truly mass communication medium but was also the easiest medium to pirate. Technology alone was not enough to combat such piracy, it had to be supported by legal methods of enforcement. There was no basis to exclude large webcasters from the scope of the instrument while including small broadcasters. Copyright owners deserved to be paid for the use of their works and its organization paid large amounts of money to rightholders for the use of protected works. When webcasters' signals were pirated, no compensation could be paid to rightsholders. Webcasting had been growing commercially for many years and it deserved protection. Exclusion of webcasting from the scope of the new treaty would amount to an outdated treaty. There was no technological basis for denying protection.
99. A representative of European Digital Rights (EDRI) stated that the treaty should be signal-centric and should not introduce a new layer of rights, as these would conflict with existing copyright protection. This would damage the interests of copyright holders and the public. Broadcast rights should not restrict the public domain. Transmitted works currently without copyright protection, due to expiry of the term of protection or lack of originality, would become subject to a new broadcast right. This could effectively remove them from the public domain and make them inaccessible to users, even if this was not the intention. This would be made worse with the inclusion of Article 16 of the draft, which gives legal support to technological protection measures. It believed that technological protection measures that restrict access to public domain materials contained in a broadcast would be covered by Article 16, and supported the position of Brazil that Article 16 should be removed from the Text. There was no rationale for a 50-year term of protection. Webcasting should not come within the scope of the treaty, as there was no consensus on the issue. If necessary, protection for webcasters should be provided in a separate instrument that could be tailored to the specific characteristics of this medium. It opposed the Consolidated Text as a basis for the new treaty.
100. A representative of the American Film Marketing Association (AFMA) stated that the object of protection in these discussions should be the signal rather than the contents of

broadcasters' transmissions. Rightsowners existed long before a broadcast was created, and contracted with an intended transmitter based on specific rights. It supported the statement submitted by coalition of rightsholders. The Consolidated Text demonstrated that wide misinterpretation existed as regards substantive issues including definitions. There was a lack of understanding of the operators' practices, whether on cable or satellite, in respect of simultaneous retransmissions which differed widely from one country to another. Most European and North American audiovisual producers had mandated collective management of their retransmission rights to AGICOA, representing content producers that negotiate with simultaneous retransmission organizations. There was a missing reference to primary broadcasters in the debate, the only organizations that contracted and applied specific rights, those that allowed or prohibited retransmission of their signals by others. When broadcasters were themselves producers they already enjoyed protection in the area of retransmission. They did not want to grant equal rights to retransmitters that did not originate schedule transmissions but merely carried another broadcaster's signal. This category of operators should not be included in the category of broadcasters. Simultaneous retransmission needed to be properly defined.

101. A representative of the International Association of Broadcasting (IAB) stated that the Rome Convention did not establish different categories of right holders, but provided intellectual property rights of the same nature to all of them. He recalled the long process of discussions regarding the modernization of the rights of broadcasters, which started in 1992. After the 2000 Diplomatic Conference nine meetings of the SCCR had been devoted to that issue. It was now clear that substantial agreement existed on the protection of broadcasters and cable operators. It was necessary to take a decision on the exclusion of webcasters in order to promote a solution for the minor pending differences in other areas. It was not possible to establish a relationship between the protection of audiovisual performers and that of broadcasters. The first were expressly excluded from protection in the Rome Convention. Moreover they had enjoyed a lengthy process of discussion that failed to achieve an agreement in the 2000 Diplomatic Conference. The protection accorded by the Rome Convention, and that proposed in the Consolidated Text, did not give broadcasters rights over content belonging to other right owners, nor over public domain material. It was necessary to speedily proceed to exclusion of webcasting from the scope of protection, solve the minor pending differences and recommend that the General Assembly convene a diplomatic conference.

102. A representative of the Association of Commercial Television in Europe (ACT) noted that the 60th anniversary of the liberation of Europe had been broadcast a few days before. That was an exemplary example of what broadcasting could do in uniting a community of viewers through their participation in a public event. The event which was broadcast from different locations which the broadcaster brought together, was not subject to copyright protection. Since the event was being transmitted live, there was no question of the coverage being protected as for example a film or a sound recording, and even if a fixation had to be made some jurisdictions would not grant protection to the fixation as a creative work. There was probably wide consensus that the signals transmitting that event should be protected against unauthorized retransmission. Those willing to limit the ongoing process to an anti-piracy agenda should explain why the skills and investment which a broadcaster had put into its transmitted schedule would be less worthy of protection than the similar skills and investment which a record company had put in the production of a successful session. Many arguments had been advanced. It had never been a requirement under the Rome Convention that protection would be granted to original broadcasts. There was little evidence that broadcasters' fixation rights had been exercised to the detriment of other rightholders. It also

referred to the argument that broadcasters should be beyond money considerations. The ACT represented private commercial companies operating pay-TV services that needed a source of revenues, and had to make profit just as was the case for the recording industry. It could not imagine broadcasters being excluded from the possibility of exploitation of downstream markets.

103. A representative of the Asia-Pacific Broadcasting Union (ABU) referred to the fact that traditional broadcasters had, over the past six years, comprehensively explained the reasons why there was a need to grant updated rights to broadcasting organizations. Issues in relation to new forms of broadcasting had to be discussed at a proper time when the need to protect these rights would be sufficiently established. In the Asia Pacific Region, webcasting and other new forms of broadcasting were still non-existent or in their infancy. Domestic laws on webcasting had not been legislated. Protection under the proposed treaty should be granted only to traditional broadcasters who had adequately justified their need for protection and whose rights required immediate updating. The updating of broadcasters' rights was for the protection of the broadcast signal, to enable the broadcasters to continue their mandate of public service which included providing education and access to information. Unlike the new forms of broadcasting, traditional broadcasting continued to provide services to the public free of charge. Traditional broadcasters believed there was enough consensus to schedule a diplomatic conference in 2005.

104. A representative of the International Confederation of Societies of Authors and Composers (CISAC), speaking also on behalf of the International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM), noted three issues of concern. First, what was at the stake was the appropriate means by which broadcasting organizations could protect their legitimate interests. Second, great care had to be taken when delineating the rights to be granted to broadcasting organizations. It would have an impact on those who are involved in the creative process. The lack of creativity with regard to broadcasts should have a restrictive effect on the extent of protection granted by this instrument to broadcasters. A high level of protection should not be granted to broadcasters. Third, with respect to the beneficiaries of protection of any new instrument, he noted widespread concern among the creative community and delegations in regard to the position of the United States of America with respect to webcasting, and stated that the extension of protection to webcasters was premature and undesirable. Webcasters should be excluded from the discussions. In relation to the preamble, he noted that the reference to the benefits of the possible new treaty for authors and the creative community should be deleted. Alternative A to Article 1 should not be limited to international conventions protecting performers and phonogram producers. Further clarity was required. In relation to Article 1 (2), further clarification was required on how the new treaty would not affect underlying rights. One of the possible ways of doing this would be to provide that the need for authorization of the underlying rightholders would not cease to exist simply because the broadcaster had been required to give his authorization. Protection had to be limited to broadcast signals while respecting longstanding principles of intellectual property protection.

