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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

Sixteenth Session
Geneva, March 10 to 12, 2008

DRAFT REPORT

prepared by the Secretariat

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Standing Committee,” the “Committee” or the “SCCR”) held its sixteenth session in Geneva from March 10 to 12, 2008.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Berne Union for the Protection of Literary and Artistic Works were represented in the meeting:
3. The European Community (EC) participated in the meeting in a member capacity.
4. The following intergovernmental organizations took part in the meeting in an observer capacity:
5. The following non-governmental organizations took part in the meeting as observers:

OPENING OF THE SESSION

6. The session was opened by Mr. Michael Keplinger, Deputy Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

7. The Standing Committee unanimously elected Mr. Jukka Liedes (Finland) as Chair, and Messrs. Abdellah Ouadrhiri (Morocco) and Luís Villarroel (Chile) as Vice-Chairs for the present year.

8. The Chair stated that some information on the negotiated results concerning the elections should be shared with all participants and invited the Deputy Director General to make such information available.

9. The Deputy Director General stated that, according to information received from the Group Coordinators, it was part of the agreement leading to the elections that at the end of the year, Morocco would not stand at re-election and China would be nominated for the position of Vice-Chair for 2009.

10. The Chair noted that this meant that officers of the forthcoming meeting were not elected on a totally *ad hoc* basis, as there was an agreed order in which the delegations and the groups would proceed.

11. The Chair paid homage to the memory of Mr. Otavio Afonso, a frequent delegate of Brazil and dear colleague for many years, who had passed away a few days ago. The Committee observed a minute of silence in his memory.

12. The Delegation of Chile expressed on behalf of GRULAC, the gratitude of that group to the valuable contribution of Mr. Otavio Afonso.

ADOPTION OF THE AGENDA OF THE SIXTEENTH SESSION

13. The Chair reminded the Committee that an uninterrupted period of seventeen or eighteen years had been devoted by WIPO to updating the system of copyright conventions. Developments in that regard included the adoption of the 1996 WIPO Treaties complementing the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and updating the international protection of performers and producers of phonograms. After that, great efforts had been invested during several years in the attempt to reach a conclusion concerning the establishment of an international regime for the protection of audiovisual performances. In the year 2000 that turned out not to be possible. A long series of meetings had over a period of ten years been devoted to the preparation and conclusion of a treaty on the protection of broadcasting organizations. It was easy to see how demanding, challenging and time-consuming the norm-setting activity had become in the large community of WIPO members and observers, where such a diversity of opinions and traditions prevailed. It was therefore legitimate to question what should be done with the norm-setting activity and with those two agenda items, the protection of audiovisual performances and the protection of broadcasting organizations. A possibility would be to try

to establish a description of the prospects. The discussion on those issues had lasted so long that there had been no meaningful possibility for the Committee to take stock of what had happened meanwhile in the outside world, and what new needs had emerged. For that reason, and based on the proposal of the Delegation of Chile, the question of exceptions and limitations was included in the Agenda. The question was what meaningful international coordination and exchange of information could take place at government level and in contact with the non-governmental and intergovernmental organizations. Should some more time be devoted to other than norm-setting activities from now on or should there still be an attempt to conclude one or the other of those projects? Consideration should also be given to possible other important themes in addition to exceptions and limitations that simultaneously or consecutively could be considered. In addressing the question of the future work of the Committee and the need to establish a work plan, it would be necessary to engage in a team-oriented planning activity within the group of Chair and Vice-Chairs, in order to guide the work in directions which would be most favorable for the Committee as a whole.

14. The Delegation of Slovenia, speaking on behalf of the European Community and its member States, proposed to add an item to the agenda, "Information on the WIPO Arbitration and Mediation Center". That information would be provided by the Secretariat and there would be a possibility to have an exchange of views between Member States and observers.

15. The Delegation of Algeria noted that the draft Agenda contained a list of substantial issues: protection of audiovisual performances; protection of broadcasting organizations; exceptions and limitations; and future work of the Committee. It was not clear whether the Chair wished the same program for the future work of the Committee or whether a different agreement on the future work of the Committee could be adopted.

16. The Chair confirmed his intention to follow the order of business reflected in the draft agenda and then, under the item future work, decide independently on the future work of the Committee. All ideas on the future work would be put in a systematic form and there would be complete transparency as far as the Agenda of the next meeting was concerned. Additionally, the report of the meeting might reflect ideas concerning the work plan and record the delegations' priorities concerning the work of the forthcoming meetings. The first thing that should be planned in detail was the Agenda of the current meeting for which there was the proposal by Slovenia that one item would be added as item 7a in the Agenda, entitled "Information on the WIPO Arbitration and Mediation Center".

17. The Delegation of Brazil thanked the Chair and all delegates for the justified and deserved minute of silence in the memory of Mr. Otavio Afonso de Souza, a very special person who had presided for more than two decades the Copyright Office of Brazil. While in principle the delegation of Brazil would not oppose adding an item to the Agenda as proposed by the delegation of Slovenia it would be convenient to have further clarification of how the activities of the WIPO Arbitration and Mediation Center would fit into the discussions of the SCCR. As regards Algeria's comment on the order of the agenda items, the best would be to leave agenda item 6 "Protection of Broadcasting Organizations" to be dealt with after the "Protection of Audiovisual Performances" and after the issue of "Exceptions and Limitations". As a long time had already been spent on discussing that issue it was now necessary to ensure that the Committee would have enough time to discuss other issues.

18. The Chair recalled that the protection of audiovisual performances was formally at the level of the General Assembly. The protection of broadcasting organizations had, as a substantive item, been sent back from the General Assembly to the Standing Committee.

That distinction implied that the discussion on the protection of audiovisual performances would be limited to a stock taking of the situation and there would be no possibility to embark on any substantive analysis of the matter itself. The assessment of how and when and by what means the item could possibly be activated or kept on the agenda remained in the hands of the General Assembly.

19. The Delegation of El Salvador supported the proposal made by the Delegation of Brazil regarding the order of topics on the Agenda. Both protection of broadcasting organizations and the protection of audiovisual performances should be kept in the Agenda.

20. The Delegation of Chile supported the proposal of Brazil. The proposal on exceptions and limitations had been in the Agenda since 2003, and it had hardly been discussed at all. The Secretariat had prepared a number of documents and the Delegation of Chile had already made two proposals on that matter. It was therefore appropriate to discuss exceptions and limitations before broadcasting.

21. The Delegation of Senegal was not opposed to receiving a briefing on the mission or the role of the Arbitration and Mediation Center. However, it was difficult to establish a link between the structure of the Standing Committee and the Center. Second, an exception to copyright was only valid when there was a rule or a principle at stake and for reasons of consistency it would therefore be better to discuss the substance of the rule before the exceptions to it.

22. The Delegation of Slovenia, speaking on behalf of the European Community and its member States, confirmed that it had only requested information on the possible activities of the arbitration and mediation center with regard to copyright disputes, including in the field of collective management.

23. The Chair indicated that objections had been raised concerning neither the addition of an item nor the reversing of the order of agenda items as proposed. Therefore, the draft Agenda was adopted as amended.

ADOPTION OF THE REPORT OF THE SECOND SPECIAL SESSION OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

24. The Chair noted that the draft Report, dated August 2007, had been made available.

25. The Delegation of El Salvador requested that its country be included in the list of participants and that both the name of the Ambassador and the name of the delegate at that Standing Committee be listed therein.

26. The Chair stated that delegations could present in writing proposals to refine the paragraphs that reflected their own interventions. Those delegations had the possibility to hand over to the Secretariat the proposals. There was also the possibility to send them by email to the general copyright email address, which was copyright.mail@wipo.int. Under that condition he submitted the Report for the consideration of the Committee. It was adopted.

PROTECTION OF AUDIOVISUAL PERFORMANCES

27. The Secretariat clarified that its update would cover recent activities concerning the protection of audiovisual performances pursuant to the decisions of the WIPO General Assembly. At its session in September 2007, the General Assembly decided that the issue of audiovisual performances would remain on that Assembly's Agenda for its session in September-October 2008. The General Assembly also noted the intention of the Director General to organize national and/or regional seminars in order to promote exchange of information and recent developments on the issues involved, at the level of national legislation and international consensus building. Following the decision of the 2007 General Assembly which in fact mirrored a similar decision taken the previous year in 2006, a number of regional and national seminars had been organized and others were scheduled to take place before the end of 2008. In carrying out those events, the WIPO Secretariat had followed a flexible and balanced approach to the protection of performers at the national level, in such practical areas as contractual relations, collective bargaining, the exercise and transfer of rights, and remuneration systems. The spread of activities had been global. Seminars had been organized in Latin America, Asia and Africa and seminars would also take place in Central and Eastern Europe during the remaining months of the year. In some cases the issue of audiovisual performances was part of the agenda in events that focused not exclusively on performer's rights, but had a larger scope and purpose. National and regional seminars had followed different formats, depending on the interest expressed by the Member States requesting them and the stakeholders involved in the seminars. In all of them representatives of WIPO Member States and representatives of audiovisual performers or indeed performers themselves had been involved. In some of the events, music performers had been involved. In others, producers and authors of audiovisual content had also been invited to speak. Both approaches, one focusing on the audiovisual sector and the entire value chain for audiovisual content and the other focusing on performances in a broad sense, that was to say, covering both musical and audiovisual performances, had been of great value in the words and the reactions of the stakeholders. Both approaches helped to analyze the issues facing performers in a global and more meaningful context, including in the context of users on the Internet and new business models. Contracts between performers and producers, collective management and collective bargaining as well as developments in national legislation figured among the issues that received greater attention during the seminars. The role of collective management organizations, trade unions and producers of audiovisual works had been extensively analyzed as performers did not exercise their rights in isolation, but in the context of a broadly collaborative creative industry where other stakeholders played relevant roles. The discussion on international protection of audiovisual performances remained at a merely informational level with the purpose of raising awareness among governments and stakeholders about the current status of the issue. It would remain for the next session of the General Assembly to decide on the disposition of that agenda item including further work possibly in the Standing Committee or indeed on the agenda of the Assemblies itself.

28. The Chair agreed that the matter was formally on the agenda of the General Assembly. However, stock-taking belonged to the faculties of the Committee in order to inform the General Assembly and provide delegations with an opportunity to exchange views on prevailing considerations and positions.

29. The Delegation of Senegal congratulated the Secretariat on the activities undertaken regarding the protection of audiovisual performances. There was a great growth in the audiovisual market and, unfortunately, due to lack of protection, not all those who should be

benefiting from it actually did so. It was necessary to grant rights to all creators in order to introduce incentives for further creation. It was necessary to carry on with the updating exercise and exchange of information in order to make progress towards the adoption of an instrument.

30. The Delegation of Colombia expressed its support to reconvene a diplomatic conference so as to finally adopt a treaty containing the recognition of the rights of audiovisual performers. It was important that the future treaty contained general provisions on the recognition of those rights and that it did not establish rules that would set limits to the legislations of each country.

31. The Delegation of Japan appreciated the effort that had been made by Member States and the Secretariat to reach a consensus and to retain the issue on the agenda of the General Assembly. The treaty would be very important for providing the necessary protection to audiovisual performers in the digital and networking society which was not covered by the WIPO Performances and Phonograms Treaty (WPPT). Member States and the Secretariat needed to seek ways to overcome the current difficulties thereby leading to the adoption of the treaty in the near future.

32. The Delegation of Slovenia, speaking on behalf of the European Community and its member States, was pleased that the issue of the international protection of audiovisual performers was on the agenda of the Standing Committee. The European Community and its member States were still aiming for strong protection of audiovisual performers in line with that accorded by the WPPT to other performers. The European Community and its member States were favorable to the advancement of the discussions on the protection of audiovisual performers at the international level taking into account the different aspects of such protection. Some of the statements made by the participants at the General Assembly held in September-October 2007 showed that the interest for that protection remained at the national level. WIPO should be commended for having continued to organize national and regional seminars which played an important role in raising awareness and building consensus. In order to have a clear view of the current status of the protection of audiovisual performers, the European Community and its member States invited the WIPO Secretariat to present the Member States with an evaluation of the situation resulting from the various national and regional seminars. The evaluation could include a stock taking of positions and possibilities for re-opening discussions within WIPO.

33. The Delegation of El Salvador associated itself with the preceding delegations who had spoken in favor of the protection of audiovisual performers.

34. The Delegation of the United States of America fully understood the need to protect audiovisual performers and copyright creators and owners in a digital world. At the same time, it was aware of the wide differences that remained among Member States for achieving such protection at the international level, particularly, differing approaches to the transfer of exclusive rights from performers to producers. With a view towards gaining a deeper understanding of the complex issues related to the protection of audiovisual performances in the digital age, its country continued to support WIPO's efforts to organize national and/or regional seminars in 2008 and beyond and welcomed the opportunity to discuss the results of such meetings within the Committee.

35. The Delegation of Norway considered that the objective of updating the international system of related rights should be to provide for the neighboring right holders a level of

protection as similar to copyright protection as possible. The different groups of right holders in the area of neighboring rights should be treated on an equal footing and the rights should be updated to meet the challenges and requirements of the new digital environment. In that context the protection of audiovisual performances should be kept on the agenda with the aim of finding a good way to conclude the matter as soon as possible.

36. The Delegation of Morocco attached great importance to the protection of audiovisual performances. The process should be reactivated in the context of the Committee's work. Debates should be more serious and thorough because it was not possible to be satisfied with just having the item on the agenda without going into it in the depth it deserved.

37. The Delegation of Ukraine stated that its national legislation on copyright and related rights did contain, in principle, rules on audiovisual performances. However, the lack of an international instrument capable of providing a common foundation to national legislation was strongly felt.

38. The Delegation of Kenya reiterated the positions taken by most delegations in terms of not only retaining the particular item on the agenda but also reactivating it. For the last couple of years Kenya had worked very hard in the development of the audiovisual industry. In order to achieve a compromise on an international standard for the audiovisual sector, it would be necessary to revisit the whole issue of the protection of audiovisual performances.

39. The Delegation of Ghana took note of the revival of discussions on the protection of audiovisual performances. Protection of audiovisual performances was very important not only in the area of copyright but also regarding performances of expressions of folklore. As discussions had resumed it was hoped that in the very near future a conclusion of the whole treaty process would be achieved.

40. The Delegation of Egypt thanked the Secretariat for having gone back to the consideration of the issue once again and for having included the corresponding item on the Agenda. New methods to consider the matter should be developed so the new efforts could be crowned with success. The reasons why the 2000 Diplomatic Conference had not been a success should be analyzed in order to get rid of the obstacles which stood in the way of an agreement. Accordingly, the holding of regional and national meetings was encouraged. Informal meetings in the form of workshops should take place in parallel to the Standing Committee. At such venues experts would brief delegations on the best methods and techniques to solve pending problems. The Secretariat would hopefully present delegations at the following meeting with a document summarizing the situation of the protection of audiovisual performances both at national and at international level. The document could also contain suggestions and practical solutions which could apply to the particular problem.

41. The Delegation of Turkey expressed its support to the adoption of a Convention on the issue. It agreed with the Delegation of Egypt that new approaches should be adopted leading to a better understanding of the differences between the states and the need to have a treaty. Regional seminars could be instrumental in that regard as well as bringing out the results of the seminars to the Committee in order to prevent repetition of work. The purpose of that exercise should be to understand the objectives, specific scope and the object of protection.

42. The Delegation of Brazil did not oppose retaining the item on the agenda because that was the mandate from the General Assemblies. It also went along with the idea of trying to activate the issue and trying to have some kind of process to discuss the protection of

audiovisual performances within the Committee. However, the long-standing differences that led to the failure of the 2000 Diplomatic Conference made it necessary to assess whether substantive progress had taken place. In that sense it would be advisable to have in the next session some kind of background information produced by the Secretariat. That background information should be objective and factual and focus on the outcome of the seminars.

43. The Delegation of South Africa supported the position of Brazil that echoed what Slovenia had put on the table. It was necessary to have a sense of the evaluation at the national and regional seminars as to the present situation, to which end the Secretariat should produce a briefing document.

44. The Delegation of Morocco stressed the need for the Secretariat to ensure that there would be informal meetings during the next Standing Committee so that experts could come up with methods that would enable the Committee to avoid repeating the failure of the last Diplomatic Conference.