105. A representative of the National Association of Broadcasters (NAB) also expressing the views of the North American Broadcasters Association (NABA) noted that continued concern had been expressed over the balance of rights. Disturbing that balance was not the intended effect of the new treaty. If content owners did not want to be part of the broadcasting process, they could choose to distribute their works in other ways. If they chose to become part of the process and to use the signals to exploit their works, they should then be willing to be subject to protections for broadcasters against the exploitation of the signal. Anyone wanting to

exploit content that was broadcast would still have to secure rights to do so under existing licensing schemes. On the issue as to whether the treaty should be based on an just anti-piracy approach, he noted that the treaty should do more by affording broadcasters with exclusive rights in their signal. Most broadcasters operated on a single channel, had one revenue stream, and were available most of the time free over the air. They competed with multichannel delivery channels with multiple revenue streams. The broadcasting systems provided multiple benefits to society in terms of political dialogue and cultural enrichment. If broadcasters were to continue delivering these services, they must have the flexibility for alternative business models that might increasingly include the reproduction, making available, and distribution of broadcasts. Because exploitation and piracy of broadcast signals could occur with respect to any of these activities, broadcasters needed a full set of all of these rights. Such rights would compliment, but would not conflict with, those of content suppliers. He opposed the removal of Article 16. In most national systems, exceptions and limitations met the needs of users. As regards Article 24, his organization opposed Alternative AA. Each treaty should be judged on its merits. It was time for moving forward to a diplomatic conference.

106. A representative of Public Knowledge stated it had conducted an analysis of the Consolidated Text and supported the statement made by the IMMF. He referred to the statements of the Delegations of India and Chile, that highlighted that any rights granted to broadcasting organization should not diminish the rights of content owners and public access to information. He urged the Committee to consider provisions ensuring reasonable access to information and for exercising legitimate personal use, and supported the prevention of signal piracy. That could be done without harming the rights of content owners and the public. The Committee should not be bound by existing language of preexisting treaties.

107. A representative of the European Broadcasting Union (EBU) said that consensus existed on the major points of discussion. Broadcasters were motors of social, economic and cultural development. The purpose of the proposed treaty was the updating of the existing signal protection under the Rome Convention. That protection would not have the effect of putting a limitation on public domain material. Such interpretation was based on confusion between signal and content. A right to prohibit, being less than an exclusive right to authorize, was also based on confusion between the use of the signal and the content. Piracy had to be combated effectively, in the same way that the 1996 WIPO Treaties were intended to combat piracy. Never had a similar degree of consensus been reached among delegations before any other diplomatic conference.

108. A representative of the American Intellectual Property Law Association (AIPLA) noted that a provision relating to the protection of technological measures existed under the legislation of the United States of America. In the last few years, more copyrights and patents had been obtained than ever before. Contrary to some of the statements made, such technological measures had not hurt creativity, nor the protection of content. In 2000 and 2003 the US Copyright Office had held extensive consultations on the appropriateness of such provisions, and had determined that no further exemptions were necessary to the technological measures in place. Public domain concepts and fair use had adequately protected consumers and the public at large.

109. A representative of *Associação Paulista de Propriedade Intelectual* (ASPI) recognized the need to enhance protection of broadcasting organizations to fight against piracy. However, the implementation of a broad definition of broadcasting and cablecasting was a matter of concern. Webcasters and cablecasting organizations could not be classified as

broadcasters when they did not produce content nor have other social value. In depth analysis was needed. The human rights aspects of these issues had to be taken into consideration. He emphasized the need for a discussion on the issue of audiovisual performances.

110. The Chair opened the floor for possible additional comments and views, in light of the interventions by the IGOs and NGOs.

111. The Delegation of India referred to the statement made by the Representative of ACT concerning the televised D-Day events, and noted that it demonstrated the need for specific protection of rights in signals, as set out in the Consolidated Text. It was recognized that certain public events might be declared by some countries to be non-copyrightable as a matter of public policy. In addition, it might be impracticable for the audiovisual company to obtain all necessary permissions concerning intellectual property rights from all persons involved in the production and, therefore, signals-based protection was essential. To the extent that the audiovisual company played a purely technical, non innovative, role in bringing an event to television viewers, the rights in the process were addressed by the Brussels Convention or, if that protection proved inadequate, could be taken up in discussions at the International Telecommunications Union (ITU), and were therefore outside the remit of WIPO. The production of the program itself might be protected as intellectual property, whereas the technical act of broadcasting as such, while requiring investment, would qualify only for protection of the signal. The Committee's debates should focus on protection for intellectual property, rather than business investment, which fell outside the competence of WIPO.

112. The Delegation of Turkey noted that while the Consolidated Text was still under examination by its Government, it provisionally expressed its reservation concerning the protection of signals in any future instrument for the protection of broadcasting organizations.

113. The Chair noted in conclusion that progress had been made towards a high degree of convergence of opinion. The Consolidated Text reflected both areas of convergence and divergent proposals, and there was no indication that any options or proposals were missing from the Text, with the exception of Article 16, where a new option had been proposed. The current discussions on legal and technical issues had been broad and constructive in tone and flexibility of opinion, and would prove useful as a basis for preparation of a revised Consolidated Text. The Committee meeting was not a negotiating forum, but a place for exchange of information, questions and explanation of various positions, and therefore it was to be expected that Members would maintain their original positions, while greater flexibility would be demonstrated at the final negotiations. Questions raised in the discussions concerned all stakeholders, and included: how to proceed on issues of webcasting; the level of exclusive rights or the right to prohibit; how to determine eligibility to become a member of a future instrument; and which model of national treatment should be adopted. The 17 proposals being considered by the Committee were all based on the well-developed related rights approach drawn from existing treaties, namely the Rome Convention, WPPT and, to some extent, the TRIPS Agreement. The related rights resembled intellectual property rights that are contained in national legislation, and were therefore well understood by government delegations. In that respect, the Chair noted that 77 countries were party to the Rome Convention, which granted protection to broadcasting organizations, 147 countries were party to the TRIPS Agreement, which required protection for broadcasting organizations, and further such protection was granted at the national level by legislation based on the related rights traditions within the intellectual property framework. Collectively, the motivation was the protection of creativity as well as effort and investment. While 24 countries became Members of the Satellite Convention in the 31 years after its conclusion, that Convention had

never become the worldwide standard or model for harmonization of protection of broadcasting organizations, which was the ultimate goal for the Committee's discussions on the issue. While the related rights model was under consideration, other models should be considered, and it was the role of proponents of those models to communicate their proposals to their governments, to test and refine the proposed solutions for later communication to the Committee to take into account in improving its model. It was important to understand all viewpoints to make honest and meaningful progress.

114. The Delegation of India referred to the general consensus on extending protection to broadcasting organizations. It also noted differences of opinion on issues including the scope, objective and exclusivity of rights, the term of protection, and technological protection measures, and questioned whether the Committee could proceed in light of those divergent opinions. Consensus should be sought on Article 15 regarding the term of protection. It was noted that Article 14 on limitations and exceptions conflicted with the WPPT and, as it was already contained in the Rome Convention, did not need to be included in the proposed instrument. The Delegation emphasized that the preamble to the proposed instrument should recognize the rights of copyright holders and the need to balance their rights with those of broadcasting organizations. With respect to Article 16, concern was expressed that technological protection measures could prove detrimental to society and the public's right to information, and prove an obstacle to technological development and access to the public domain. Article 16 should therefore be further discussed, clarified and curtailed with a view to social and scientific development. With respect to Article 15, it noted that the Consolidated Text gave no alternatives, and that the exclusivity of rights granted to broadcasting organizations should be examined in order to restore balance with respect to the rights of copyright holders. The scope of the proposed instrument would need to be examined before progress could be made.

115. The Chairman referred to the issue raised by the Delegation of India with respect to the term of protection, noting that there had been a proposal by the Delegation of Singapore referring to the term of protection and that it was reflected in the explanatory comments on Article 15 of the Consolidated Text, but the prevailing opinion was to grant a 50 year term of protection.

116. The Delegation of Canada noted that the Consolidated Text was missing an option that it had proposed, and asked the Chairman if it was appropriate to mention it at the present stage of the discussions

117. The Chairman mentioned that all delegations that believed that an important possible option was missing, should take the floor and activate such options now. He also noted that some options were in the explanatory notes due to the fact that they were single comments proposed by only one Delegation.

118. The Delegation of Canada noted that there was a missing option, proposed by itself in the previous session of the Committee, under Article 11 on the right of transmission following fixation, related to the nature of protection of the fixation. It was reflected in the records of the previous report in paragraph 22.

119. The Delegation of India mentioned that as a member of WTO, it was party to the TRIPS Agreement and therefore in compliance with the provisions of that Agreement. There was no reason to expand those rights in the framework of WIPO. Its country had not acceded to the Rome Convention but the Delegation still believed it was in compliance. The Chair had

referred to a proposal for a 20 year term of protection, and that proposal was not incorporated in the Consolidated Text, even though it had received wide support from delegations. The Delegation was not opposed to a treaty but needed to fully understand the benefits of having an international convention dealing with broadcasting rights and it believed it to be premature to start the discussion with respect to that issue in a diplomatic conference.

120. The Delegation of Brazil noted that it had also proposed a new option for Article 16, which should be reflected in the Consolidated Text. It had proposed deletion of the whole of that Article.

RECOMMENDATIONS OF THE STANDING COMMITTEE

121. Stating that he had taken note of the proposal made by the representative of the delegation of Brazil, the Chairman opened the floor for discussion of the draft recommendations of the present session of the SCCR (reproduced as Annex I to this Report).

122. The Delegation of Nigeria stated that there was a need for regional consultations to take place before any diplomatic conference would take place. The recommendation should include the areas in which there has been substantial progress. Progress should be made on the protection of audiovisual performances as well.

123. The delegation of Japan noted that the issue of updating the rights of broadcasting organizations had been extensively discussed since 1998. It recognized the need for the establishment of an instrument of international legislation. It supported the recommendations submitted by the Chairman and encouraged the Committee to make efforts to decrease the number of options as much as possible at the next session of the Committee, in view of a diplomatic conference in the near future.

124. The Delegation of Mexico noted that through the present and previous sessions of the Standing Committee there had been progress. There were still some points that needed to be looked at in order to reach a document that balanced the rights of broadcasting organizations and other owners of rights. There were still some differences, but it recognized that there was a Consolidated Text which included many of the concerns that had been expressed by States. It therefore supported the recommendations submitted by the Chair and supported that the WIPO General Assembly in 2004 take a decision on the convening of a diplomatic conference on the protection of broadcasting organizations at the appropriate time, that the chairman should prepare a basic proposal that would include the proposals submitted by the delegations, and that regional consultation meetings should be organized.

125. The delegation of India noted that a considerable amount of work had to be done before the Committee could recommend to the Assembly the possibility of convening a diplomatic conference. From the previous discussions it had learned that there was a lack of understanding of all the issues that were involved, and that there was not sufficient consensus. It would be premature for the Committee to recommend that the Assembly consider the convening of a diplomatic conference. The right approach to international regulation of the rights of broadcasting organizations was a signal protection based approach, and therefore it suggested that the Secretariat prepare a draft treaty, based on that approach. The recommendation of a diplomatic conference would be premature because of the diversity of opinions that had been discussed. The process in the Committee had to be continued.

126. The Chairman noted that the convergence on the need of international regulations on broadcasters' rights had been measured at several meetings. There were important elements concerning the scope and the rights that should be included, and simply by listing those elements delegations would have the possibility to consider which elements should be there. All of that was in the proposal and that was convergence. The Consolidated Text was not a basic proposal, it was just another form of presentation of delegations' proposals

127. The delegation of Brazil noted that as party to the Rome Convention its country was committed to protect the rights of broadcasting organizations. It was committed to updating those rights and was supportive of the process in the Committee. The first round of discussions on the Consolidated Text reflected common ground on certain issues that had been discussed, but the discussion also reflected that there was important disagreement with respect to significant provisions of the treaty and that it was premature to recommend a diplomatic conference before these disagreements were resolved. The Delegation agreed that a revised version of the Consolidated Text should be prepared, and supported the delegation of India in questioning the need to add square brackets in the Consolidated Text, because all proposals should be analyzed. It questioned the need to call a diplomatic conference, because time was needed to sort the differences that the delegations had expressed in the previous discussions. The fact that no recommendation would be sent to the General Assembly would not mean that the Committee should not continue its work.

128. The Delegation of Nigeria noted that if it had preempted the statement leave made by the coordinator of the African Group it was because it had been under the erroneous impression that the African Group had already spoken on the substance of the recommendation. Any misunderstanding or difference caused by preempting the coordinator of the African group would be very unfortunate.