45. A representative from the International Federation of Actors (FIA) thanked the Secretariat of WIPO for the way in which it had supported the initiative to improve the situation of performers in different respects. Intellectual property rights could greatly contribute to improving the economic situation of performers, which was especially difficult at the end of their careers. FIA had taken part in numerous meetings at the regional level which had been fruitful and had provided also an informal basis for the exchange of views with governments and stakeholders. A treaty on the protection of audiovisual performances was greatly needed. In the year 2000 Member States had made extraordinary progress which now needed to be supported and pursued even further. The outstanding issue regarding transfer of the rights should be solved. To the extent that it was promoted as a universal rule imposed on all the states, a rule on transfer remained unfair. However, a positive outcome also in that respect was not far and in the forthcoming months a result might be seen which could be satisfactory for performers.

46. The Delegation of Algeria, speaking on behalf of the African Group, stated that in order to achieve progress on the item, it was necessary to have certain background documents, especially an updated document that would give the opportunity to examine the process and to develop the position of the Group.

47. The Chair underlined the consensus regarding the need to compile and assess the outcome of the seminars and conferences that had been organized. The factual information put together by the Secretariat could be the basis on which the delegations took positions, at the time of the General Assembly, on how to formulate the mandate for further work on the issue.

48. A representative from Comité de Seguimiento de Actores e Intérpretes (CSAI) agreed with previous speakers that it was not enough to keep the issue in the agenda of the General Assembly. It was necessary to ensure that effective protection of audiovisual performances be achieved, so discussions should be engaged with a view to adopt a treaty for the protection of audiovisual performers.

49. A representative from the Ibero-Latin-American Federation of Performers (FILAIE) indicated that since the exclusion of audiovisual performances from the outcome of the 1996 Diplomatic Conference, the situation remained unchanged. However, the context had changed and the Internet allowed wide spread exploitation of audiovisual performances. It

was not enough to keep the item on the agenda, it was necessary to speed up the work with the firm determination to come up with a successful treaty.

50. The Chair offered the following preliminary conclusions from the discussion on audiovisual performances: many delegations expressed their willingness to take up further discussions on the substance, with the aim of finding a way forward. The outcome of the present session of the SCCR would be reported to the General Assembly, which might wish to formulate more detailed instructions on the matter. The Secretariat was requested to prepare a factual document summarizing the outcome of the activities organized in accordance with the request of the General Assembly. The Secretariat was further requested to continue organizing seminars at the regional and national level.

EXCEPTIONS AND LIMITATIONS

51. The Chair opened the discussion on the Agenda Item and invited the Secretariat to provide information on its activities in the area.

52. A representative of the Secretariat noted that technological measures of protection and limitations and exceptions to copyright and related rights in the digital environment had been thoroughly discussed in different WIPO fora, including: the WIPO Workshop on Implementation Issues of the WIPO Copyright Treaty (WCT) and the WPPT, held in 1999, and the two International Conferences on Electronic Commerce, held in 1999 and 2001. In November 2003, in connection with the Tenth Session of the SCCR, WIPO organized an Information Meeting on Digital Content for the Visually Impaired, in order to provide an overview of the present situation regarding access to works by visually impaired people. At the Thirteenth Session of the Standing Committee on Copyright and Related Rights, which took place in Geneva from November 21 to 23, 2005, the Member States of WIPO examined the impact of the copyright system on the use of protected works for educational purposes, particularly in developing countries. In addition, WIPO had commissioned three major studies on limitations and exceptions since 2003; the first was the WIPO study entitled "Limitations and Exceptions of Copyright and Related Rights in the Digital Environment," prepared by Mr. Sam Ricketson, Professor of Law, University of Melbourne, and Barrister, Victoria, Australia. That document was presented at the Ninth Session of the SCCR in June 2003 (document SCCR/9/7). The study covered 84 pages, and outlined the main limitations and exceptions to copyright and related rights protection that existed under the Berne Convention, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), the WCT, and the WPPT. It also described different national approaches to application of limitations and exceptions, in particular, with respect to the digital environment. The study further analyzed the application of the three-step test to specific areas of concern, in an attempt to highlight the kinds of issues that would arise for national legislators in formulating their statutory limitations and exceptions, particularly in the digital environment. The study concluded by highlighting the relationship between the obligations with respect to technological measures as found in various conventions relating to limitations and exceptions.

53. The second study commissioned by the Secretariat on the subject of limitations and exceptions was entitled "Automated Rights Management Systems and Copyright Limitations and Exceptions," prepared by Mr. Nic Garnett, Principal Consultant at Interight.Com. That document was presented at the Fourteenth Session of the SCCR in May 2006 (document

SCCR/14/5). The document covered 97 pages of substantive reporting and a further 50 pages of tabulated and detailed legal analysis. The study elucidated the concept and workings of digital rights management (DRM) technologies, considering the particular situations of two groups of beneficiaries: the subset of the educational community involved in distance learning, on the one hand, and visually impaired persons, on the other. To illustrate the state-of-the-art in the relevant fields, the national law and practice in five countries (Australia, the Republic of Korea, Spain, the United Kingdom, and the United States of America) were examined following a case study approach to examining the contexts in which rights management technologies might serve as an effective means to implement limitations and exceptions in the digital environment.

54. The third and most recent study commissioned by the Secretariat in the area of Limitations and Exceptions, entitled “Copyright Limitations and Exceptions for the Visually Impaired,” was prepared by Ms. Judith Sullivan, Consultant, Copyright and Government Affairs, the United Kingdom, and was presented at the Fifteenth Session of the SCCR in September 2006 (document SCCR/15/7). The study involved extensive case studies, covered 136 pages of substantive reporting and an additional 97 pages of annexes, which provided sources of information on national laws; full analysis of specific exceptions for the benefit of visually impaired people in 58 national laws; and distribution and importation rights in 59 national laws. The study built on a number of earlier studies and reports, focusing on the relationship between copyright and the needs of visually impaired people and, in particular, the search for appropriate balance between the interests of right holders and visually impaired people. Examining the application of international treaties and in particular the “three-step test,” the study presented 26 case studies that, on the one hand, illustrated problems concerning the production and dissemination of accessible copies of works for visually impaired people and, on the other, sought to identify solutions to those problems. The study concluded by recommending, *inter alia*, that where cross-border movement of copies of copyright works were made under exceptions, the laws of both the exporting and importing country need to be taken into account.

55. A fourth study on limitations and exceptions had been commissioned and was currently under preparation, dealing with the subject of limitations and exceptions in the area of libraries. Two proposals on the subject of limitations and exceptions had been submitted to the Standing Committee by the Government of Chile, respectively in its eleventh session (November 2004) (document SCCR/12/3) and in its thirteenth session (November 2005) (document SCCR/13/5). Some discussion among governments and representatives of non-governmental organizations had taken place in both sessions of the Committee.

56. The Chair thanked the Secretariat for the information provided, and invited government delegations to address the following questions: on what basis should the Committee’s work on limitations and exceptions proceed? What should be the objectives of the work, and how should it be organized?

57. The Delegation of Chile presented a joint proposal on behalf of itself, Brazil, Nicaragua and Uruguay entitled “Proposal by Brazil, Chile, Nicaragua and Uruguay for Work Related to Exceptions and Limitations,” with the following wording:

“Introduction

“Brazil, Chile, Nicaragua and Uruguay commend the Standing Committee on Copyright and Related Rights of the World Intellectual Property Organization on the work it has recently undertaken on exceptions and limitations to copyright and related rights.

“As expressed in the Chilean submission at the Thirteenth Session of the Standing Committee on Copyright and Related Rights in November 2005,¹ exceptions and limitations to copyright are important instruments for defining and protecting a heritage of public property and areas of freedom for the use of knowledge and products of human creativity, which are necessary not only to guarantee the right of humankind to participate in cultural activity and scientific and economic progress, but also to facilitate and promote the creative activity of authors and cultural industries which require those exceptions to carry out a part of their activities.

“In light of the vital importance of exceptions and limitations to these widely-shared values, it was proposed that three areas of work be undertaken by the Committee:

1. Identification, from the national intellectual property systems of Member States, of national models and practices concerning exceptions and limitations.
2. Analysis of the exceptions and limitations needed to promote creation and innovation and the dissemination of developments stemming there from.
3. Establishment of agreement on exceptions and limitations for purposes of public interest that must be envisaged as a minimum in all national legislations for the benefit of the community; especially to give access to the most vulnerable or socially prioritized sectors.²

“In this context, we appreciate the work undertaken by WIPO to provide several studies reviewing the implementation of national copyright systems’ exceptions and limitations for particular classes of beneficiaries and the public interest.³ We look forward to having the reports presented to this Committee by their authors, to enrich the discussion that we are starting today.

“This Sixteenth Session of the SCCR is the first meeting to formally include the topic of exceptions and limitations on the Committee’s agenda. This opportunity requires us to adopt

¹ PROPOSAL BY CHILE ON THE ANALYSIS OF EXCEPTIONS AND LIMITATIONS, Proposal to Standing Committee on Copyright and Related Rights, SCCR/13/5, November 22, 2005.

² Id.

³ In recent years WIPO has commissioned four studies on Exceptions and Limitations: *Study on Copyright Limitations and Exceptions for the Visually Impaired* by Ms. Judith Sullivan (SCCR/15/7); *Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment* by Professor Sam Ricketson (SCCR/9/7); *Automated Rights Management Systems and Copyright Limitations and Exceptions* by Mr. Nic Garnett (SCCR/14/5); and a study on limitations and exceptions for library use at the request of Chile which will be completed soon.

a work plan to structure our discussions and allows us to move forward in a constructive manner.”

58. The Delegation of El Salvador welcomed the proposal presented by the Government of Chile. The proposal was extremely interesting and would immediately be sent to the capital in order to receive instructions. The issue of limitations should remain on the agenda as it was of interest to all the members and in particular to the developing countries.

59. The Delegation of Ukraine supported that the item of limitations be included in the agenda and considered that a debate on the proposal by Chile could lead to the incorporation of positive changes into national legislation.

60. The Delegation of Brazil fully associated itself with the presentation made by Chile. It was necessary to set up a positive process that would permit the Committee to look into the issue of exceptions and limitations. The issue was a permanent item on the Committee's agenda which might constitute a fruitful area of work, capable of promoting a positive interaction and consensus among the members of the Committee. The proposal put forward by Chile and co-sponsored by Brazil, Nicaragua and Uruguay presented a structured and focused methodology of work to deal with exceptions and limitations. It contained a gradual and step-by-step working plan. Some of its elements deserved to be highlighted. The Secretariat should produce an in-depth study on the issue. In the next session it would be convenient to discuss with all members and interested parties in an informative session to be organized by the Secretariat. The informative session could focus on all the studies that had been produced for the last few years. The proposal also envisaged organizing at a later stage an open forum on exceptions and limitations. All those steps should take into account that, as the process went forward, participants would be gathering relevant information materials for a comparative analysis on how the issue was treated at the national and international levels.

61. The Delegation of Paraguay supported the proposal from Chile which had been co-sponsored by Brazil, Nicaragua and Uruguay. Developing countries needed access to culture and Paraguay welcomed the possibility to have access to the works without infringing copyright, maintaining the delicate balance between the interests of the society and the interests of the right holders. The legislation in Paraguay listed a number of important exceptions, especially for the disabled people and for libraries. It was a matter of concern to see the progress made by certain technologies and the limitations that they could impose on such contexts as distance-learning.

62. The Delegation of Uruguay stated that effective protection of copyright required that copyright laws not only be fair but also clear as to the scope of the rights. Therefore, it was fundamental to facilitate as much clarification as possible regarding exceptions and limitations, which by nature defined the scope of the rights. Clarity was also needed regarding the limits between restricted and free acts. It was necessary to preserve the balance recognized in Article 27 of the Universal Declaration of Human Rights, an aspect which Uruguay had supported on many opportunities within the Standing Committee and before the Committee for the Development Agenda.

63. The Delegation of New Zealand referred to the Study on Copyright Limitations and Exceptions for the Visually Impaired, which had been submitted to the Fifteenth Session of the SCCR (document SCCR/15/7). Generally, New Zealand could endorse the recommendations contained in the study and encouraged further discussions on the topic. In particular, the Delegation would like to highlight the issue of international exchange of accessible formats. It was an important issue for New Zealand as many accessible formats of

useful materials were published outside of the country. The most significant problems in New Zealand related to vision-related services. The Royal New Zealand Foundation of the Blind faced difficulties related to the import of accessible format copies from organizations for the visually impaired in other jurisdictions. That was due to the fact that territorial limitations to copyright impact the international distribution of material created under those exceptions. Further work needed to be done to take stock of the often complex legislative situation with regard to copyright exceptions. New Zealand saw particular value in exploring alternatives to the exceptions, particularly in the short- and medium-term, to facilitate the import and export of accessible copies, such as looking at the role WIPO could play in facilitating arrangements that might cover the international exchange of accessible formats as reflected in the recommendation of the Study.

64. The Delegation of the Russian Federation considered very favorably the issue of exceptions and limitations. The subject was of great topical importance for the protection of copyright and related rights throughout the world. The Committee should give enough attention to that item by including it regularly on the agenda. It was extremely important that international law established the minimum level for exceptions and limitations. The Russian Federation had adopted a new Civil Code, in force since January 1, 2008, which included limitations in such areas as reproduction for personal purposes; for blind people; for illustrations in teaching materials; for quotations, for press articles, etc.

65. The Delegation of Cuba welcomed the proposal by Chile and others and supported the inclusion of the issue of limitations on the agenda of the Committee in order to be able to touch directly the delicate balance of interests in the area of copyright and related rights.

66. The Delegation of Senegal thanked Chile and other sponsors for their proposal. Article 27 of the Universal Declaration of Human Rights of 1948, mentioned by the Delegation of Uruguay, gave a basis to legitimize the creation of a rightful balance between the rights of the author and the rights of the general public. The best illustration could be found in the consideration of Article 9 of the Berne Convention which gave an exclusive right to the author while establishing the conditions for the free use of works. If there were no protection there would be no information available. In all the legal instruments administered by WIPO, the international community had always had in mind that it was necessary to establish limitations and exceptions. If there were problems and needs which were not addressed by the limitations enshrined in the treaties that already existed, the first step would be to assess the state of play in order to have a consistent approach. Such an assessment was also a key element in the proposal by Chile and others. Second, it would be necessary to describe the areas in which legislation was lacking, especially in the light of the new requirements that had emerged. And it was only when those two stages were completed that discussions on possible proposals would be possible.

67. The Delegation of China stated that the issue of limitations and exceptions was of great importance not only in terms of the dissemination of knowledge, education and public interest, but also in terms of the recreation of intellectual works. The Delegation believed that the issue deserved further and deeper discussion in the Committee and should remain on the Agendas of future sessions of the SCCR. It was necessary to prepare a work plan with clear objectives so as to lead members to conduct practical work on the issue with the aim to elaborate a set of minimum and universally bounding international norms. The proposal made by Chile was very detailed and constructive and deserved also constructive consideration.

68. The Delegation of Egypt expressed its deep interest in the proposal which had been presented by the Delegation of Chile on its own behalf and on behalf of Brazil, Nicaragua, and Paraguay. The Egyptian legislation included a number of limitations and exceptions which in total aimed at a balance between the interests of authors and creators and the rights of the society and the public domain as a whole. The question of limitations and exceptions was at the heart of the agenda of WIPO and balance was needed between the rights of IP on creations and the right to have access to them. The methodological framework of the debate should be clarified to ascertain whether at the end a declaration or a set of guiding principles was a sufficient result. Alternatively, a treaty on limitations and exceptions could be adopted. Clarification was also needed regarding whether the limitations to be developed should be minimum requirements as proposed by Chile or should stipulate the maximum limitations that could be included in national legislation. The first option was preferable as a minimum of such norms and guiding principles could then be expanded in line with the national characteristics. Second, it was necessary to assess whether the question of limitations and exceptions in the framework of copyright could be understood as separate from limitations and exceptions to IP as a whole. Third, it was important to decide whether to only analyze limitations and exceptions in the field of national legislation or also deal with the limitations and exceptions in international treaties and conventions. The proposal of Chile was important though it could be further clarified.

69. The Delegation of the Islamic Republic of Iran attached great importance to the subject of limitations and exceptions. The discussion on limitations and exceptions should be deliberated in the light of the implementation of the WIPO Development Agenda which was approved by the General Assembly. It should also balance the interest of the rightsholders and the public interest.

70. The Delegation of South Africa considered that the three points on limitations and exceptions in the proposal by the Delegation of Chile, supported by Brazil, Nicaragua, and Uruguay offered a sound basis for discussion. The Delegation looked forward to studying the document further in detail once it had been made available to the Committee.

71. The Delegation of Saudi Arabia stressed the importance of maintaining on the agenda the item of limitations in order to have a balance between the interests of the authors and those of the public. It also endorsed what other delegations had indicated regarding the methodology of how to examine the topic from various angles.

72. The Delegation of Australia referred to the very comprehensive and extensive proposal as outlined by the Delegation of Chile and stressed the need to study the text to consider all its implications. As an initial reaction the idea of taking stock of the limitations and exceptions that had been enacted in national laws was certainly a useful and valuable comparative exercise. As expressed by the Delegation of New Zealand, it was necessary to explore ways of promoting accessibility to particular formats that were being developed in one country so that they could be used in other countries for affording greater access by people with visual disabilities. The proposal raised a number of questions, some of which had already been listed by the Delegation of Egypt. If the exercise proposed by Chile led to the establishment of new exceptions at the international level, the impact of such development in the rights provided for in existing treaties should be analyzed. Nobody could deny the virtue of seeking greater certainty for both copyright owners and users in establishing a more definitive understanding on exceptions and limitations. However, if the proposal also included the opportunity for incorporating other or greater limitations and exceptions at the national level, such a result would be at odds with the quest for certainty.

73. The Delegation of Ghana congratulated Chile and the collaborating countries that had put together the detailed proposal on limitations and exceptions. The proposal would be submitted to the appropriate authorities in its capital. The proposal should be a good basis to start discussing any future work on the subject matter and Ghana would be interested in participating in any future discussion. Ghana was presently studying seriously every issue concerning gender and the rights of persons with disabilities. In as far as the subject matter attempted to address the human rights in areas such as IP of the visually impaired, special attention should be granted at the Standing Committee.

74. The Delegation of the United States of America shared some of the positive experiences under the existing exceptions and limitations in its national copyright law. At the domestic level, the United States of America approached the subject of exceptions and limitations to the exclusive rights of authors and other creators with a great deal of sympathy. Over the more than two centuries of development of its copyright law, courts had developed and progressively refined a sophisticated jurisprudence on exceptions and limitations. Under the fair use doctrine, courts had long recognized that a certain amount of borrowing should be excused in order to achieve copyright's very purpose. In 1976, Congress codified the fair use doctrine providing a non-exclusive list of four factors that courts could consider in determining whether a particular use was fair. That open-ended, flexible doctrine had proven extremely valuable to judges, allowing them to address equitable issues in resolving a specific dispute. Over the years, Congress had also enacted specific exceptions and limitations to the exclusive rights of authors, and today the Copyright Act contained numerous detailed exceptions, among others, for the benefit of libraries, face-to-face teaching, distance education and the handicapped community. That legislative approach to exceptions and limitations also had proven successful allowing lawmakers, at times after extensive fact gathering and hearings, to make adjustments to the copyright law taking into account the needs of specific stakeholders. More broadly, recognizing that domestic approaches and national policy-making related to exceptions vary widely, the United States of America would be willing to exchange views on successful approaches and policy-making at the national level. At the international level, the United States of America had long recognized the need for some limitations to and exceptions from the exclusive rights of authors to advance national, cultural, economic, and information policies. The Berne Convention, for example, granted its member States the latitude to limit the rights of authors under certain circumstances such as for educational purposes or news reporting. The United States of America also noted the growing importance of Article 9(2) of that Convention, which had become what Professor Sam Ricketson in the study on exceptions and limitations prepared for the Committee called the "horizontal" provision applying generally to limitations and exceptions. The so-called three-step test had been incorporated into the WCT, the WPPT and the TRIPS Agreement. It provided for the necessary discipline for the discretion of national legislators to fashion exceptions and limitations. The United States of America further believed that the principle which allowed countries to balance the competing claims of authors and the broad public interest had served Berne Union members well. Historically, the establishment of exceptions and limitations had been accomplished at the national level where the competing interest could be continuously recalibrated and where the views of all stakeholders could be taken into account. The Delegation was not aware of any evidence suggesting that national policy makers were having difficulty identifying specific issues and concerns of stakeholder groups and crafting appropriate exceptions and limitations in national law. The case had not been made for the need to undertake norm-setting activities at the international level related to exceptions and limitations. Any attempt to provide for internationally binding legal minimum standards for certain exceptions and limitations might have the perverse effect of limiting the

very latitude that had served Berne Union members well, thereby restricting the public interest in its various respects. Certainly, any attempt to harmonize limitations and exceptions at the international level could present significant difficulties for the implementation of those norms at the national level. The Delegation did not support the proposed third work area element of the proposal of the Delegation of Chile. It was ready, as noted earlier, to share national experiences related to exceptions and limitations within the Standing Committee. However, it was questionable whether such an exchange should be the highest priority of the Committee at the present time. Thus it was appropriate to reserve judgment on the proposal of the first work area under the proposal of the Delegation of Chile. The delegations had not seen a written proposal nor supporting documentation for the proposed work program, much less had they had the opportunity to review the proposal in the detail that it deserved. The sheer scale and scope of the proposal suggested the need to carefully evaluate the obvious issues of resources, both human and financial, and the balance of issues within the Committee. The premise of the proposed second work area under the Chilean proposal appeared as questionable as it would seem to pit the exclusive rights of authors against the promotion of creativity and innovation, turning upside down the historic rationale for copyright. The Delegation would not be prepared to support the second area of work under the Chilean proposal.

75. The Delegation of Japan was not opposed to the exchange of information among Member States. However, the decision whether to move on to norm-setting or not should be taken after such exchange of information and discussions had taken place. The three-step test criteria contained in the Berne Convention had served the interest of both the rightsholders and the public in a balanced manner. The outcome of the exchange of information should not be prejudged. No written documents had yet been provided to really examine the proposal, so more consideration was needed before deciding on the work program.

76. The Delegation of Nigeria considered that developing an internationally acceptable approach to the regime of limitations and exceptions was one of the major challenges facing the international copyright system. National, regional and international imperatives, such as access to knowledge and education, public interest and the internal balance of the copyright system, provided cautionary milestones in the attempt by WIPO to deal with the matter. Careful consideration should be given to adopting existing jurisprudence in a way that was not opposed to development and the very foundation of copyright itself, which was the promotion of the ideals of society, culture and the national patrimony. The Delegation appreciated the proposal of Chile and noted that limitations and exceptions provided a historic opportunity to harmonize the current standards of protection in the existing international instruments.

77. The Delegation of Indonesia joined other delegations in supporting the proposal of Chile and looked forward to contributing to all the elements of its work plan. The Copyright Law of its country already had limitations and exceptions serving the public interest, particularly in the area of education and for the rights of the disabled communities. A serious consideration was needed regarding expanding limitations and exceptions to include all educational activities, such as libraries and distance education and regarding free copies of teaching materials. The analysis should also cover the possibility of providing limitations for educational broadcasts in areas such as recording and cinematographic rights of copyright owners for educational performances. It would be convenient if delegations could establish a work program on exceptions and limitations during the present session of the Committee.

78. The Delegation of Colombia thanked Chile for the presentation of its proposal even though it had not yet been possible to become fully acquainted with a document in writing. It was not appropriate to draw up an international document regulating in a mandatory way limitations and exceptions. There should be general rules which would allow countries to make provisions in their legislation for the limitations and exceptions that they considered appropriate using the three-step test as a criterion.

79. The Delegation of Kenya supported the proposal by Chile and the position that had been articulated by the African Group. The national and international experience in developing exceptions and limitations could be used to set up the minimum standards in terms of limitations and exceptions, which should be developed with a holistic approach that safeguarded the interests of creators and users.

80. The Delegation of Chile thanked the delegations that had expressed support for the joint proposal on exceptions and limitations and responded to some of the questions raised by the Delegations of Egypt, Australia and the United States of America. The proposal would not affect in any of its phases and parts existing international treaties already signed and agreed to by Member States. The expression minimum, mandatory exceptions meant clarifications regarding limitations within the scope allowed for in the existing international treaties. The intention was that, for some specific areas such as the disabled people and the educational community, some minimum elements should be selected from the big amount of possibilities that were available to Member States. The Delegation of the United States of America had made a good point that it had not been provided with evidence on the need to work on stimulating the creation of exceptions and limitations. However, the reports made by WIPO with regard to the availability of works for the blind provided some such evidence. Only around 60 countries in the whole world had exceptions for the blind, and yet the possibility existed under the treaties for having those exceptions. Also, recently Chile had conducted a survey on the exceptions and limitations in countries covering part of the Asia-Pacific Economic Cooperation (APEC) region. In the 13 countries reviewed, only seven had exceptions for distance education. The objective of the proposal would be to address distortions and exchange experiences about what would be the implications for each situation where a limitation might apply. In some cases an agreement could be reached on the need for a specific limitation and, within a limited scope, on what should be the basic minimum freedom in that context for the information society to work. Another important area for clarification related to the type of recognition that should be provided once there was an agreement on the need to act in a specific area. According to some, the intervention should adopt the form of a treaty; others considered recommendations as the best approach. At the present stage the best would be to remain totally open and, as far as Chile was concerned, soft norms, recommendations and guidelines appeared in principle as possible alternative approaches. In any case the decision which type of formulation should be adopted would not be taken during the present year.

81. The Delegation of Switzerland was not opposed to studying the problems connected to exceptions and limitations, but the Committee should first of all conclude the harmonization of the protection for audiovisual performances and the protection of broadcasting organizations. Regarding the proposals of the Delegation of Chile on exceptions and limitations, an exchange of information on the relevant existing national provisions might be useful. It could serve as a guideline for countries who were trying to find a balance between the various and different interests at stake, and help them settle the problems connected with exceptions and limitations. An analysis of national law in the light of the three-step test would also be useful and clarify the room for maneuver available to national legislators. On

the other hand, the Delegation was strongly opposed to any work, the purpose of which would be to draw up a catalogue of limitations and exceptions and make them mandatory, for example through a recommendation. If that was done, it would be perverting the system of protection. The Berne Convention allowed national legislators to establish exceptions on precisely defined conditions. That system would be inversed and exceptions and limitations would be imposed on the national legislation. That would be incompatible with the system that had existed since 1886.

82. The Delegation of Norway thanked the Delegation of Chile for having prepared a new proposal on exceptions and limitations. Both its national law and the international regulations already had a good balance between rights and exceptions and limitations. At the same time, it could support further studies on those items, even though it found the proposal of Chile rather extensive, although it had not yet seen it in writing. It therefore reserved its comments till after it had studied that proposal in writing.

83. The Delegation of Slovenia, on behalf of the European Community and its member States, thanked the Delegation of Chile for preparing a new proposal on exceptions and limitations. Since the proposal was extensive and the Delegation had not yet seen it in writing, it reserved its comments until after it had had the possibility of studying it. The exceptions and limitations enshrined in the existing international treaties represented balanced solutions. The European Community and its member States had a long experience in the field of exceptions and limitations of which a wide selection were set out in community law and the national laws of the member States. The Delegation supported further studies on exceptions and limitations at national and regional levels and was looking forward to exchange of views on that issue. At the present stage, it was premature to decide on a new work program for the Committee regarding exceptions and limitations.

84. The Delegation of Canada recognized the importance of the ongoing work of the Committee in dealing with exceptions and limitations, as evidenced by the brief presentation of the Secretariat. The Delegation had participated in that work, for example, by providing a written submission prior to the Second Special Session in June 2007, regarding safeguarding of existing exceptions for broadcasters under the TRIPS Agreement. In the context of the proposal put forward by the Delegations of Chile and other countries, more information on the overall proposal would be welcome. Preliminarily, there seemed to be three distinctive projects with respect to that proposal. The first project was the proposal to study limitations and exceptions. It noted that there was a study undertaken by APEC in that regard. Canada had also participated in that study which had been a very useful exercise. The Delegation asked if the proposed study would be similar in scope. It also wanted to know of other parameters to be discussed, for example, whether all or only certain limitations and exceptions would be included; and whether limitations would be in one specific area or some other form. As to the second and third items of the proposal, the Delegation supported that some valuable studies on exceptions and limitations be undertaken in the context of future work.

85. The Delegation of Chile stated that the proposal of Brazil, Chile, Nicaragua and Uruguay was available outside the meeting room for those delegations that wanted to read it.

86. The Chair noted that the document was available in one language version only, as presented by the Chilean Delegation.

87. A representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) remarked that the Committee had been discussing a topic that had

always been very interesting in the copyright system, and it was certainly much more interesting in the context of the digital world. It was an issue that needed to be looked at in more detail. The representative drew attention to the Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace which was adopted by the General Conference of UNESCO in October 2003 and which dealt with limitations to copyright protection. It contained four sections, one of which dealt with the development of public domain content. Section 4 was entitled “Reaffirming the Equitable Balance between the Interest of Right Holders and the Public Interest” and concerned directly the subject of limitations and exceptions to the copyright system in relation to the universal principle of access to information and knowledge. In that regard UNESCO supported further studies on the issue and on the application of limitations and exceptions by national legislation. It might be too early to know how to proceed further before a deep examination of the issue was made, but certainly it would be important and very helpful to Member States and particularly to developing countries if an exchange of information and best practices was facilitated by the Committee and by the Secretariat of WIPO. The notions of legitimate or public interest were mostly a matter of national policy. Finally, she pointed out that UNESCO had developed a number of activities and studies in the field of exceptions and limitations, including a study by Dr. Lucie Guibault made under the supervision of Professor Bernt Hugenholtz, published in the UNESCO Copyright Bulletin in October 2003.

88. A representative of the Independent Film and Television Alliance (IFTA) remarked that copyright law should enshrine the principles of creativity, access and recognition of remuneration. It was a popular and misguided view that creators of works did not rely on financial reward. When libraries provided copies on loan of physical books or recorded music, those were seen as reasonable exceptions to authors’ rights for the public good. That was less true in the digital age where a single copy could be replicated electronically *ad infinitum*. The British Library had pointed out that contract law might undermine copyright law and exceptions, including fair dealing and fair use. In seeking to harmonize a minimum level of limitations and exceptions across the field of copyright, especially in the digital era, one should not generalize the application to all forms of creative works on each and every form of access or delivery. To ignore the rights of the creative community would imperil the continued supply of content on which they relied. He requested the SCCR to seriously consider if valuable resources and heavy investment in time and money by WIPO and its delegates could result in an acceptable outcome to the creative industries and the governments which claimed to nurture the expansion of valuable industries.

89. A representative of Consumers International (CI) and Trans-Atlantic Consumer Dialogue (TACD) thanked the Delegation of Chile for its proposal. A new framework for a dynamic evaluation of how global copyright norms could be most effectively translated into a credible system that appropriately valued authors’ and users’ right was a necessity. The need to delineate the border between protected subject matter and the public domain, and the need to frame the latitude left by international conventions to Member States to limit exclusive rights of copyright of copyright holders, were widely acknowledged. To achieve the goal of restoring the balance of the international copyright regime, a multilateral solution as opposed to bilateral approaches was necessary. That goal could not be achieved without WIPO. As new technologies challenged the internal balance of copyright, it was strongly believed that limitations and exceptions should be examined, not only on the basis of the copyright *acquis* but also on the basis of the user *acquis*. International harmonization of minimum limitations and exceptions would also further help facilitating trans-border trade and the promotion of innovation and competition in certain key sectors, while integrating public interest goals in the international copyright system. He called upon the SCCR to also review the Appendix to

the Berne Convention to see if it was necessary to consider updates that reflected the technological changes. He also requested the SCCR to investigate the degree to which the Berne Appendix had been a successful mechanism to deal with excessive pricing.

90. A representative of the Copyright Research Information Centre (CRIC) stressed that limitations for educational purposes were important and necessary for all, but if all works concerning education were under copyright exceptions, publishers of academic books would be ruined. He urged the Committee to study and exchange information on the issue and to set the norms in a careful manner.