129. The Delegation of the European Community, speaking also for its member States, recalled that it was the responsibility of the Standing Committee to discuss all intellectual property issues that were of common interest to the international community. The protection of broadcasting organizations was not unknown territory and there was a solid basis, both in the Rome Convention and in the TRIPS Agreement. The Standing Committee had agreed years ago to update those rights through a new instrument. Good progress had been made, and any decision on the future work and text should be based on a well reflected assessment of substance. It would only advocate an international agreement where there was agreement on the substance. Transparency was needed with respect to the need to call a diplomatic conference and with respect to a reasonable and appropriate time frame. With respect to the next session of the WIPO General Assembly in September 2004, it was a key element that the WIPO Assembly was the appropriate forum to decide on the possibility to hold a diplomatic conference. It should decide on the possibility, because otherwise there would be no possibility. Another key element was the assessment of progress on substance to be undertaken during the twelfth session of the Standing Committee in November. There had to be an assessment at some point as to whether the work done was sufficient. The key two elements were well reflected in the draft recommendation which the Delegation supported, based on that interpretation.

130. The Chair observed that this was the correct way to interpret the recommendations. The organization of a diplomatic conference was subordinated to assessment of work by the Committee.

131. The Delegation of Kazakhstan, on behalf of the CIS countries, noted that some proposals had been endorsed by a majority of delegates, while others had not been the object of consensus. It was of the view that the fruitful work had been in line with the spirit of the Consolidated Text and reflected a balance in the views of the majority of delegations regarding the convening of a diplomatic conference. However, that issue had to be referred to as a possibility. It supported the recommendations.

132. The Delegation of the Islamic Republic of Iran stated that positive achievements had been reached. Ambiguities remained with respect to certain articles. More time was needed before the convening of a diplomatic conference. The twelfth session of the SCCR could be appropriate to assess any progress made. The preparation of a basic proposal should be considered.

133. The Delegation of Chile noted that progress had been achieved but time was not ripe for convening a diplomatic conference. The wording of the recommendation had to be amended and refer to a possible convening of a diplomatic conference.

134. Based on the comments on the first draft of the recommendations, the Chair introduced a revised draft of recommendations (reproduced as Annex II to this Report). The Committee now had a better understanding of the aims and objectives of the recommendations, it had moderated its ambitions and clarified that further steps were subject to assessment of progress, and it had reached a consensus that a further session of the Committee in November 2004 would consider a revised version of the Consolidated Text. The further revised recommendations was a road map for the further work of the Committee.

135. The Delegation of Egypt, on behalf of the African Group, thanked the Chair for his creative efforts to carry the Committee's work forward, and thanked the International Bureau for facilitating the translation of the recommendations into multiple languages. The revised recommendations represented a significant improvement, and the Delegation emphasized the connection between decisions taken and continuing assessment of current and future work. With respect to drafting of the revised draft recommendations, the Delegation suggested that the last sentence in the second paragraph of the preamble be removed because it was redundant, and suggested that the word "unanimously" be removed from the final sentence. It suggested that the words "the possibility of" be added before "convening" in the first paragraph of the preamble. The Delegation questioned whether a separate operative paragraph four was required, and suggested the addition of "including the possibility of the Chair preparing a Basic Proposal for this Conference" at the end of operative paragraph three. The value of holding regional consultations was emphasized.

136. The Delegation of the Russian Federation stated that considerable progress had been made towards the goal of the Committee, and that most government delegations were of the view that it would be possible to achieve a decision at the Committee session in November 2004 on a draft treaty that took account of various acceptable views. The regional consultations offered the possibility to achieve this agreement. The revised draft recommendations were fully supported.

137. The Delegation of Brazil recognized the honest and valuable effort towards reaching compromise language in the recommendations so as to achieve a positive outcome of the meeting. Although the Delegation remained unconvinced that it was appropriate for the following General Assembly to decide to convene a diplomatic conference, in light of the state of discussions in the Committee on the issue of protection of broadcasting organizations,

it would attempt to work on the revised draft recommendations. With respect to the preambular paragraphs, the Delegation suggested the deletion of the last phrase of the second paragraph, deletion of the word “unanimously” at the conclusion of the preamble, and addition of “non-original” before “databases” in the third paragraph. With respect to operative paragraph 1, clarification was sought for the term “make provision for.” Wording was suggested that: “The WIPO General Assembly keep under consideration, beginning at its September-October session 2004, the possibility of convening at an appropriate time a Diplomatic Conference.” With respect to operative paragraphs 3 and 4, the changes suggested by the Delegation of Egypt, on behalf of the African Group, were acceptable. It was suggested to add “possible” before “Diplomatic Conference” at the end of paragraph 3. With respect to operative paragraph 5, it was understood that the regional consultations could prove useful, but that that issue had not been fully discussed within GRULAC, and it was up to each region to decide whether such a meeting was appropriate. Therefore, the wording was suggested: “Depending on the decision of the WIPO General Assembly under Point A.1 and the recommendation of the Standing Committee, the International Bureau shall organize, where appropriate and at the request of relevant regional groups, international consultation meetings.”

138. The Delegation of the European Community noted, with respect to the reference to regional consultations, that the reference to the Baltic Countries was no longer correct since their accession to the European Union on May 1, 2004. It was more appropriate to refer to regional consultations in general, without giving details as to each specific region. With respect to paragraph three, it was suggested to replace “decide whether to determine” with the more appropriate “recommends”. Subject to these comments, the Delegation could support the revised draft recommendations.

139. The Delegation of India stated that the revised draft recommendations provided a good basis for consensus and compromise. With respect to the second paragraph of the preamble, it was suggested to delete “and considering,” as potentially misleading. With respect to the third paragraph of the preamble, it was suggested to insert “non-original” before “database”, as this was what was discussed by the Committee. The word “unanimously” should be removed from the conclusion of the preamble. With respect to operative paragraph 1, it was unclear what “provision” referred to, and if that reference were budgetary, then provisions were made at WIPO in the context of the biennial budget that was routinely approved by the General Assembly. Such issues had not been the concern for drafting by the Committee in the past. In agreement with the Delegation of Brazil, it suggested that the best basis for future work was to retain the option for the General Assembly at its meeting in 2004, and thereafter, to take a decision concerning the possibility of convening a Diplomatic Conference on the protection of broadcasting organizations. With respect to operative paragraph 3, in agreement with the Delegation of the European Community, it was suggested to replace “determine” with “recommend” and add “possible” before “Diplomatic Conference.” The text in operative paragraph 4 should be combined with paragraph 3, with the addition of “possible” before “Diplomatic Conference.” The references to specific regions in operative paragraph 5 should be deleted, to reflect the membership of the Baltic Countries in the European Union.