91. A representative of the Association of European Performers Organization (AEPO-ARTIS) welcomed the reopening of discussions regarding performers' rights in the audiovisual field at the international level. The work on the adoption of a WIPO international treaty on that topic had been suspended at the end of the Diplomatic Conference of December 2000. Since then, a number of changes in national or regional legislation, as well as economic developments had occurred. For those reasons, he greeted with keen interest the re-starting of discussions and expressed his support to continuing work to grant performers adequate protection for their performances in the audiovisual field.

92. A representative of Knowledge Ecology International (KEI) supported the proposal made by Chile, Brazil, Nicaragua and Uruguay for a strong substantive work program in the area of limitations and exceptions. Those were important and challenging tasks, as they went to the very core issues of consumers and were highly relevant to the WIPO Development Agenda. He welcomed the constructive comments by the Delegation of the United States of America and other countries, and agreed that the work on norm-setting should be formed by evidence, careful analysis and with the need for national discretion in implementing treaty flexibilities. Some questions the SCCR might consider were: (1) the adoption of limitations and exceptions in order to foster cross-border innovation in publishing and sharing of information; (2) minimum exceptions on distance education services; (3) the update of the Appendix to the Berne Convention bearing in mind the digital age; (4) the interplay between DRM and TPM technologies and consumer rights; (5) the flexibilities in the TRIPS Agreement dealing with copyrighted works; and (6) the implementation of flexibilities in the TRIPS Agreement, regarding both Article 40 on control of anti-competitive practices and Article 44 on injunctions or alternatives to injunctions based on remuneration.

93. A representative of the World Blind Union (WBU) emphasized the good relationship with WIPO, the SCCR and the many delegations that had championed the causes of visually-impaired people within the copyright context. He referred to the case of a student in Sierra Leone who had spent four years completing his masters degree because of the situation he faced in trying to get accessible text books as a blind student. There was no accessible format of Braille or audio available to him. He had had to pay his own reader to read the text books because there were no grants from the University or the Government. Moreover, his reader could not read at the University library as it was a silent place. He supported the statement made by the Delegation of New Zealand about the difficulties of cross-border exchanges, and the recommendations of the Sullivan report on exceptions for the visually impaired, particularly recommendations G, K, L, and M. He referred to the campaign called "the Global Right to Read Campaign," to be launched next April 23, as part of the Amsterdam World Book Capital event, which brought together stakeholders and governments. It would be an opportunity to persuade and convince the latter to put in place appropriate exceptions which did not currently exist in 120 countries. He added that publishers should be provided

with a full documentation and should be asked their opinion about the implementation of the Sullivan recommendations.

94. A representative of the Coordinating Council of Audiovisual Archives Associations (CCAAA) supported the initiative of the Delegation of Chile. Exceptions were needed for the preservation of, and access to, the audiovisual heritage.

95. A representative of the Max Planck Institute for Intellectual Property, Competition and Tax Law lauded the usefulness of further studies regarding exceptions and limitations. She pointed out that the great diversity in the area of exceptions and limitations was due to the diverse cultures and national situations. Existing treaties gave a certain amount of international flexibility, such as the three-step test in the WCT and the WPPT. She recalled that in the European Union Directive on the Information Society of 2001, the 15 Member States had not been able to agree on a specific level, but had left a certain amount of flexibility. It would be contrary to the existing international systems of protection to introduce mandatory exceptions and limitations. The idea of minimum exceptions and limitations had already been expressed a long time ago when revising the Berne Convention, but it had not been adopted. Finally, she supported the studies on national practices.

96. A representative of the International Federation of Reprographic Rights Organization (IFRRO) pointed out that the three-step test was based on a delicate equilibrium. Flexibility could only be built on general international principles, which left to Member States the freedom to fully adopt IP laws according to local economic and cultural conditions and development. Therefore, more detailed internationally-binding norms or agreements on minimum exceptions or limitations would not serve to improve access in a dynamic media landscape. To ensure the continuation of that stable equilibrium, a holistic and sustainable long term approach was needed to enable a lawful access to knowledge-based material and to promote local writing, publishing activities and cultural diversity. Free access through exceptions would have implications for societies. Every country wished its citizens to have access to material which reflected local realities. Text book publishing was a main driver for the publishing sector. In most countries, publishing was dominated by small and medium-sized enterprises. A solid legal, economic and cultural environment was needed to boost their development. Creators and publishers had every interest in ensuring lawful access on reasonable terms, as both wanted the widest possible audience provided that their intellectual property rights were respected. Access for important user groups, in particular educational establishments, libraries and disabled persons could be offered in a variety of ways, from selling books to licensing various forms of electronic delivery. Exceptions and limitations often provided an inflexible solution whereas collaboration among stakeholders, users and representatives of rightsholders could bring clear advantages in ensuring accessibility in constantly evolving scenarios. Offering publications and information services to research and educational communities, including non-commercial ones, constituted a normal exploitation of the works. He concluded that: (1) there was no need for new international binding instruments or agreements on exceptions and limitations; (2) at national level, all legislation should be built on flexible and fair foundations, ensuring lawful access to users and respecting the rights of authors and publishers; and (3) IFRRO could provide examples of national models and practices within the prevailing international norms.

97. A representative of the International Publishers Association (IPA) stressed that clear and sound copyright laws were crucial for the international publishing community, in particular to publishers in least-developed countries, which were still in the process of establishing a creative industry that served students, universities and readers generally.

Publishers relied on fair copyright protection but also supported and required a public domain and well-defined copyright exceptions so that they could play their vital role in education of society as a whole. Minimum exceptions set out in an international instrument would be too rigid to allow the adaptation to the different economic conditions and political framework in different countries. In this regard, he referred to three different pillars. Firstly, full harmonization was in practice hard to achieve given the differences in cultural and historical background of each country. That applied even in organizations with an impressive harmonization record and with similar range of economic development levels among its members. The second issue was the speed of technological development. Over the past decade, the speed of technological change had accelerated enormously, and that also opened the door for experiences with new business models. Never before had so much information been so easily accessible. Those changes also meant that issues that appeared important might lose their urgency as technology and economic models moved on. It would be difficult for harmonization at WIPO level to stand the test of time. Publishers actively experimented with new business models and participated in licensing solutions in public and private partnerships that were adaptable as circumstances changed. Third, technology trends not only affected business models but publishers, technologists and software developers, among others. Entities were currently working together at national and international levels in different projects around the world to improve access, for example for the visually-impaired persons. There were a number of projects proposed by the publishing community, as well as by the library community and other stakeholders to improve access to scientific works. Those models often relied on the cooperation of all stakeholders to create a balanced win-win situation. Copyright exceptions however risked pushing stakeholders away from mutual understanding and cooperation and towards a more confrontational battle with theoretical and legal arguments. The three-step test was a sound and flexible solution for copyright exceptions generally. There was no reason to believe that it had not served the international community well as an appropriate standard which guaranteed a minimum level of harmonization, and at the same time provided all countries with a necessary policy space to make their own sovereign decisions in line with their individually chosen national policy objectives. He urged the Committee to look for practical, pragmatic and result-oriented solutions within the existing legal framework. Embarking on a harmonization might not only be time and resource-consuming but actually could slow down the collaborative way in which issues were being tackled and resolved in the public interest.

98. A representative of the International Music Managers' Forum (IMMF) stressed that the landscape of copyright and related rights had changed completely in the past ten years, particularly due to the Internet. He supported the intervention made by the Delegation of Senegal that suggested that Member States compared their law on limitations and exceptions with other Member States and corrected any deficiencies or shortcomings in their national law. He was also encouraged by the intervention of the Delegation of the United States of America to participate in such an exercise, and congratulated it on the progress made on the introduction of public performance rights on sound recordings in its national territory. The three-step test had proven to be a very sound and useful basis for copyright law concerning limitations and exceptions. He referred to a case in the United Kingdom where a company distributing commercial DVDs had found a way through national law on fair-dealing. The company used the footage of famous artists, such as Pink Floyd and Genesis, and employed a commentator to review the audiovisual material at the end of the DVD. By doing that, it claimed that the entire DVD was a work used for criticism and review. No royalties had been paid to any of the stakeholders. Had the United Kingdom Government adhered more closely to the three-step test, that problem could have been avoided. The representative urged all Member States to incorporate the three-step test wherever possible.

99. A representative of the Computer and Communications Industry Association (CCIA) welcomed the exploration of new topics for work in the SCCR, especially discussions related to exceptions and limitations. There was work to be done both to make the legacy of the Berne Convention more effective and relevant, and to foster greater appreciation of the incredible value of the system in recognizing and providing a mechanism for encouraging the creative input that drove the development of humanity. The debate and work in relation to limitations and exceptions was the best way to accomplish those objectives, firstly, because controversies among stakeholders were very often related to whether or not a given activity was covered by an exception or limitation and, secondly, because they would enhance the credibility of copyright, which was undermined by the unfortunate public perception that it unreasonably restricted uses, that it encouraged non-compliance activities together with greater enforcement with larger penalties, feeding a vicious circle.

100. A representative of the International Federation of Film Producers Associations (FIAPF) recalled that the mandate of the SCCR was to protect the rights of creators, authors, and others who made creative works. Authors and creators were at the heart of the process, and proper protection in a world of changing technology was a major priority. The very term “exceptions and limitations” suggested that for each exception and limitation there was a corresponding precise right, and that exception or limitation was conferred in a precise cultural context. Discussing exceptions and limitations out of context could give rise to confusion rather than clarity. The proposal under discussion was based on premises which were a bit schizophrenic, and which artificially separated the protection of authors from the public interest. She urged the Committee not to lose sight of the importance of a holistic approach towards the legal problems of exceptions and limitations while ensuring that copyright and related rights continued to play the role for the public interest and encouragement of the creation and circulation of new works.

101. A representative of European Digital Rights (EDRI) supported the proposal made by Chile to start the work on a new international instrument on limitations and exceptions of copyright. Any new instrument should also have a strong focus on issues such as best practices of rights of all ordinary citizens, in addition to the professional or institutional users that traditionally occupied the centre stage during the discussions on exceptions and limitations. Copyright had to learn to live with the consumer protection regulation. In practice, that meant that the Committee should seek to answer questions such as the utilization of iPhones and the making of unauthorized copies of their application software or whether it was legal to create tools for consumers to transfer maps from old navigators to new ones, even if license agreements forbade it. Those questions were not yet clarified at any jurisdictions and global harmonization was necessary. He advocated exceptions and limitations to protect free speech. Copyright had a dark history of being a tool for censorship and oppression of controversial opinions. He hoped the new instrument could be a tool for redeeming that black past.

102. A representative of the Library Copyright Alliance (LCA) recalled that Member States should not limit the rights of the public to use information for the advancement of learning and knowledge creation. The effectiveness of the American copyright system was rooted in the effective balance between the rights of users to access information and the interests of rights holders. Limitations and exceptions to copyright were the legal mechanisms necessary to achieve that balance. The US Copyright Office had supported a two-year study on Section 108 of the Copyright Law to update reproduction, preservation and replacement exceptions for libraries and their users that better reflected the realities of the digital

environment. In addition, the Copyright Office had proposed legislation that would enable the public, including libraries, educational institutions, individuals, among others to use orphan works, when rightsholders could not be found or identified after a reasonable search. Remedies for the use of those works would be limited. Those actions demonstrated that the United States of America was committed to the development of exceptions that facilitated the public's right to use information to advance knowledge and learning. A broad exemption on fair use could recognize that the formats and delivery mechanisms of knowledge changed over time and that copyright exceptions were viewed in light of their situational use. She recalled that libraries did not come to the SCCR to always represent themselves, but also to represent the interests of the public they served. As primary purchasers of information products and services, libraries showed the importance placed on creators and on the need to ensure a compensation for the use of their work. However, those economic incentives were meaningless if the public interest was not guaranteed. Finally, she stressed that economic rights had limits, not to the detriment of the content industry, but to ensure the advancement of creativity and knowledge in the interest of all.

103. A representative of the Ibero-Latin-American Federation of Performers (FILAIIE) said that intellectual property in itself was limited. For instance, in the 1996 Treaties, limitations could not be extended beyond 50 years. The inclusion of the agenda on limitations and exceptions was seen with a great deal of caution. The Berne Convention and the 1996 Treaties had entrusted national legislation with the whole issue of exceptions and limitations as the best solution, as national circumstances varied from one country to another.

104. A representative of the International Federation of the Phonographic Industry (IFPI) believed that a good structure of exceptions and limitations was critical. Copyright should always incorporate an appropriate balance between rights and exceptions in order to lead to an optimal set of incentives to create, combined with the freedom to use works in positive ways without interfering with the development of legitimate markets. She supported the proposals on the preparation of studies and information exchange. All content was free to be used unless there was a specific right to control a particular type of use. Countries were free to delimit further those rights as appropriate to their own national, legal, cultural, economic and political circumstances. The globalized nature of intellectual property discussions had led to increase a *de facto* harmonization among exceptions. The SCCR work program should start by gathering information and analyzing it. Without completing that process it would not be possible to see whether any level of international norm-setting exercise would be necessary or advisable. Two questions should be addressed in that regard. One was whether the value from any imposed additional norms outweighed the loss of flexibility, in other words, whether it made sense to move towards a greater internationalization of the law on that issue. The other was the fundamental pragmatic question about the benefits from having a treaty in that area over and above what countries had already chosen to do.

105. A representative of the International Literary and Artistic Association (ALAI) said that the issue of exceptions and limitations was a fundamental matter that underpinned the copyright system. The first term of the equation was based on the exclusive right notion which was aimed to promote creation and encourage investment in the interest of the general public. The other side of the equation was the free access to works through a number of techniques such as limited duration of rights, not protection of ideas and exception to rights. Exceptions were dealt with in international conventions in terms sometimes vague that gave rise to uncertainties regarding their interpretation. Treaties gave the feeling that the exceptions were reduced in number and scope, however, the implementation of the international standards in domestic laws showed that the scope of exceptions was quite vast

and broad. There was quite a lot of flexibility, especially in the area of education, teaching and libraries. He supported the exchange of information and the preparation of a comprehensive document which listed the national practices. Also, he stressed that the interaction between exceptions and protection of technical measures deserved to be looked at in more depth. It would be useless, premature and even unsubstantiated to engage in the discussion of a treaty on mandatory exceptions.

106. A representative of the Electronic Frontier Foundation (EFF) supported the proposal put forward by the Delegations of Chile, Brazil, Nicaragua and Uruguay. Projects were under way to digitize the cultural heritage collections of the world's great libraries. Project Gutenberg had made available on the Internet more than 24,000 works in the public domain in the United States of America. Another group of creators using collaborative software had been publishing the world's most global and comprehensive encyclopedia: Wikipedia. Any student who had access to the Internet anywhere in the world could watch university lectures on platforms such as YouTube, and download freely-available university lectures into her mobile phone. Teachers could use search engines to find material to create locally relevant curricula to educate entire communities that had no access to books. Each of those educational projects faced obstacles under the prevailing copyright regime. First, because different countries had varying copyright exceptions and limitations, students and teachers that used digital copyrighted works obtained outside their country could not be sure that they could do so legally. Second, educators, libraries, archives, and other producers and providers of information faced uncertainty about what information they could digitize and make available without fear of legal liability because of the lack of internationally harmonized exceptions and limitations, territorial limits of copyright laws and uncertainty about the application of private international law to the Internet. A mandatory set of minimum exceptions and limitations was required to facilitate digital education and the building of internationally acceptable digital libraries. She called for the analysis of the impact of technical measures on existing exceptions and limitations, technology innovation and network intermediaries' liability. She also supported the commission of a study on the range of limitations and exceptions provisions for educational purposes that existed in the national laws of Member States.

107. A representative of Electronic Information for Libraries (eIFL.net) welcomed the initiative by the Delegation of Chile. Some countries such as the United States and the United Kingdom were currently consulting stakeholders on the issue of limitations and exceptions with a view to possibly amending legislation. The WIPO study on limitations and exceptions in the digital environment for the blind and visually impaired people, the forthcoming study on limitations and exceptions for libraries, and the recent study prepared by Professors Hugenholtz and Okediji, presented a significant body of work and a rich source of material for an open debate on that important topic. The agreed statement to Article 10 of the WCT was an attempt to provide a remedy to future issues on exceptions but, after twelve years, the issues faced by libraries and others had become too complex to be properly addressed solely by that general statement. Librarians found themselves struggling with unsuitable exceptions and limitations to adequately deliver content and services in the digital age and had to adopt sometimes absurd practices in order to comply with copyright law. Library services were hindered when they should be expanding and developing in response to new technologies. She proposed to hold an information session in that topic at the next meeting of the SCCR.