140. The Delegation of Serbia and Montenegro preferred to strengthen, rather than weaken, the well-balanced text of the revised draft recommendations, but agreed to the changes suggested in the Committee for the sake of general consensus. Support was given for the suggestions of the Delegations of Brazil and the European Community, to delete references to specific regions in relation to the regional consultations. With respect to the second paragraph

of the preamble, strong support was given for retaining the phrase that referred to the “state of discussions”, as a reminder that the convening of a diplomatic conference was possible.

141. The Chairman divided all the proposals made by different Delegations into two categories: minor drafting proposals and substantive proposals. All the minor drafting proposals were immediately accepted by the SCCR. A debate followed on the substantive proposals, all of which were contained in the paragraph A.1 of the revised draft recommendations. The discussion focused on how and when the General Assembly might consider the possibility of convening a diplomatic conference.

142. The Delegation of Egypt questioned the formulation given to the recommendation on the protection of non-original databases (paragraph B), and proposed the deletion of that paragraph. It was possible to discuss that issue at the request of any interested Member of the SCCR, under an agenda item on “Other issues for review” or even under “Other matters.” A specific point on the issue of non-original databases appeared as redundant, given the little interest of the issue for the Members of the Committee.

143. The Delegation of the European Community was of the opinion that the issue had to be kept on the agenda.

144. The Delegation of Egypt indicated that it could accept that position and added that the issue should be revisited at the request of interested delegations.

145. The Delegation of Brazil accepted the wording proposed in the Chairman’s room paper.

146. The following text was approved by the Committee (reproduced as Annex III to this Report):

The Standing Committee made the following Recommendations

considering that the Standing Committee on Copyright and Related Rights at its Tenth Session, from November 3 to 5, 2003, recommended that the present session of the Standing Committee should be convened to examine a consolidated text and to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee;

having had an exchange of views and information regarding the protection of non-original databases,

agrees on the following recommendations:

A. BROADCASTING ORGANIZATIONS

1. The WIPO General Assembly

the WIPO General Assembly is recommended to consider, beginning at its September/October session in 2004, the possibility of convening, at an appropriate time, a diplomatic conference on the protection of broadcasting organizations;

2. Twelfth Session of the Standing Committee;

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised version of the Consolidated Text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004;

3. Assessment of the Progress of the Work

at its Twelfth Session the discussions of the Standing Committee will be based on the revised consolidated text and the Committee will assess the progress of the work. In the light of those discussions and that assessment, the Committee will recommend the dates, and the necessary preparatory steps for a possible diplomatic conference including the possibility that the Chairman prepares a basic proposal for this conference;

4. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, and the recommendations of the Standing Committee, the International Bureau shall organize regional consultation meetings where appropriate and at the request of the relevant regional groups. The International Bureau shall also organize consultation meetings at the location of the diplomatic conference immediately before its commencement.

B. DATABASES

The issue of protection of non-original databases will be included in the Agenda of the Thirteenth Session of the Committee and thereafter at appropriate intervals, at the request of interested delegations.

OTHER ITEMS FOR REVIEW

147. The Secretariat informed the Committee that a new publication, "Guide to Licensing on Copyright and Related Rights" was to be published.

CLOSING OF THE SESSION

148. The Secretariat recalled that the draft report of the proceedings would be completed in three languages, and distributed, and that all participants could then make comments as to their respective interventions. The Final Report would then be compiled and distributed.

149. The Chairman closed the session.

[Annex I follows]

ANNEX I

DRAFT RECOMMENDATIONS

The Standing Committee on Copyright and Related Rights:

considering that the Standing Committee on Copyright and Related Rights at its Tenth Session, from November 3 to 5, 2003, recommended that the present session of the Standing Committee should be convened to examine a consolidated text and to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee; and considering that the state of discussions concerning the international instrument allows a diplomatic conference to be prepared and negotiation to take place at that level,

having had an exchange of views and information regarding the protection of databases,

unanimously agreed on the following recommendations:

A. BROADCASTING ORGANIZATIONS

1. The WIPO General Assembly

the WIPO General Assembly should decide, at its September/October session in 2004, on the convening of a diplomatic conference on the protection of broadcasting organizations at an appropriate time,

2. Twelfth Session of the Standing Committee

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised version of the consolidated text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004,

3. Basic Proposal

based on the discussion at the Twelfth Session of the Committee, the Chair shall prepare the Basic Proposal for the diplomatic conference,

4. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, the International Bureau shall organize regional consultation meetings in Africa, the Arab countries, Asia and the Pacific, Latin America and the Caribbean and in certain countries of Eastern and Central Europe, and CIS countries, and consultation meetings at the location of the diplomatic conference immediately before its commencement.

B. DATABASES

The issue of protection of non-original databases will be included in the Agenda of the Thirteenth Session of the Committee and thereafter at appropriate intervals.

[Annex II follows]

ANNEX II

REVISED DRAFT RECOMMENDATIONS

The Standing Committee on Copyright and Related Rights:

considering that the Standing Committee on Copyright and Related Rights at its Tenth Session, from November 3 to 5, 2003, recommended that the present session of the Standing Committee should be convened to examine a consolidated text and to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee; and considering that the state of discussions concerning the international instrument allows a diplomatic conference to be prepared and negotiation to take place at that level,

having had an exchange of views and information regarding the protection of databases,

unanimously agrees on the following recommendations:

A. BROADCASTING ORGANIZATIONS

1. The WIPO General Assembly

the WIPO General Assembly is recommended to make provision, at its September/October session in 2004, for the possible convening, at an appropriate time, of a diplomatic conference on the protection of broadcasting organizations;

2. Twelfth Session of the Standing Committee;

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised version of the consolidated text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004;

3. Assessment of the Progress of the Work

at its Twelfth Session the discussions of the Standing Committee would be based on the revised consolidated text and the Committee would assess the progress of the work. In the light of those discussions and that assessment, the Committee would decide whether to determine the dates, and the necessary preparatory steps for a diplomatic conference;

4. Basic Proposal

based on the discussion and recommendations of the Committee, the Chair shall prepare the Basic Proposal for the diplomatic conference;

5. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, and the recommendations of the Standing Committee, the International Bureau shall organize regional consultation meetings in Africa, the Arab countries, Asia and the Pacific, Latin America and the Caribbean, Central European and Baltic Countries, and in Central Asia, Caucasus and Eastern European Countries. The International Bureau shall also organize consultations meetings at the location of the diplomatic conference immediately before its commencement.

B. DATABASES

The issue of protection of non-original databases will be included in the Agenda of the Thirteenth Session of the Committee and thereafter at appropriate intervals.