108. A representative of the International Federation of Library Associations and Institutions (IFLA) supported the previous statement. Exceptions and limitations were being undermined

in substance because they were created to deal with specific technologies and formats which were already outmoded. As a result of the change from print to digital, the information content held by libraries had largely become subject to contract law instead of copyright law. Libraries experienced on a daily basis how contracts and licenses specifically sought to override and undermine statutory exceptions and limitations. Furthermore, the licenses were increasingly enforced by technological protection measures. The use of copyrighted works even when compliant with the three-step test unreasonably became subject to excessive control and censorship by monopolies. Librarians believed that the prevailing law was inadequate because it related to modes of access and delivery that were formulated for a print world. For example, in the digital world, a limitation to the making of a specified number of copies for preservation purposes was nonsensical. Likewise, implied and expressed prohibitions on what was permitted outside physical premises of the library were outmoded. In many countries the law did not cater for new requirements such as the preservation of websites. Apart from the exception on quotation of Article 10(1) of the Berne Convention, exceptions had always been optional in every international and regional instrument. Therefore, he proposed to work towards the introduction of mandatory minimum limitations and exceptions at international level.

109. A representative of Public Knowledge supported the continuing work of the Committee on exceptions and limitations. As technology was advancing, methods of reproduction and distribution had become more available to the general public and had made it easier to restrict both institutional and individual uses of works. Establishing those leaps and bounds could help to ensure that users of works, the general public, could benefit from secured rights and freedom to access works. Limitations and exceptions could create a well-defined space for users to access works ensuring that they would be acting within the law. Explicitly recognizing justified, unauthorized uses for works could also help to draw a line between those and unjustified, unauthorized infringements. It was necessary to update and clarify minimum standards and principles for exceptions and limitations. That would allow to better deal with the new challenges created by digital media including technological protection measures and rapid copying, storage and transmission of data. The fact that there were differences of interpretation at the margins of uses traditionally accounted for by exceptions and limitations should not be a barrier to clarifying and indeed harmonizing the best established or best justified lawful uses both in a traditional media and in the digital age. Sharing information on national policies relating to limitations and exceptions was an important first step to constructive work on those issues. The international dialogue had come to consensus on a number of minimum rights for rights holders, although there was room for diversity and disagreement on the level of rights asserted. From the users' perspective, Member States had to reach consensus on a number of minimum exceptions and limitations while leaving room for flexibility and diversity.

110. A representative of the International Federation of Film Distributors Associations (FIAD) reminded that distributors contributed to the financing of films and were often rights holders in relation to the dissemination of the works on television, video and the Internet. Distributors were in a fragile economic situation because the success of a film determined whether they could recuperate their costs or not. The current regime of limitations and exceptions provided a balance between rights holders' rights and the interests of the public, especially in relation to the size of the public domain. Those differences were not contradictory but complementary. Rights holders needed to be remunerated for their works and their investments, otherwise there could be no works to be proposed to the public. Investments in the production and distribution of films involved large amounts of money; therefore a legal basis for the organization of activities was indispensable. The current regime

was part of that legal predictability. International legal instruments in place allowed for flexibility while properly taking into account the national specificities of each country. The three-step text was a useful tool for diverse situations, describing various situations in countries which were facilitated by the government and by the judiciary. New technologies had had for effect to allow people to use the works without remunerating the rights holders, and remuneration of rights holders had almost become an exception as compared to user's rights.

111. The Chair stated that the conclusions of the discussion on exceptions and limitations would be considered in the context of the overall set of conclusions of the whole session of the Committee.

PROTECTION OF BROADCASTING ORGANIZATIONS

112. The Chair recalled that the item had been under active consideration by the SCCR since 1997 when it was launched at the WIPO Symposium in Manila, after which the negotiations had started to take a more concrete shape in 2004, when the decision to elaborate a consolidated document of the various submitted proposals had been taken. In that initial working document the question of webcasting was still an integrated part of the proposal. However, at that time it became clear that a majority of the delegations were not ready to discuss, at the same time and in one package, any mandatory protection of webcasting. Therefore, it was in a subsequent working document presented as a separate and optional element of protection, and later in the form of an appendix. Several options had been explored, but at the final stages of the discussions a decision had been taken that the whole exercise should first and foremost concentrate on the protection of traditional broadcasters. Only after the conclusion of that first part of the work, a separate working project would be launched to address a possible protection of webcasting. Document SCCR/15/2 Rev. on the protection of traditional broadcasters had finally been drafted which consolidated all the previous elements of the discussion on the basis of the principle of inclusiveness and transparency. All proposals that had been made had been included in a single package with the objective of convening a diplomatic conference: Such decision, however, proved impossible to reach at the 2006 WIPO General Assembly and, as a result, two Special Sessions of the SCCR were convened. In those Sessions, some delegations felt that document SCCR/15/2 Rev. was too complex to be used as a basic proposal to a diplomatic conference and an attempt was therefore made to start working on the basis of non-papers. However, that attempt failed at the end of the Second Special Session of the SCCR. In accordance with the 2007 decision of the General Assembly, the matter had been brought back on the agenda of the Standing Committee with a view to examine any possible ways to move forward towards a treaty. The questions which therefore now needed to be put to the delegations were whether they would be willing to pursue efforts and negotiate to conclude a treaty on the protection of broadcasting organizations and, if yes, what should be the time frame and the basis for the work. If that was not the preferred option, would delegations consider putting aside the issue for a definite or an undefined time? Most delegations had constantly repeated their willingness to work towards the adoption of an international instrument, but the divergence of opinions had made it impossible to consolidate the views and to forge common ground. After almost twelve years of negotiations, delegations had to consider whether they would be able to put forward a new strategy and show further willingness to conclude the unfinished business.

113. The Delegation of El Salvador considered that the future work on that item had to be carried out without prejudice to the work that had been achieved in the past years and was looking forward to an agreement on the objectives and specific scope and the object of protection which would allow a treaty to take shape.

114. The Delegation of Colombia reiterated its support for the convening of a diplomatic conference to adopt the proposed treaty on the protection of traditional broadcasting organizations including cablecasting organizations, while leaving aside the protection of webcasting. The non-papers could constitute a good basis for further work in the Committee, on which the future international instrument could be drafted.

115. The Delegation of Senegal recalled that the draft treaty had been under discussion for at least ten years which represented one tenth of a century. Nobody would wish to be involved in such discussions for half a century without reaching any results. Further discussion was required on the issues where no consensus could be reached, and a list of the stumbling points had to be elaborated. The mandate provided by the General Assembly was clear and had urged delegations to continue discussions and to only convene a diplomatic conference once consensus had been reached. All items which were related to digital broadcasting would need to be excluded from the discussions. However, the process of negotiations had to be pursued on traditional broadcasting and cablecasting with a view to finalizing the process of modernization of the rights of broadcasting organizations.

116. The Delegation of Japan expressed its appreciation of the work that had been done towards reaching a consensus on the protection of broadcasting organizations with many positive proposals that had emanated from Member States. Despite the disappointing outcome of the previous special session of the SCCR, there was still need for an early adoption of the treaty and it was expected that Member States and the Secretariat could continue to work towards consensus on the remaining outstanding issues to allow a diplomatic conference to be held soon. Document SCCR/15/2 Rev. could be the basis for discussion but even that could be further discussed.

117. The Chair noted the willingness of the delegations to pursue the discussions and even noted that some had stressed the urgency of moving forward. He also noted that the threshold set by the General Assembly was high and almost implied that a diplomatic conference had to be held at the Committee's level.

118. The Delegation of Algeria, speaking on behalf of the African Group, considered that significant work had been achieved in the Committee but a number of additional issues needed to be further considered, in particular in relation to the mandate given by the General Assembly in relation to the objective, the scope and the object of the protection. The Group had always supported an instrument that would not consider any relevant element in relation to webcasting and that position had constantly been followed. Although there had been a failure to conclude a treaty, a significant amount of work had been achieved and needed to be further considered at the next sessions of the Committee while allowing it to prepare with sufficient time ahead a diplomatic conference to conclude the treaty.

119. The Delegation of India took note of the Chair's statement and looked forward to more inclusiveness in the Committee's work. Unfortunately, there had not been sufficient driving force to move forward the issue of the protection of broadcasting organizations and even after fifteen sessions, no common understanding and consensus on the aims and objectives of the protection had been reached. Extensive discussions had taken place on the basis of document

SCCR/15/2 Rev. without any significant results regarding the aims and objectives of the proposed instrument, despite the fact that the General Assembly mandate had provided a very clear delineation of the parameters and of the objectives of the protection to be provided for. Learning from that experience, it would be prudent to pause and reflect both on the substantive aspects and the modality of the protection. All delegations had attended the meetings with a very clear open mind and constructive outlook and a willingness to understand and explore possibilities of convergence in the discussions. All energies had to strive to come to a convergence of views on the calibrated mandate given by the General Assembly and many more meetings would be required before any agreement could be reached. If discussions could focus on those three major areas and explore possibilities of convergence, a positive outcome could possibly result. Convergence on the basic parameters had to be fully explored according to a natural progression before a treaty could be envisaged.

120. The Delegation of Egypt recalled that it had participated in several sessions of the Committee and expressed its appreciation for all the efforts carried out towards the adoption of the proposed Treaty. Webcasting had slowed down the negotiations until the possibility of putting the issue aside had been decided, while maintaining the possibility of having a separate document to address it. On the protection of traditional broadcasting and cable casting, very valuable technical discussion amongst the Member States had taken place on the various drafts and it had almost been thought that consensus on a text could be reached. The Delegation had proposed to submit a document defining the points of convergence amongst the delegations in order to better address them. Such proposal was still on the table to play a positive role in the process in order to sum up what had been agreed upon and point out the points of disagreement. It hoped that such proposal could be taken into consideration.

121. The Delegation of Slovenia speaking on behalf of the European Community and its member States expressed its satisfaction that the issue of the protection of broadcasting organization had been put on the agenda of the Committee. It considered the improvement of the protection of broadcasting organizations at the international level together with the advancement of the discussion on the protection of audiovisual performances as current priorities for the SCCR. Despite the inconclusive results at the second special session of the Committee, in June 2007, the international protection of broadcasting organizations was an important issue which deserved continued attention in order that further consensus could be achieved. It was grateful for the organizational and substantive support which had been provided to the topic over the last 10 years of discussions and invited the Secretariat and the Chair to present Member States with a summary of the positions of the various delegations as they had been expressed at the end of the second special session of the Committee. WIPO was the most appropriate venue for international negotiations on the subject of the international protection of broadcasting organizations and participants were encouraged to build on the past work. There was willingness to conclude as soon as possible an international treaty on the basis of the last submission of the European Community dated April 5, 2007.

122. The Delegation of Ghana said that it was willing to continue the efforts to protect broadcasting organizations through a treaty. It observed from the Fifteenth Session of the SCCR that a number of Member States had divergent views as to how to conclude a treaty. The Committee might take into consideration the various changes and technological challenges that confronted the protection of broadcasting organizations at that moment. The diplomatic conference should be convened, once the Committee was able to arrive at some convergence on the various issues.

123. The Delegation of Norway was in favor of continuing the work towards a treaty on broadcasting. The Delegation was in favor of updating the right of broadcasters to meet the challenges of a new digital environment. If the Committee agreed to continue the work, it could be done on the basis of the existing proposal in document SCCR/15/2 Rev. It proposed starting as soon as possible the work with an aim to finalize the work with a treaty text in the Committee. It further added that the Committee had the necessary basis to recommend to the General Assembly to decide on a diplomatic conference.

124. The Delegation of the Russian Federation, on behalf of the Regional Group of Countries of Eastern Europe, Central Asia and the Caucasus, supported continuing the work of the Committee to prepare, as soon as possible, and convene a diplomatic conference on a treaty to protect of rights of broadcasting organizations in accordance with the mandate of the General Assembly. It said the group supported the work done by the Chair and the Secretariat. Over a long period of time a great deal of work had been done and the Committee had achieved a certain amount of success in preparing the text of the treaty, in particular WIPO document SCCR/15/2 Rev. Unfortunately, on a number of items disagreements had arisen. It was important that the Committee concentrated on those issues where unanimous agreement had not been reached. It could enable, in a short period of time, to conclude the work on a draft treaty to protect the rights of broadcasting organizations.

125. The Delegation of Australia said that its national law provided a comprehensive copyright protection, definitely in excess of that provided in the Rome Convention, including copyright protection for broadcasters against Internet re-transmission. It was in a position to discuss further progress towards a treaty. As for the basis, it quoted the mandate that had been agreed upon at the General Assembly to seek agreement on the objectives, specific scope and objective of protection. In document SCCR/15/2 Rev., there were submissions and proposals for various forms of protection by more than 15 countries. The mandate of the General Assembly did quite appropriately call for focus and consideration of the objectives and the object of protection. To an outsider, it might seem odd, but a free-to-air broadcaster whose very operation was to disseminate material to as many people as possible, wanted some sort of protection. It was therefore important to identify the object of protection. The typical program material of broadcasts were soap operas, films, news bulletins, football or sport matches, which could be viewed as they were broadcast on a TV set, by getting a DVD, by getting a copy of the film, by podcasting the news broadcast or by going to the game. The broadcaster saved all the efforts of going to those various sources. When one went to the ground and could not get a ticket, or could not go to the film, or even get a copy of the soap opera, they could be presented if one only just switched on the set. That quest to determine what the treaty would be protecting seemed to have bedeviled the SCCR for years and probably would go on bedeviling it.

126. The Delegation of Turkey said it had supported the conclusion of an international treaty on the protection of broadcasting organizations on every possible occasion. Since the work on the topic had taken more than 10 years, delegates had to be reminded of the areas of dispute. The Secretariat had a role to play for facilitating further the work of the Committee. It believed that the basis of discussions should be document SCCR/15/2 Rev. together with a document showing the outstanding issues of agreement. An agreement was needed for the convening of a diplomatic conference.

127. The Delegation of Morocco said it fully supported the continued work within the Committee in order to prepare an international agreement or a convention on the protection of broadcasting organizations. It urged the Secretariat to prepare a document on the points of

divergence. The question of audiovisual performances should not be an obstacle or impediment to convene a diplomatic conference in order to adopt a treaty.

128. The Delegation of India reiterated that it was premature to talk about a treaty at the time unless there was consensus on the three issues that were mentioned in the previous General Assembly, namely the objectives, scope and object of protection. Consensus on those issues had not been reached yet, so the question when to convene a Diplomatic Conference could not be explored yet.

129. The Delegation of the United States of America noted that despite the able leadership of the Chair and the significant efforts of many delegations for over almost a decade, the Committee had not been able to fulfill the General Assembly mandate which called for reaching an agreement and finalizing a text on a signal-based approach to the protection of broadcasting organizations. Although members of the Committee had made progress towards reaching a better understanding of the position of the various stakeholders, Member States had fundamental disagreements and could not reach consensus on the objectives, specific scope and object of protection. Against its sober assessment of the possibility of successfully narrowing the differences among Member States on the outstanding unresolved issues, it believed that the proposed treaty for the protection of broadcasting organizations should remain on the agenda of the Standing Committee.

130. The Delegation of Canada suggested that any future work should not be restricted only to past work but should also include future new submissions that might come forward. Document SCCR/15/2 Rev. had not included Canada's submission with respect to retransmission. It noted that Member States had the opinion that the matter should be kept on the agenda and there were many different shades and grades on how document SCCR/15/2 Rev. had been considered.

131. A representative of the Arab Broadcasting Union (ASBU) felt optimistic about future work on the issue. He supported what had been proposed by the Delegations of Senegal, Slovenia and Morocco, to ask the Chair and the Secretariat of the Committee to make a list of the points of convergence and divergence so that the Committee could concentrate its efforts on the former in order to reach a consensus.