[Annex III follows]

ANNEX III

RECOMMENDATIONS OF THE STANDING COMMITTEE (FINAL)

The Standing Committee on Copyright and Related Rights:

considering that the Standing Committee on Copyright and Related Rights at its Tenth Session, from November 3 to 5, 2003, recommended that the present session of the Standing Committee should be convened to examine a consolidated text and to assess progress of work with a view to a possible diplomatic conference which would consider an international instrument on the protection of broadcasting organizations,

considering that the work at the end of the present session of the Standing Committee is well advanced, taking into account the identification and analysis of substantive issues to be addressed in the international instrument, the progress made in these substantive issues during the deliberations in the present and previous sessions of the Standing Committee;

having had an exchange of views and information regarding the protection of non-original databases,

agrees on the following recommendations:

A. BROADCASTING ORGANIZATIONS

1. The WIPO General Assembly

the WIPO General Assembly is recommended to consider, beginning at its September/October session in 2004, the possibility of convening, at an appropriate time, a diplomatic conference on the protection of broadcasting organizations;

2. Twelfth Session of the Standing Committee;

the Chair of the present session of the Standing Committee will prepare, for the Twelfth Session of the Committee, a revised version of the Consolidated Text in which the possible protection of webcasting organizations and other proposals having received very limited support will be indicated in square brackets. The Twelfth Session of the Committee will take place from November 17 to 19, 2004;

3. Assessment of the Progress of the Work

at its Twelfth Session the discussions of the Standing Committee would be based on the revised consolidated text and the Committee would assess the progress of the work. In the light of those discussions and that assessment, the Committee would recommend the dates, and the necessary preparatory steps for a possible diplomatic conference

including the possibility that the Chairman prepares a basic proposal for this conference;

4. Regional Consultations

depending on the decision of the WIPO General Assembly under Point A.1 above, and the recommendations of the Standing Committee, the International Bureau shall organize regional consultation meetings where appropriate and at the request of the relevant regional groups. The International Bureau shall also organize consultations meetings at the location of the diplomatic conference immediately before its commencement.

B. DATABASES

The issue of protection of non-original databases will be included in the Agenda of the Thirteenth Session of the Committee and thereafter at appropriate intervals, at the request of interested delegations.

[Annex IV follows]

ANNEXE IV/ANNEX IV

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique français/
in French alphabetical order)

ALGÉRIE/ALGERIA

Boualem SEDKI, ministre plénipotentiaire, Mission permanente, Genève

Hakim TAOUSAR, directeur général de l'Office national des droits d'auteur et des droits voisins (ONDA), Alger

ALLEMAGNE/GERMANY

Anne ROHLFF (Ms.), *Oberregierungsrätin*, Copyright and Publishing Law Division, Federal Ministry of Justice, Berlin

ARGENTINE/ARGENTINA

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Marta GABRIELONI (Sra.), Consejero, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Chris CRESWELL, Copyright Law Consultant, Copyright Law Branch, Information and Security Law Division, Barton

David JANSEN, New Technologies Section, Intellectual Property Branch, ICT Industry and Intellectual Property Division, Department of Communications, Information Technology and the Arts, Canberra

Neil GORDON, General Manager, Licensed Broadcasting, Broadcasting, Department of Communications, Information Technology and the Arts, Canberra

AUTRICHE/AUSTRIA

Guenter AUER, Head of Section, Federal Ministry of Justice, Wien

BARBADE/BARBADOS

Christopher BIRCH, Deputy Registrar, Corporate Affairs and Intellectual Property Office,
St Michael

BELGIQUE/BELGIUM

David BAERVOETS, conseiller, Office de la propriété intellectuelle, Bruxelles

BÉNIN/BENIN

Samuel AHOKPA, directeur du Bureau béninois du droit d'auteur (BUBEDRA), Cotonou

BOSNIE-HERZÉGOVINE/BOSNIA AND HERZEGOVINA

Alija KRDZALIC, Legal Assistant Director, Institute for Standards, Metrology and
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BRÉSIL/BRAZIL

Otavio Carlos M.A. DOS SANTOS, Director of Copyright, Copyright Coordination Bureau,
Ministry of Culture, Brasilia, D.F.

Leonardo DE ATHAYDE, Secretary, Permanent Mission, Geneva

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Michael HIMSL, Legal Counsel, Legal Services, Department of Justice, Canadian Heritage,
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Cameron MACKAY, First Secretary, Permanent Mission, Geneva

CHILI/CHILE

Luis VILLARROEL VILLALON, Asesor de Propiedad Intelectual, Ministerio de
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CHINE/CHINA

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ZHAO Jie, National Copyright Administration of China (NCAC), Beijing

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COLOMBIE/COLOMBIA

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COSTA RICA

Alejandro SOLANO ORTIZ, ministre conseiller, Mission permanente, Genève

CÔTE D'IVOIRE

Désiré Bosson ASSAMOI, conseiller, Mission permanente, Genève

CROATIE/CROATIA

Tajana TOMIĆ (Mrs.), Head, Copyright Department, State Intellectual Property Office (SIPO), Zagreb

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Anne Sophie Gersdorff SCHRØDER (Mrs.), Head of Section, Ministry of Culture, Copenhagen

ÉGYPTE/EGYPT

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EL SALVADOR

Ramiro RECINOS TREJO, Ministro Consejero, Misión Permanente, Ginebra

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RÉPUBLIQUE DÉMOCRATIQUE DU CONGO/DEMOCRATIC REPUBLIC OF CONGO

Fidèle Khakessa SAMBASSI, ministre conseiller chargé des affaires économiques, Mission permanente, Genève

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Hana MASOPUSTOVÁ (Mrs.), Head, Copyright Department, Ministry of Culture, Prague

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Eugen JASILIU, directeur général adjoint, Bucharest

ROYAUME-UNI/UNITED KINGDOM

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SERBIE-ET-MONTÉNÉGRO/SERBIA AND MONTENEGRO

Ivana MILOVANOVIC (Mrs.), Third Secretary, Permanent Mission, Geneva

SINGAPOUR/SINGAPORE

Lee Li CHOON (Ms.), Director, Trade Mark Legal Counsel, Intellectual Property Office,
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SRI LANKA

Senarath DISSANAYAKE, Second Secretary, Permanent Mission, Geneva

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SUÈDE/SWEDEN

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SUISSE/SWITZERLAND

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TOGO

Komi Ametefé AYI, directeur général, Bureau togolais du droit d'auteur (BUTODRA), Lomé

TUNISIE/TUNISIA

Mounir BEN RJIBA, conseiller, Mission permanente, Genève

TURQUIE/TURKEY

Yasar OZBEK, conseiller juridique, Mission permanente, Genève

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Alejandra DE BELLIS (Srta.), Primera Secretaria, Misión Permanente, Ginebra

VENEZUELA

Virginia PÉREZ PÉREZ (Srta.), Consejera, Misión Permanente, Ginebra

ZAMBIE/ZAMBIA

Edward CHISANGA, First Secretary, Permanent Mission, Geneva

II. AUTRES MEMBRES/
NON-STATE MEMBERS

COMMUNAUTÉ EUROPÉENNE (CE)*/EUROPEAN COMMUNITY (EC)*

Jörg REINBOTHE, Head of Unit E4 – Copyright and Neighbouring Rights, DG Internal Market, Brussels

Rogier WEZENBEEK, Administrator, Unit E4 – Copyright and Neighbouring Rights, DG Internal Market, Brussels

Luis FERRÃO, Principal Administrator, DG INFSO/E4, Luxembourg

* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membre sans droit de vote.

* Based on a decision of the Standing Committee, the European Community was accorded member status without a right to vote.

Patrick RAVILLARD, Counsellor, Permanent Delegation, Geneva

Anna ATHANASOPOULOU (Ms.), Second Secretary, Liaison Office, Geneva

Laure-Anne BARRAGAN (Miss), Intern, Permanent Delegation, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

BUREAU INTERNATIONAL DU TRAVAIL (BIT)/INTERNATIONAL LABOUR OFFICE
(ILO)

John MYERS, spécialiste industriel (Médias, culture, images; Service postal et autres services de communication), Département des activités sectorielles, Genève

ORGANISATION DES NATIONS UNIES POUR L'ÉDUCATION, LA SCIENCE ET LA
CULTURE (UNESCO)/UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND
CULTURAL ORGANIZATION (UNESCO)

Petya TOTCHAROVA (Ms.), Legal Officer, Cultural Enterprise and Copyright Section, Paris

ORGANISATION MONDIALE DU COMMERCE (OMC)/WORLD TRADE
ORGANIZATION (WTO)

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

ORGANISATION RÉGIONALE AFRICAINE DE LA PROPRIÉTÉ INDUSTRIELLE
(ARIPO)/AFRICAN REGIONAL INDUSTRIAL PROPERTY ORGANIZATION (ARIPO)

Gift Huggins SIBANDA, Senior Industrial Property Officer, Harare

UNION DE RADIODIFFUSION DES ÉTATS ARABES (ASBU)/ARAB STATES
BROADCASTING UNION (ASBU)

Lyes BELARIBI, Director, Arab News and Programmes Exchange Center, Algiers

LIGUE DES ÉTATS ARABES (LEA)/LEAGUE OF ARAB STATES (LAS)

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Sisule F. MUSUNGU, IP Project Officer, Geneva

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IV. ORGANISATIONS NON GOUVERNEMENTALES/
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American Intellectual Property Law Association (AIPLA): Judith SAFFER (Mrs.)
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Associação Brasileira de Emissoras de Rádio e Televisão (ABERT)/Brazilian Association of
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Associação Paulista da Propriedade Intelectual (ASPI):
Ivana Có GALDINOCRIVELLI (Mrs.) (Cultural Coordinator, São Paulo)

Association américaine de marketing cinématographique (AFMA)/American Film Marketing
Association (AFMA): Lawrence SAFIR (Chairman, AFMA Europe, London)

Association canadienne de télévision par câble (ACTC)/Canadian Cable Television
Association (CCTA): Gerald (Jay) KERR-WILSON (Vice President, Legal Affairs, Ottawa)

Association des organisations européennes d'artistes interprètes (AEPO)/Association of
European Performers' Organisations (AEPO): Xavier BLANC (General Secretary, Brussels)

Association des télévisions commerciales européennes (ACT)/Association of Commercial
Television in Europe (ACT): Tom RIVERS (External Adviser, Brussels);
Petra WIKSTRÖM-VAN EEMEREN (Ms.) (European Affairs Manager, Brussels)

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting
(IAB): Andrés LERENA (Presidente, Comité de Derecho de Autor, Montevideo);
Alexandre KRUEL JOBIM (Legal Counsel, Brasilia, D.F.)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI): Silke VON LEWINSKI (Ms.) (Head of Unit, Department of Intellectual Property and Competition Law, Munich, Germany)

Bureau international des sociétés gérant les droits d'enregistrement et de reproduction mécanique (BIEM)/International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM): Willem A. WANROOIJ (Public Affairs, BUMA/STEMRA, The Hague); Elsa TRIOLAIRE (Ms.) (International Department, SACEM, Neuilly-sur-Seine, France)

Comité de Seguimiento "Actores Intérpretes" (CSAI)/Actors, Interpreting Artists Committee (CSAI): Fernando MARIN (Vice-Presidente, Madrid)

Civil Society Coalition (CSC): James LOVE (Consumer Project on Technology (CPTech), Washington, D.C.); Manon RESS (Ms.) (Secretariat, Washington, D.C.); Thiru BALASUBRAMANIAM (Geneva, Switzerland); Volker GRASSMUCK (Humboldt University, Berlin)

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Copyright Research and Information Center (CRIC): Ryohei ISHII (Senior Associate Director, Copyright Center, Multimedia Development Department, Japan Broadcasting Corporation, Tokyo); Samuel Shu MASUYAMA (Director, Legal and Research Department, Center for Performers' Rights Administration (CPRA), Japan Council of Performers' Organizations (GEIDANKYO), Tokyo); Yoshiji NAKAMURA (Secretary General, Japan Association of Music Enterprises (JAME), Tokyo)

Digital Media Association (DiMA): Seth GREENSTEIN (Attorney, Washington, D.C.)

Electronic Frontier Foundation (EFF): Cory DOCTOROW (European Affairs Coordinator, London); Wendy SELTZER (Ms.) (Staff Attorney, Intellectual Property, San Francisco, United States of America)

Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA): Juan José MARIN LOPEZ (Catedrático, Toledo, España)

European Digital Rights (EDRi): Ian BROWN (Co-Chair, Intellectual Property Working Group, London); Ville OKSANEN (Member of the Board, Helsinki); Teresa HACKETT (Mrs.) (Consultant, Dublin, United Kingdom)

Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle (EUROCOPYA)/European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA): Nicole LA BOUVERIE (Mme) (Paris); Yvon THIEC (délégué général, Bruxelles)

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIÉ)/Ibero-Latin-American Federation of Performers (FILAIÉ): Luis COBOS (Presidente, Madrid); Miguel PÉREZ SOLIS (Asesor Jurídico, Madrid); Paloma LÓPEZ PELÁEZ (Sra.) (Asesora Jurídica, Madrid)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI): Maria MARTIN-PRAT (Ms.) (Deputy General Counsel, Director of Legal Policy, London); Ute DECKER (Ms.) (Senior Legal Adviser, London); Brigitte LINDNER (Ms.) (Consultant, Registered European Lawyer, Serle Court, London)

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA): Dominick LUQUER (General Secretary, London); John T. McGUIRE (Senior Advisor, Screen Actors Guild, New York); Robert HADL (Advisor, Beverly Hills, United States of America); Bjørn HØBERG-PETERSEN (Attorney-at-Law, Copenhagen)