132. A representative of Knowledge Ecology International (KEI) opposed the agenda item on the protection of broadcasting organizations. Copyright and related rights should only be given on the basis of creative contributions. To the extent broadcasting organizations did anything creative, they could obtain creative copyright protection. To the extent that they only distributed works, they should have no more intellectual property rights than what had been given to bookstores, supermarkets, video rental services and iTunes. If broadcasting organizations had a real problem with signal piracy, it could be solved with a solution that focused on that issue without the granting of intellectual property rights. Signal piracy could easily be addressed under existing treaties and regulatory regimes. He urged WIPO to put that issue to rest and focus on real problems. For many years the SCCR had devoted its time and energy to the broadcasting treaty and ignored requests to deal with other problems. The World Blind Union had been asking for several years, for example, to the SCCR to address their very real problems in ensuring access to copyrighted works. Other practical problems were related to making the copyright system work better for consumers and creative communities.

133. A representative of the Asia-Pacific Broadcasting Union (ABU) urged the Committee to treat the issue with utmost urgency considering the progress of technology. The development of the Internet had resulted in increased unauthorized exploitation of their broadcasts which knew no borders. He expressed regret that an agreement for a diplomatic conference had not been reached in the last session. Broadcasters were entitled to have legal rights to protect their program-carrying signals against all means of unauthorized retransmissions. Misappropriation of broadcasters' signals resulted in economic losses for broadcasters in both developed and developing countries. He called for the early conclusion of a broadcasting treaty.

134. A representative of the National Association of Broadcasters of Japan (NAB JAPAN) welcomed the recognition of the importance of the issue of protection of the broadcasting organizations. He was also pleased that the protection of audiovisual performances, which had been put on hold for long, had been taken back on the SCCR agenda. Piracy of the broadcasters' greatest asset, namely TV programs, had never been more rampant. The Committee should continue to work on that critical issue based on the non-paper issued in May 2007. He hoped the seriousness and goodwill of all the participants would get the momentum back on track and lead to the convening of a diplomatic conference at the earliest possible.

135. A representative of Public Knowledge remained deeply concerned about the prospects of further work on the broadcasting treaty. Giving broadcasters rights in fixations of transmissions created, at least in some jurisdictions, a new property right. That new grant of right had never been adequately justified in terms of solving any concrete problems that were not already solved by existing agreements and existing laws. The existence of competitive pressure alone was not a justification for a treaty. New rights created new complications with respect to the underlying content contained within the signal. Authorized uses of the work or uses permitted by limitations and exceptions to copyright would still be subject to decisions made by a broadcasting entity exerting another layer of right over a delayed retransmission of a fixed broadcast. Public domain works would be subject to the controls of a broadcaster even after the copyright terms had expired. Also, provisions prohibiting devices that were merely capable of decrypting signals targeted an inappropriately wide range of devices including personal computers. Beyond the substance of the proposed treaty language, he remained concerned about the state of negotiations on that topic. The lack of consensus of the previous year was not an encouraging sign for making progress on the treaty in the future.

136. A representative of the Association of Commercial Television (ACT) also spoke on behalf of the European Broadcasting Union (EBU). Computers morphed into televisions gave a vivid illustration of the way technology was modulating consumers' habits and the challenges those developments posed to existing business models. Such challenges posed precisely the kinds of question that the Committee should analyze and solve. If delegations felt it would be helpful to have an information meeting on the prevailing technical developments, the broadcasters would be very happy to facilitate such meeting.

137. A representative of the International Federation of Film Producers Associations (FIAPF) speaking also on behalf of the International Federation of Film Distributors (FIAD), recalled the organizations' involvement in the broadcasting discussions and expressed their disappointment about the result of the talks. The Committee had to resume its work on the text which had been submitted as a non-paper in June. It had to be reminded that for many works of intellectual property the financing was organized on the basis of a principle of exclusivity, territorial exclusivity, exclusivity in time, and exclusivity regarding means of

dissemination. In that perspective, it was essential that broadcasters could protect their exclusivity in the dissemination of protected signals through appropriate protection that required the work on the draft treaty to be taken up again.

138. A representative of the Ibero-Latin-American Federation of Performers (FILAIE) reminded that the mandate granted by the General Assembly related to the protection of broadcasters' signals which were pirated on a large scale basis, but it was difficult to establish a difference between the protection of signals and of content. When the Rome Convention was adopted in 1961, a conflict of interest existed with performers, but the piracy of signals implied that when performances were being broadcast, performers could lose all rights granted under the Rome Convention. As a result the protection had to focus on signals exclusively but WIPO was perhaps not the best forum to grant protection to signals. It would constitute a problem if progress could be achieved on the protection of broadcasting organizations without updating the protection of audiovisual performers.

139. A representative of the National Association of Broadcasters (NAB) expressed disappointment with the failure of the Committee to reach agreement on proceeding to a diplomatic conference. It was expected that WIPO would pursue its serious work on the issue since the need for updating the legal protection of broadcasting organizations had become even more urgent as new technologies allowed new and easier ways to pirate broadcast signals. Broadcasters offered free signals which were particularly vulnerable to piracy and would make broadcasting an insecure platform for the most valuable, high quality programming. Piracy had a high cost which would translate into increased costs to consumers. The introduction of updated protection for broadcasting organizations at the international level was not a risky experiment since most of the rights considered for a new broadcaster's treaty already existed at national or regional level without being problematic. Member States were urged to consider the real risks of not updating protection for broadcast signals. If members believed that broadcasting organizations provided economic, social and cultural benefits to countries they had to reflect on the future capability of broadcasters to continue to provide those benefits without adequate protection of their signals.

140. A representative of the International Federation of Journalists (FIJ) reiterated the view that the scope of a possible treaty on the protection of broadcasting organizations had to be limited to the protection of signals and had to exclude any post-fixation rights and protection of webcasting. The willingness of many delegations to keep the broadcasting item on the agenda had been noted although no agreement had been reached on the objective, scope and object of protection of a possible treaty. The need for updating the legal protection of audiovisual performers was also recalled.

141. A representative of the International Federation of Musicians (FIM), speaking also on behalf of the International Federation of Actors (FIA), thanked the Secretariat for the organization and the quality of regional seminars held on the protection of audiovisual performances which had played a significant role in terms of awareness-raising. Discussions on the protection of broadcasting organizations against piracy of their signals had already lasted more than ten years. Such a long process had used considerable financial and human resources from all involved so caution in resuming discussions on that item was required, while there was a need to devise new balances in a changing world. While no consensus had been found on a number of items such as the copyright nature of the signal protection, wide consensus existed on the need to take concrete steps to give performers an international protection of their audiovisual performances. It was essential to respect a natural chronology and give the performers priority in the discussions at international level. It would therefore be

premature to reopen the discussions on the protection of broadcasting organizations which would hamper progress on granting performers rights in the digital environment which they were still deprived of.

142. A representative of the Electronic Frontier Federation (EFF) stated its concern about the proposed broadcasting treaty which would grant broadcasters broad new intellectual property rights over retransmission after fixation of the signals instead of solely providing measures against intentional signal theft. As long as the proposed treaty was not limited to signal protection, it would impair public access to knowledge. The inclusion of legally enforced technological protection measures was likely to override national exceptions and limitations in copyright law that protected the public interest and precluded access to public domain works. Such instrument would also have for effect to harm competition and innovation by allowing broadcasters and cablecasters to control the market for transmission-receiving devices together with broadband decryption devices. As a minimum, the treaty had to include mandatory exceptions at least equivalent in scope to those provided under the Rome Convention and TRIPS Agreement. After ten years of discussions, no empirical evidence had been presented to justify the need for a right-based treaty. Meanwhile, exceptions and limitations, a topic of great interest to many developing and developed countries and of tremendous importance to the visually impaired, libraries and education communities had had no substantial discussion in the Committee since the issue had been submitted by the Delegation of Chile in 2004. There was a high level of urgency about the pressing problems faced by the visually disabled and impaired community, libraries and on-line archives, teachers and students who were trying to harness their potential in digital and cross border education. Member States had now been presented with the choice of alleviating sufferings to the world citizens and tackling the greatest challenge facing the global copyright regime or to invigorate discussions on a treaty that had been drafted to protect broadcasters' and cablecasters' investments and which would be causing considerable harm to consumers and innovation.

143. A representative of the Copyright Research and Information Center (CRIC) recalled that two new treaties had been adopted in 1996 to adapt the legal environment to the Internet. The Internet had been spreading rapidly all over the world and the technology was advancing while the WIPO intellectual property framework had not been fully completed in relation to the protection of audiovisual performances and the piracy of broadcasting signals. Any legal framework for copyright and related rights had to maintain and develop culture. Broadcasting was the most useful and helpful tool for education, information, public access to knowledge, entertainment and culture development. Without any effective instruments to fight piracy, performers and broadcasters would be losing and that meant that the public would also lose important tools for cultural heritage and public access to knowledge and information. The SCCR had to continue its discussions on a basic proposal for a broadcasters' treaty and the discussions had to resume on the basis of the non-paper discussed at the second special session of the SCCR in May 2007.

144. The Delegation of Senegal welcomed the fact that the majority of Member States had expressed their firm determination to continue to work towards a diplomatic conference, since it would have been a collective failure after a tenth of a century of work. No efforts should be spared to ensure that the long gestation of the baby came to successful term. Member States had to show constructive spirit in order to reach compromises on the stumbling block

145. A representative of the Library and Copyright Alliance (LAC), expressed its serious reservations about the proposed treaty on the protection of broadcasting organizations in the

absence of any evidence of harm to broadcasters under the current international regime of protection in force under the Rome Convention. That lack of a clear benefit had to be opposed to the risk of granting broadcasters an intellectual property right in their signals. As part of their core mission, libraries transmitted to the public a wide variety of media including broadcast material. In making use of such material, libraries relied upon limitations and exceptions in the copyright of the underlying work. If the broadcast work was subject to an additional layer of intellectual property rights without a separate set of exceptions and limitations, their current uses could become unlawful. Libraries had been particularly concerned about the impact on classroom instructions and distance education, educational and research uses and ordinary public discourse. All of these uses had been permitted under national legislation but the absence of a parallel set of limitations and exceptions in the proposed broadcasting treaty would expose libraries to liability. The Committee was asked to agree on a treaty that could accommodate the existing environment and system of copyright exception and limitations.

146. A representative of the Computer and Communications Industry Association (CCIA), drew attention to the broad cross section of industrial stakeholders from the communication, information technology and consumer electronic industries who had made joint statements with a broad cross sections of civil society over many years of the debate. It was hoped that the Committee would move to other areas of work after ten years of discussion, without prejudice to the obvious benefits that broadcasting brought to the modern world.

147. The Chair noted the willingness of many delegations to pursue discussions and to consider a proper process where compromises would be necessary. The threshold stemming from the General Assembly mandate was also very high in relation to the object, objective, and scope of the protection. That heading covered the whole treaty and would require a diplomatic conference to agree on it. Caution needed therefore to be shown in the interpretation of the General Assembly mandate because diplomatic conferences usually were convened to resolve the last outstanding issues. Some avenues needed to be found to pursue the work. He was not aware of any country which had not provided in its national legislation some form of intellectual property right for broadcasting organizations. There were more than 110 ten countries where such protection had been provided for. An acceptable level of protection had therefore to be established at the international level.

148. The Chair stated that the contents of the proposed draft conclusions of the meeting, including those on the discussions on the protection of broadcasting organizations, would later be read to the Committee for comments and to allow group coordination.

INFORMATION ON THE WIPO ARBITRATION AND MEDIATION CENTER

149. At the invitation of the Chair, the Secretariat explained that the WIPO Arbitration and Mediation Centre was established in 1994 to offer alternative dispute resolution (ADR) options, in particular, on arbitration and mediation, for the resolution of intellectual property disputes among private parties, particularly regarding cross-border international solutions of disputes involving increasingly specialized technical intellectual property subject matters. Its activities could be described as twofold. Firstly, it acted as a resource center to raise awareness on the different dispute resolution options available to the private parties. That included relevant publications, arbitration and mediation workshops, and information services to informal queries. Secondly, it acted as a case-administering authority in disputes, under the WIPO Arbitration, Mediation or Expert Determination Rules. One area which had drawn

wide attention was the different activities provided under specialized procedures to address specific disputes involving transactions in a number of sectors or industries. A prime example was the domain name dispute resolution. Conventional procedures could be very briefly summarized as follows: mediation was an informal procedure in which a neutral intermediary, being the mediator, would assist the parties agreeing on a mutually agreeable solution. It was not necessarily a legal decision. The mediator would not render a decision, but simply assist the parties in reaching a settlement. Arbitration was a binding process in which the parties submitted the dispute to one or three arbitrators to render a decision which had binding effect on the parties and was not subject to appeal. The expert determination rules were more informal than arbitration. Parties might agree on whether or not to make the expert determination binding or not binding. The expert would not necessarily need a legal background but competence on a matter of discreet nature involving technical, scientific or business issues. Copyright royalty disputes were a good example of a subject matter that might be referred to expert determination. The principle characteristics of those alternative-dispute resolution procedures were the following. Firstly, it was different from the courts, in the sense that parties had to consent to submit the dispute to those procedures. Parties controlled and could design the procedure to make it fit to their needs. Procedures were flexible, operated on an *à la carte* basis and were, in principle, confidential. Once an arbitral award was rendered, it was enforceable in some 140 countries that were party to the New York Convention. In case of mediation, there was no binding decision that was rendered by the mediator. As neutral intermediary, the mediator assisted the parties in reaching a settlement, not necessarily on the legal options, but on business solutions that could be interesting to both parties. Over 28,000 domain name cases had been initiated under the WIPO Uniform Domain Name Dispute Resolution Policy (UDRP). Well-known names such as Columbia Pictures, DreamWorks, EMI, Warner, El Pais, J.K. Rowling, and Microsoft, among others, were some examples of the different domain name cases that had been dealt with by the WIPO Center. In the previous eight years, the Center had had over 70 mediations and 100 arbitrations with subject matters covering a broad spectrum of intellectual property matters, including copyright licences, collective management, patent licences, patent infringements, research and development agreements, IT contracts, trademark co-existence agreements, art marketing and other commercial relationships. Those cases also differed in nature and the value in dispute varied from US\$20,000 to reaching US\$600 million. They covered rather broad geographic areas and parties had come from 18 different countries. Examples of disputed matters in the field of copyright covered copyright licenses, interpretation on contract performance, copyright license termination, copyright royalty issues, collecting societies and copyright infringement. Cases also involved parties that were very active in the copyright sector, such as publishing houses, producers of artistic performances, art galleries, artists, broadcasting companies and collecting societies. They came to the WIPO Center to refer a dispute that was not necessarily related to copyright, but one that arose out of their commercial relationships with other parties. Another category of disputes was related to copyright in a more collective or structured scheme. Recently, a collecting society had decided to adopt an adapted version of WIPO expedited arbitration as its procedures could be adapted to meet the needs of the organization or the needs of the parties. In the previous year, the European Union's high level expert group on digital libraries, that included stakeholders from the British Library, the German National Library, the Federation of European Publishers and Google, had recommended a model license on digitalization of out-of-print works. They recommended the WIPO expert determination as the dispute resolution method of first instance. The Center had a database of arbitrators, mediators and experts, and an electronic case facility that allowed parties to submit their case communications electronically into an online secure docket. Fees were charged for

administering cases, but they were on a cost recovery basis. More information was available on the website <arbiter.wipo.int>.

150. The Delegation of Austria asked if the arbitration decisions were published.

151. The Secretariat answered that decisions were not published as, in principle, they were confidential. Under the WIPO Arbitration Rules the procedure itself, the dispute and the award had to remain confidential. However, in special schemes such as those involving a collecting society and the disputes among members, confidentiality could be renounced by the organization. They could decide that the awards be published only for the members.

FUTURE WORK OF THE COMMITTEE

152. The Chair invited the Committee to express its views on the future work of the Committee.

153. The Delegation of Slovenia, speaking on behalf of the European Community and its member States, expressed its priority for the conclusion of the unfinished business and in particular the protection of broadcasting organizations. In addition to that, it suggested the following topics: resale rights, collective management, orphan works, and applicable law. The European Community and its member States remained committed to participate in the discussion on the above-mentioned or other proposed issues in a dedicated and positive spirit.

154. The Delegation of Australia expressed its interest in taking part in discussions on the items mentioned by the Delegation of Slovenia.

155. The Delegation of Switzerland supported the statement of the Delegation of Slovenia.

156. The Delegation of New Zealand supported the statement of the Delegation of Slovenia

157. The Delegation of Senegal expressed interest in the proposals submitted by the Delegation of Slovenia but recommended to focus efforts on the issues where most progress had been made.