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA): Jarka LOOKS (Mme) (sous-directrice, Institut suisse de droit composé, Lausanne)

Fédération internationale des associations de distributeurs de films (FIAD)/International Federation of Associations of Film Distributors (FIAD): Gilbert GRÉGOIRE (président, Paris)

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF): Valérie LEPINE-KARNIK (Mrs.) (Deputy to the Director General, Paris)

Fédération internationale des journalistes (FIJ)/International Federation of Journalists (IFJ): Pamela MORINIÈRE (Ms.) (Authors' Rights Campaign Coordinator, Brussels)

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM): Benoît MACHUEL (General Secretary, Paris)

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/International Federation of Reproduction Rights Organizations (IFRRO):

Veronica WILLIAMS (Mrs.) (Secretary General, Brussels);
Tarja KOSKINEN-OLSSON (Mrs.) (Honorary President, Helsinki)

Groupement européen des sociétés de gestion des droits des artistes interprètes (ARTIS GEIE)/European Group Representing Organizations for the Collective Administration of Performers' Rights (ARTIS GEIE): Pilar BARDEM (Mrs.) (Vice-President, Brussels); Fernando MARIN (Vice-President, *Comité de Seguimiento "Actores Intérpretes"* (CSAI), Madrid); María GABALDÓN (Ms.) (Lawyer, Brussels)

Institut Max-Planck pour la propriété intellectuelle, le droit de compétition et de fiscalité (MPI)/Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI): Silke VON LEWINSKI (Ms.) (Head of Unit, Department of Intellectual Property and Competition Law, Munich, Germany)

International Intellectual Property Alliance (IIPA): Fritz ATTAWAY (Executive Vice-President, Government Relations, Washington General Counsel, Motion Picture Association of America (MPAA), Washington, D.C.); Scott M. MARTIN (Senior Vice-President of Intellectual Property and Associate General Counsel, Paramount Pictures, Hollywood, United States of America)

International Affiliation of Writers Guilds (IAWG): Bernie CORBETT (General Secretary, The Writers' Guild of Great Britain, London)

International Hotel & Restaurant Association (IH&RA): Elizabeth CARROLL SIMON (Ms.) (Director, International Relations and Industry Affairs, Paris)

International Music Managers Forum (IMMF): Nick ASHTON-HART (Executive Director, London); David STOPPS (Advisor, London); Gillian Joan BAXTER (Mrs.) (Legal Advisor, London); Enrique HUANTE (Assistant, London)

International Video Federation (IVF): Theodore (Ted) SHAPIRO (Legal Adviser, Brussels)

IP Justice: Robin D. GROSS (Ms.) (Executive Director, San Francisco, United States of America)

Japan Electronics and Information Technology Industries Association (JEITA): Yasumasa NODA (Advisor to President, Tokyo)

National Association of Broadcasters (NAB): Benjamin F.P. IVINS (Senior Associate General Counsel, Legal and Regulatory Affairs, Washington, D.C.)

National Association of Commercial Broadcasters in Japan (NAB-Japan): Fuyuko KITA (Rights Administration, Fuji Television Network, Inc., Tokyo); Mitsushi KIKUCHI (Patent Attorney, Head of Intellectual Property, TV Asahi Corporation, Tokyo); Hidetoshi KATO (Copyright Department, Programming Division, TV Tokyo Corporation); Honoo TAJIMA (Deputy Director, Digital Broadcast Promotion Division, Tokyo); Mariko NOBECHI (Simultaneous Interpreter, Kent, United Kingdom)

NetCoalition: Jonathan BAND (Attorney-at-Law, Morrison & Foerster LLP, Washington, D.C.)

North American Broadcasters Association (NABA): Erica REDLER (Ms.) (General Counsel, Senior Vice-President, Policy and Legal Affairs, Canadian Association of Broadcasters, Ottawa); Alejandra NAVARRO GALLO (Mrs.) (IP Attorney, Televisa Mexico, Zug, Switzerland)

Public Knowledge: Nathan MITCHLER (Director, Global Knowledge Initiative, Intellectual Property Counsel, Washington, D.C.)

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU): Maloli MANALASTAS (Mrs.) (Chairman, Copyright Committee, Quezon City); Atsushi IIZUKA (Principal Program Director (Copyright Center), Multimedia Development Department, Japan Broadcasting Corporation, Tokyo); Fernand ALBERTO (Legal Officer, Attorney-at-Law, Kuala Lumpur)

Union des radiodiffusions et télévisions nationales d’Afrique (URTNA)/Union of National Radio and Television Organizations of Africa (URTNA): Hezekiel OIRA (Head, Legal Department, Kenya Broadcasting Corporation, Nairobi)

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU): Moira BURNETT (Ms.) (Legal Adviser, Legal and Public Affairs Department, Geneva); Heijo RUIJSENAARS (Legal Adviser, Legal and Public Affairs Department, Geneva)

Union for the Public Domain: David TANNENBAUM (Coordinator, Oxford, United Kingdom); Tina PIPER (Ms.) (Policy Analyst, Oxford, United Kingdom); Shyamkrishna BALGANESH (Oxford, United Kingdom); Tatiana NIKIFOROVA (Ms.) (Oxford, United Kingdom)

Union internationale des éditeurs (UIE)/International Publishers Association (IPA): Carlo SCOLLO LAVIZZARI (Legal Counsel, Geneva)

Union mondiale des aveugles (WBU)/World Blind Union (WBU): David MANN (Campaigns Officer, Royal National Institute of the Blind (RNIB), Belfast, United Kingdom); Stephen KING (Director, Technical and Consumer Services, Royal National Institute for the Blind (RNIB), Peterborough, United Kingdom); Henri CHAUCHAT (Association Valentin Haüy, Paris); Jeanne CHAUCHAT (Mrs.) (Paris)

Union Network International–Media and Entertainment International (UNI-MEI): Jim WILSON (Director, Media, Entertainment and Arts, Brussels)

V. BUREAU/OFFICERS

Président/Chairperson: Mr. Jukka LIEDES (Finland)

Vice-présidents/
Vice-Chairpersons: Mr. Shen RENGAN (China) and
Mr. Abdellah OUADRHIRI (Morocco)

Secrétaire/Secretary: Mr. Jørgen BLOMQVIST (OMPI/WIPO)

VI. SECRÉTARIAT DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/ SECRETARIAT OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Rita HAYES (Mme), vice-directeur général/Deputy Director General

Jørgen BLOMQVIST, directeur de la Division du droit d'auteur/Director, Copyright Law Division

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[Fin de l'annexe IV et du document/
End of Annex IV and of document]