158. The Delegation of Brazil stated that priority should be given to the continuation of the in-depth discussion on exceptions and limitations. It also believed that the issue of the broadcasting treaty was no longer an unfinished business but almost a finished business. There was support for the decision of the General Assembly and a high pressure had to be maintained for the continuation of work on that particular treaty. Many years had been spent on that issue, but there was still a wide divergence of views. The Delegation could go along with the draft conclusions suggested for the protection of audiovisual performances, if some margin for progress on that particular item existed. It was not ready to take any decision on the issues of new items for the agenda. Further communication on these particular items was needed to learn what exactly was being proposed. Members could then take an informed decision as to the inclusion or not of those particular items on the agenda at the next meeting of the Committee.

159. The Chair welcomed the idea of supporting documentation to further explain the proposed new agenda items.

160. The Delegation of Norway supported the proposal made on behalf of the European Community and its member States.

161. The Delegation of Japan stated that there was still unfinished business, which needed to be dealt with, especially in relation to the broadcasting treaty and the protection of audiovisual performances. The advancement of digital networking technology had made infringements more complex and more wide-spread. Time was not ripe for the introduction of new topics.

162. The Delegation of the Islamic Republic of Iran believed priority had to be given to the item of the protection of broadcasting organizations in view of reaching an agreement. The General Assembly mandate was clear in relation to the convening of a diplomatic conference; it could only be convened after agreement on the objectives, scope and object of protection of the draft treaty. Any decision on the inclusion of new items would not be appropriate at present, before supporting documents and information could be submitted to the Committee.

163. The Delegation of Chile supported the statement of the Delegation of Brazil and indicated that further documents were needed to better understand the objectives sought with the proposed inclusion of new topics. There was no objection in principle to the inclusion of additional topics while it had to be taken into account that since three unsolved items were already on the agenda, priority had to be given to discussions on those items.

164. The Delegation of Morocco stated that the inclusion of new items on the agenda had not been discussed by the African Group and no documents had been submitted to support that proposal. Work had to be finalized on the unfinished business in particular in relation to the protection of broadcasting organizations while taking due account of the exceptions and limitations agenda item.

165. The Delegation of India stated that a number of agenda items were already on the agenda which required careful deliberation and significant amount of discussion. Prudence was needed in considering additional items and clarity should be provided as to the objectives of such inclusion.

166. The Delegation of the United States of America welcomed the proposals of Slovenia speaking on behalf of the European Union and its Member states. The areas of collective management, orphan works and applicable law were especially important and productive areas where the Committee could make a contribution.

167. The Delegation of the United States of America, speaking on behalf of Group B, reaffirmed the long standing commitment of the Group to constructively engage in an informed, robust and sustained discussion of the complex copyright and related rights legal and policy issues before the Committee. Group B believed that such commitment was more important than ever as the Committee organized its future work. The unfinished business of the past work of the Committee on the protection of broadcasters and audiovisual performances should remain as an important issue for discussion on the agenda of the Committee. With a view to the proposal of the Delegation of Chile for future work on exceptions and limitations in copyright and related rights law, as set forth in documents SCCR/12/3 and SCCR/13/5, any future work would have to be focused on pertinent issues related to the exclusive rights of authors and other creators. The first work area described in SCCR/13/5 regarding the “identification, from the national intellectual property systems of Member States, of national models and practices concerning exceptions and limitations” was an appropriate element of a balanced future work program for the Committee. However, the

second and third areas proposed by the Delegation of Chile in document SCCR/13/5 were not supported by Group B, and there was no consensus in the Committee to proceed with future work in these proposed work areas. The proposed plan of work had arrived too late for an informed discussion.

168. The Delegation of Chile asked Group B to provide some clarification as to the why the Group did not agree with the second work area described in document SCCR/13/5.

169. The Delegation of the United States of America stated that it could not provide the kind of detail that would be satisfying without further consultations. It recalled, however, that the Group had called for a robust and sustained discussion of the complex issues raised in the document in question. As that discussion would unfold, the Committee might reach a more satisfactory and shared understanding, against the long background of the Committee, in considering exceptions and limitations within the context of the Berne Convention. That would hopefully be satisfying to all participants in the debate, and beyond the present very general discussion.

170. The Chair noted that the issue of limitations and exceptions would be on the Agenda for the following meeting of the SCCR. More clarification could, therefore, be obtained by then. A concrete work plan concerning limitations and exceptions could then be discussed, and a possibility for informed decisions by the Committee would be possible. The Chair further noted that the latest proposal by the Delegation of Chile and the other co-sponsors, Brazil, Nicaragua and Uruguay, was recent, and that there was, therefore, a justified understanding that more time was needed for delegations to consider it.

171. The Delegation of Algeria, speaking on behalf of the African Group, stated that the Committee should work on three issues, namely audiovisual performances, exceptions and limitations, and the protection of broadcasting organizations. Those were important issues, and they should be dealt with on an equal footing, bearing in mind the decision of the General Assembly on audiovisual performances. Concerning the proposal made by the Delegation of Slovenia, the Delegation of Algeria would not speak on behalf of the African Group since there had not been time to examine it in the Group. The Delegation of Algeria thanked Slovenia for its proposal, but felt that the Committee would have sufficient work concentrating on the three issues mentioned earlier. Further issues could be considered and examined in the following session of the SCCR if submitted in writing.

172. The Delegation of Brazil asked the Delegation of the United States of America to clarify whether it had referred, in its intervention, to the proposal made by Chile or to the proposed draft conclusions.

173. The Delegation of the United States of America stated that it referred in its intervention to the Chilean proposal with its proposed three work areas, as elaborated in document SCCR/13/5.

174. The Chair proceeded to present his draft conclusions, which read as follows:

“Protection of audiovisual performances

“The outcome of the deliberations in the course of the sixteenth session of the SCCR will be reported to the General Assembly.

- The Delegations who took the floor expressed their willingness to take up further discussions on the substance, with the aim of finding a way forward. Some Delegations stressed the importance of finding a way to resolve the outstanding substantive issues.
- The Secretariat was requested to prepare a factual document summarizing the outcome of the activities organised in accordance with the request of the General Assembly.
- The Secretariat will continue to organize seminars on the regional and national level, and was requested to organize an information meeting in the context of the next session of the SCCR.
- The matter will be maintained on the Agenda of the next session of the SCCR.

“Exceptions and limitations

“The basis for deliberations of the SCCR on this item was the proposal made in the present session by Brazil, Chile, Nicaragua and Uruguay, which elaborates further the proposal by the Delegation of Chile (SCCR/13/5). Many of the Delegations who took the floor supported the proposal, emphasized the importance of it and expressed their willingness to participate in the discussions on this issue. Several Delegations underlined the need for speedy action to improve the access of visually impaired persons to protected works.

- The Secretariat was requested to make, in addition to the existing study reports, a study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect in it.
- The Secretariat was requested to organize, in conjunction with the next session of the SCCR, an informative session on existing and forthcoming studies.
- The Committee will prepare a more detailed work plan on this item in its next session.
- The matter will be maintained on the Agenda of the next session of the SCCR.

“Protection of broadcasting organizations

“- The Delegations who took the floor expressed their interest in continuing the work on this item.

- To provide basis for reflection on this matter, the Secretariat was requested, in cooperation with the Chair, to prepare a document containing a summary of the work done and an identification of the unresolved issues.
- The matter will be maintained on the Agenda of the next session of the SCCR.

“Future work of the Committee

“- Consideration on the future work and the work plan of the Committee will continue in the next session of the SCCR, on the basis of the outcome of the discussion in the present session.

“Next session of the SCCR

The next session of the SCCR will be convened from November 3 to 7, 2008.”

175. The Chair thanked the Vice Chairs of the Committee for their assistance. As announced at the beginning of the meeting, the Chair and the Vice Chairs had been working as a team in the consideration, discussion and analysis of the outcome of the meeting, which had proven very useful and helpful. The conclusions consisted of five chapters under each of which there would be narrative parts and statements of fact, and then the decision parts. The Chair suggested proceeding chapter by chapter, and subsequently adopting the package as amended as a whole.

176. The Delegation of Slovenia, speaking on behalf of the European Community and its member States, thanked the Chair for having prepared the draft conclusions, and suggested some changes to them in order to reflect all interventions made by member States of the Committee. With a view to the first cluster on audiovisual performances, at the end of the third paragraph after the words “General Assembly”, it was suggested to add “and the stocktaking of positions of member States of the SCCR”.

177. The Chair noted that the Delegation of Slovenia referred to “the stocktaking of positions of the member States of the SCCR”. Since, according to the rules of procedure, also the European Community was a member of the Committee, the Chair suggested referring to the “members of the SCCR” in the proposed amendment.

178. The Delegation of Algeria, speaking on behalf of the African Group, endorsed the chapter on audiovisual performances in the draft conclusions. It was somehow vague, but it was inclusive and tried to reflect the different positions. Concerning the activities that were going to be undertaken by the Secretariat, the African Group was very interested in hosting such activities in one of the member States of the Group since the issue of audiovisual performances was very important to that Group.

179. The Chair concluded the discussions on the chapter on audiovisual performances in the draft conclusions, considering the proposed amendment as accepted, and proceeded to the subsequent chapter on exceptions and limitations.

180. The Delegation of Algeria, speaking on behalf of the African Group, supported the chapter, with a slight amendment. After “[t]he Committee would prepare a more detailed work plan on this item in its next session” in the third bullet point, the Group proposed to add the language “including the organization of seminars on the regional and national level”.

181. The Delegation of Switzerland proposed an amendment to the first paragraph of the chapter on exceptions and limitations. The second sentence of that paragraph referred to the proposal made by Chile and read: “[m]any of the delegations who took the floor supported the proposal”. For the time being, that proposal was very vague. It had been presented in an oral way, and been re-shaped during the discussions. The Delegation was not prepared to support a proposal which was not clearly defined in a written form, and proposed to replace the above language by “[m]any of the delegations who took the floor supported the discussion on the proposal”.

182. The Delegation of Slovenia, speaking on behalf of the European Community and its member States, announced that it would propose three amendments to the first paragraph in the chapter on exceptions and limitations, the addition of a new paragraph, and a change in paragraph four. Paragraph 1 would read “Brazil, Chile, Nicaragua and Uruguay presented a proposal which elaborates further the proposal by the Delegation of Chile (document SCCR/13/5). Many of the delegations who took the floor supported the proposal in whole, or in part. They emphasized the importance of it and expressed their willingness to participate in the discussion on this issue, and many delegations expressed their interest to focus on an exchange of information on national and regional legislation, and have requested to be given time to study the new proposal. Several delegations underlined the need for speedy action to improve the access of visually impaired persons to protected works”. Furthermore, a new paragraph should be added which would read: “[s]everal Delegations drew attention to exceptions and limitations enshrined in existing international treaties which represent balanced solutions.” A change was also proposed in paragraph 4, where the words “reflect on” would replace the word “prepare”. The sentence would read; “[t]he Committee will reflect on a more detailed work plan on this item in its next session.”

183. The Delegation of The United States of America stated that Group B had carefully reviewed the overall position of the European Community and its member States, and there was a broad agreement regarding many if not all of the amendments. Group B believed that the conclusions as currently drafted failed to reflect the interventions of a number of delegations expressing the view that work areas number 2 and number 3 of document SCCR/13/5 were not an acceptable basis for further work on exceptions and limitations and that there was not consensus to advance work in those two work areas.

184. The Chair submitted for the consideration of the Committee the proposal from the Delegation of Slovenia to replace the word “prepare” by “reflect”. He also asked for comments on the proposal by Slovenia to introduce a new paragraph starting with the wording “[s]everal delegations drew attention to...”

185. The Delegation of Brazil proposed an amendment to the proposal by the European Community and its member States to add a new paragraph. With that amendment the paragraph would read: “[s]everal delegations drew attention to exceptions and limitations enshrined in existing international treaties which in their view constitute balanced solutions”

186. The Chair stated that if a delegation expressed a view, a third person who referred to that view did not have a justified ground to say that it was a universal truth. The amendment from Brazil seemed to be acceptable also for the proponents of the additional paragraph. It was provisionally adopted. Consideration should again be given to the first paragraph or “chapeau” of the part on exceptions and limitations.

187. The Delegation of the United States of America formulated new language trying to capture the concerns and sentiments of Group B. The proposed language would read: “[o]ther delegations were not prepared or willing to engage in discussions of work areas number 2 and number 3 of document SCCR/13/5.” The new text would be placed after the sentence that began, “Many of the Delegations who took the floor...”

188. The Chair presented the whole set of proposals concerning the first paragraph. First the Slovenian proposal implied deletion of the first line and part of the second line in the written text until the list of proponents of the proposal that was pronounced by Chile. After the list of names of the countries there would be the words: “presented the proposal”. So it would read:

“Brazil, Chile, Nicaragua and Uruguay presented the proposal”. The rest would continue as it was. The next sentence: “[m]any of the Delegations who took the floor ...” would be rephrased, according to the proposal of the Delegation of Switzerland to replace “supported the proposal” by “supported discussion of the proposal”. Next was the Slovenian proposal to add after the word proposal “in whole or in part”. The whole paragraph up to that level would then read: “Brazil, Chile, Nicaragua and Uruguay presented a proposal which elaborated further the proposal by the Delegation of Chile (SCCR/13/5). Many of the delegations who took the floor supported a discussion on the proposal in whole or in part, emphasized the importance of it and expressed their willingness to participate in the discussions on this issue.” The sentence did not make sense anymore. The willingness to participate in the discussions was already in the end. The next element was proposed by Group B: “[o]ther delegations were not prepared or willing to engage in discussions of work areas number 2 and number 3 of document SCCR/13/5.” The Delegation of Slovenia had proposed that, at the end of the sentence starting with “[m]any delegations...” and ending with “...the discussions on this issue” a comma would be added, inserting the following text: “... and many delegations expressed interest to focus on an exchange on national and regional legislations and requested to be given time to study the new proposal.” The insertion corresponded to a factual description on how things had happened. It seemed that the new element could be accepted. The Chair asked whether the Delegation of Switzerland could consider withdrawal of its proposal under the proviso that it would be included in the report.

189. The Delegation of Switzerland agreed with the deletion as long as it was on record that Switzerland supported a “discussion on the proposal” on limitations and exceptions and not the proposal itself.

190. The Chair thanked the Delegation of Switzerland for its flexibility. The first paragraph of the conclusions on limitations read: “Brazil, Chile, Nicaragua and Uruguay presented a proposal which elaborated the proposal by the Delegation of Chile (SCCR/13/5). Many of the Delegations who took the floor supported the proposal in whole or in part, emphasized the importance of it and expressed their willingness to participate in the discussions on this issue ...” and then the already adopted Slovenian addition “... and many delegations expressed interest to focus on an exchange on national and regional legislation and requested to be given time to study the new proposal.” Then the sentence by Group B: “Other delegations were not prepared or willing to engage in discussions of work areas number 2 and number 3 of document SCCR/13/5.” The rest would be as in the initial proposal. The Chair asked whether delegations would be able to accept the shortening of the paragraph from the beginning. It would not take anything off from the fact. It would start “Brazil, Chile, Nicaragua and Uruguay presented a proposal ...” so the narrative was a bit shorter. It was provisionally adopted. Then consideration was given to the element, “in whole or in part” added after the word proposal, in the next sentence: “[m]any of the delegations who took the floor supported the proposal in whole or in part”.

191. The Delegation of Brazil indicated that it would be interesting if the latest version of the conclusions could be made available on a piece of paper. The words that were inserted and removed seemed to change the meaning of the paragraphs in several different ways. After the discussion on the proposals it was not clear what was removed, including whether Switzerland had removed the word “discussions” from the sentence.

192. The Chair confirmed that the word “discussions” was withdrawn.

193. The Delegation of Brazil indicated that the addition proposed by Group B, starting with “[o]ther delegations were not prepared or willing to engage in discussions of work areas number 2 and number 3 ...” appeared as a bit odd because there were in fact discussions and delegations did engage in those discussions. They might have expressed a negative view of the proposal but there was engagement in discussions. Moreover, to state that delegations were not willing to discuss might be a not very positive reflection of the Committee. A more positive language could be found instead of just expressing non-willingness to engage in discussions. If that outcome was considered an acceptable outcome, a similar expression could start showing up in several different items. Regarding the Slovenian addition “... and many delegations expressed interest to focus on an exchange on national and regional legislation” it would not be appropriate to isolate that particular element of the national experiences. If that approach was retained it would become necessary to also indicate that there were many other delegations who supported the proposals which included not only the exchange of national experiences but also studies regarding what existed internationally and options for a minimum international standard on exceptions and limitations.

194. The Chair stated that it was preferable to try to sort out the text by continuing the process orally. Every piece of paper to be distributed would be subject to a time consumption of at least half an hour.

195. The Delegation of the United States of America indicated that, in the spirit of cooperation and to advance the work, it was prepared to slightly modify the language of its proposal, which would read: “[o]ther delegations were not prepared or willing to proceed on the basis of work areas number 2 and number 3 of document SCCR/13/5.” In any case, utmost clarity was needed regarding the firm position of the Delegation on areas number 2 and number 3. The Delegation was trying to frame the sentence in a way that continued to capture the cooperative spirit of the Committee.

196. The Chair indicated that the effect of the sentence was the same. The reports of the SCCR were rather detailed and all interventions of the debate would appear in the report in an abbreviated but quite detailed form so the participants should not try to anticipate the task of the Report. The sentence proposed by Group B was modified to read: “[o]ther Delegations were not prepared or willing to proceed on the basis of work areas number 2 and 3 in document SCCR/13/5”. The whole paragraph read: “Brazil, Chile, Nicaragua and Uruguay presented a proposal which elaborated further the proposal by the Delegation of Chile (SCCR/13/5). Many of the delegations who took the floor supported the proposal in whole or in part, emphasized the importance of it and expressed their willingness to participate in the discussions on this issue”, and then the additional narrative text, “and many delegations expressed interest to focus on an exchange on national and regional legislation and requested to be given time to study the new proposal. Other delegations were not prepared or willing to proceed on the basis of work areas number 2 and 3 in document SCCR 13/5” and the rest as it was: “[s]everal Delegations underlined the need for speedy action to improve the access of visually impaired persons to protected works”. It was already provisionally stated that the abbreviation at the beginning was acceptable. Also agreed was the expression “in whole or in part”. The additional narrative after the word “issue” complemented the description of what happened. And then Group B’s text on the fact that other delegations were not prepared and willing, which also corresponded to the facts.

197. The Delegation of Chile indicated that, as a consequence of the additional wording, some concepts were repeated. The expression “in whole or in part” implied that some delegations did not agree with parts of the proposal. The last paragraph proposed by

Group B, which insisted that some of the delegations did not want to proceed working in the line of numbers 2 and 3, reiterated the same idea. In addition it was also said that many delegations stated that they needed more time to study the proposal. It seemed that the same delegations, those who said they needed more time to study the proposal and insisted on focusing on national experiences, were also supporting the last Group B proposal. Those reiterations might somehow necessitate some clarification in the sense that some delegations had indeed agreed that it was very important to act in a normative way.

198. The Chair stated that there was no time left for clarifications. The expression “in whole or in part” had not been met with total opposition from any delegation and all the delegations who had taken the floor had supported it.

199. The Delegation of Brazil proposed to put back the beginning of the first paragraph, which had been removed for the sake of bridging. It was important to state what the basis for deliberations was or at least to say that the SCCR had considered the proposals. Either one of the two options was acceptable, but it was important to make clear that the proposal presented by Brazil, Chile, Nicaragua and Paraguay had actually been considered during the SCCR. As indicated by Chile the same group of delegations was being counted several times for the same purpose. If the expression “in whole or in part” had been used, it was not necessary to state that the part that was not specifically supported was numbers 2 and 3. There was a contradiction between delegations focusing on exchange of national experiences, while at the same time requesting more time to study the proposals. The proposal to have more time to study the proposals went beyond focusing on national experiences. Once they had more time they would know what their position was. In order to keep it simple it would be preferable to just say: “[d]elegations who took the floor supported the proposal in whole or in part”, which more or less corresponded to the truth.

200. The Delegation of the United States of America proposed to delete the second part of the sentence in “[m]any of the delegations who took the floor supported the proposal, emphasized the importance of it and expressed their willingness to participate in the discussions on this issue and many delegations expressed interest to focus on an exchange of national experiences”. The entire paragraph would continue to end with the sentence starting with: “[s]everal delegations underlined the need for speedy action ...”.

201. The Chair noted that the proposal from the Delegation of the United States of America would amount to deleting the middle part of the paragraph. There was also the idea put forward by the Delegation of Brazil. Accordingly, the middle sentence “many of the delegations...” could be amended to read “delegations who took the floor...” That wording seemed to meet the opposition of at least some delegations. He proposed to put aside that paragraph and proceed to the text on “protection of broadcasting organizations” in the conclusions.

202. The Delegation of Slovenia proposed an amendment to the first paragraph of the text on broadcasting. The proposed text read: “[a]ll delegations who took the floor expressed their support in continuing the work on this item and many delegations showed their interest towards the conclusion of a treaty”.

203. The Delegation of Brazil indicated that it had supported complying strictly with the mandate from the General Assembly, so it would not support using the word “all”.

204. The Chair stated that taking into account the comment by Brazil the proposal would read: “[d]elegations who took the floor expressed their support in continuing the work on this item and many delegations showed their interest towards the conclusion of a treaty”.

Virtually every delegation was willing to continue the discussion and had expressed the intensity of their interest in different ways, but there was no outright opposition. Several references to a speedy conclusion were formulated as well as such expressions as “the earliest possible time”, “as soon as possible” and “a treaty should be concluded”. A couple of delegations expressed hesitation on the prospects or at least suggested that the best way of proceeding would be to engage in a moment of reflection.

205. The Delegation of Chile considered that the use of the words “many,” “several” or “all” was not consistent with what had been used to qualify interventions in the previous points. In fact few delegations took the floor on that issue and not all of them expressed that they were ready for a treaty. The general feeling of the room indicated that delegations were not ready for a treaty and that more work was needed. The proposal to say that many delegations asked to proceed towards a treaty should therefore be deleted.

206. The Chair indicated that once the Slovenian proposal was modified to read only “delegations,” without any further qualification, it corresponded to the fact. The whole text read: “[d]elegations who took the floor expressed their support in continuing the work on this item and many delegations showed their interest towards the conclusion of a treaty”.

207. The Delegation of India considered that it would be appropriate to reflect that continuation of the work should take place in consonance with the mandate of the General Assembly. Those qualifications were essential, because work should not proceed unfocused or unguided.

208. The Chair read the sentence with modifications proposed by participants: “[t]he delegations who took the floor expressed their support in continuing the work on this item in consonance with the mandate of the General Assembly, and many delegations showed their interest towards the conclusion of a treaty.” It seemed that the text could be provisionally adopted as one of the elements of the set of conclusions.

209. The Chair opened the debate on the conclusions regarding the future work of the Committee.

210. The Delegation of Slovenia proposed a new text, which read: “[m]any delegations expressed their will to tackle and accelerate unfinished business first. As requested by the WIPO Secretariat, several delegations suggested items for future work”.

211. The Chair requested a clarification on whether the text that was included in the draft conclusions would remain or whether the Slovenian suggestion would replace it.

212. The Delegation of Slovenia clarified that the text on the draft conclusions would remain.

213. The Delegation of India reminded the Chair that it had proposed a text on the protection of broadcasting organizations, which would be placed in between the two indents, and asked that such insertion be not forgotten.

214. The Chair confirmed that what had been stated by the Delegation of India on the item of broadcasting organizations would not be forgotten.

215. The Chair asked whether the proposal on future work from Slovenia was acceptable.

216. The Delegation of Brazil proposed to add that other delegations suggested that the SCCR focus on exceptions and limitations as a priority.

217. The Chair read the proposal from Brazil: “[o]ther delegations suggested that the Standing Committee focus on limitations and exceptions as a priority”.

218. The Delegation of Chile proposed to add a phrase that read: “[s]everal delegations presented items for future work. Many delegations expressed that they needed more clarification on those proposals before making a decision.”

219. The Chair noted that the suggested sentence was accepted: “[m]any delegations expressed the wish to receive further clarifications on some proposals before making a decision.”

220. The Delegation of Algeria considered that there were two different ideas on the table. The first one was to tackle and accelerate unfinished business first and the second one, put forward by Brazil, was to focus on limitations and exceptions as a priority. The preference of the African group was to take into account those three items in the agenda on a balanced and equal footing. Two of those items had been addressed for a long time. Limitations and exceptions was a new item, which had a large support from delegations so it would also need to be examined.

221. The Chair read the additional sentences and submitted the text to the consideration of the Committee: “[m]any delegations expressed their will to tackle and accelerate unfinished business first. As requested by the WIPO Secretariat, several delegations suggested items for future work. Many delegations expressed the wish to receive further clarifications on some proposals before making a decision. Other delegations suggested that the Standing Committee focus on limitations and exceptions as a priority.”

222. The Delegation of Algeria requested to also insert in the conclusions the proposal that the items should be dealt with in a balanced manner and on an equal footing.

223. The Chair offered the following formulation: “[s]everal delegations also expressed the view that the items should be dealt with in a balanced way and an excessive workload of the Committee should be avoided.”

224. The Delegation of Brazil indicated that one of the sentences stated that the Secretariat had requested Member States to propose items for future work. In fact Members made those proposals on their own initiative.

225. The Chair asked whether the Delegation of Slovenia and the member States of the European Community could consider omitting the words: “[a]s requested by the WIPO Secretariat”, because there had been no such request by the WIPO Secretariat. The item was simply put on the agenda. In consequence that element should be described by simply saying: “[s]everal delegations suggested items for future work”.

226. The Delegation of Slovenia expressed its agreement with the Chair.

227. The Delegation of Brazil asked how many delegations were referred to in that particular phrase.

228. The Chair indicated that it was not easy to quantify the support from delegations. Indeed, “several” delegations were more than one. “Some” was also more than one.

229. The Delegation of Slovenia explained that, as the European Community had 27 member States, “several” meant at least 27.

230. The Delegation of Brazil asked whether that meant that there was a common position on all four proposed items.

231. The Delegation of Slovenia confirmed that that was the case.

232. The Chair read the text provisionally adopted on future work: “[m]any delegations expressed their will to tackle and accelerate unfinished business first. Several delegations suggested items for future work. Many delegations expressed a wish to receive further clarifications of such proposal before making a decision. Other delegations suggested that the SCCR focus on limitations and exceptions as a priority. Several delegations also expressed the view that the items should be dealt with in a balanced way and an excessive workload of the Committee should be avoided.”

233. The Chair opened again the issue of broadcasting to take into account the proposal by India. Accordingly, the following language was proposed: “The secretariat was requested to prepare, in cooperation with the Chair, a document containing the summary of the work done and the identification of the unresolved issues.”

234. The Delegation of India clarified that the Chair could be mandated to prepare an informal paper based on its understanding of the views of the Member States. It would be a brief, informal paper, based on the understanding of the Chair about the position of the Member States. In that way the text could meet the qualifications of the summary of positions and all controversy could be avoided because it would not be an official document. On the other hand in looking at the discussion as reflected in document SCCR/15/2 Rev., it was difficult to identify areas of convergence and divergence. There was a whole range of issues and views and it was very difficult to have a comprehension of the stand of different parties. A summary of positions would be too long and difficult to apprehend while the modality suggested would serve that purpose much better.

235. The Chair agreed in that it would be useful to have a simple document that would allow understanding the discussions to someone who just started to look at the issue. The level of difficulty of the documentation available was considerable so the alternative to a summary suggested by India would achieve the same objective but leaving the faculty of looking at all that was on the table. The approach corresponded well to the fact that much of the work was on an informal basis and not documented in a formal manner.

236. The Delegation of India explained that the Chair, not the Secretariat, would prepare an informal paper based on the revised mandate of the General Assembly, based on the understanding of the positions of various member states, for discussion at the following meeting.

237. The Chair clarified that it would in any case be more than just a technical description of what was officially documented and therefore a dangerous exercise. As proposed by India the paper would be based on the mandate of the Assembly, rendering the understanding of the Chair on the main positions and convergences.

238. The Delegation of El Salvador appreciated very much the observations and presentation made by India. However, all the work that had been developed with the broadcasting treaty, reflected in the corresponding documents, should not be left aside.

239. The Chair clarified that the additional informal paper would not replace anything that existed and that all reports and working documents were still on the table.

240. The Delegation of India stated that an agreement was not possible on the basis of the previous documents. In spite of the fact that delegations had discussed the documents in detail it was not possible to come to a common view on the diverse aspects of those documents. That was the reason for suggesting an informal document restrained to the three issues contained in the mandate of the General Assembly. The expertise of the Chair was recalled to reflect on those three dimensions in order to initiate a discussion without being constrained by any baggage previously carried with unsuccessful result. That fresh start would reflect on the issues in the mandate and explore possibilities to find common ground.

241. The Chair read the suggested conclusions on the issue: "The Chair will prepare an informal paper based on the revised mandate of the General Assembly, rendering his understanding of the main positions and convergences to be dealt with at the next session of the SCCR."

242. The Delegation of Senegal referred to the mandate which was established by the General Assembly. According to that, the issue of the broadcasting organizations should remain on the agenda of the regular session of the SCCR. The convening of a diplomatic conference would only take place when an agreement was reached on the objectives, the specific scope and the object of the protection. In that regard it would be very interesting to truly try to organize the future work on the basis of the discussions that had been held. In moving forward it was essential to take stock of previous achievements and to focus on the mandate of the General Assembly.

243. The Chair considered that the position put forward by Senegal was in concordance with what had been proposed by the Delegation of India. The decision by the General Assembly was also reflected in the suggested language by the Delegation of India. Accordingly, the proposal was adopted.

244. The Chair opened the discussion on the last remaining item, exceptions and limitations. The conclusion of the first paragraph could be based on a composition of three sentences, with a focus on having less instead of more language: "Brazil, Chile, Nicaragua and Uruguay presented a proposal which elaborated further the proposal by the Delegation of Chile (SCCR/13/5). Many of the delegations who took the floor supported the proposal in whole or in part. Several delegations underlined the need for speedy action to improve the access of visually impaired persons to protected works." The matter would be brought to the next session where the work could be planned and everything said in the present session would be reflected, so the discussion would continue on a better informed basis.

245. The Delegation of Ghana suggested that a fourth element be added to reflect that some delegations requested more time to send the document to the capital for further study.
246. The Chair clarified that the fact mentioned by the Delegation of Ghana would be reflected in the report. There were delegations who said that the proposal had been sent to the capitals.
247. The Delegation of Ghana stated that, if the summary gave some indication as to what everybody said in detail, the suggested fourth element should also be part of the summary. As delegations did not make any comments either for or against, they had just accepted it.
248. The Chair said that the introductory paragraph on limitations was not a summary, but an introductory clause to the conclusions on the topic.
249. The Delegation of Slovenia insisted that it had requested to be given time to study the new proposal. As already said in its previous statement on the issue, the new proposal was complex and it had been seen for the first time at the meeting. That element of its proposal should be kept in the text.
250. The Chair indicated that what Slovenia said concurred with the proposal by Ghana. The fourth sentence could be: "Several delegations requested to be given more time to study the new proposal." The Chair read the whole paragraph: "Brazil, Chile, Nicaragua, and Uruguay presented a proposal which elaborated further the proposal by the Delegation of Chile (SCCR/13/5). Many of the delegations who took the floor supported the proposal in whole or in part. Several delegations requested to be given more time to study the new proposal. Several delegations underlined the need for speedy actions to improve the access of visually impaired persons to protected works."
251. The Delegation of the United States of America, speaking for itself as it had not had time to consult with Group B but presuming that its statement responded to the spirit of the position of the Group, stated that there were still some difficulties with respect to the second element of the proposed conclusions. That element failed to capture accurately the discussions. It washed out entirely from the record the statements of a number of delegations that expressed opposition to specific elements of document SCCR/13/5. One possible addition to that second element would read: "[o]ther delegations expressed opposition to specific elements of document SCCR/13/5."
252. The Chair warned that as elements had been reduced their piling up now started again and the same difficulties surfaced. To avoid running in circles a different formulation could attempt a simple and short result: "[t]he proposal by Brazil, Chile, Nicaragua, and Uruguay which elaborates further the proposal by the Delegation of Chile (SCCR/13/5) will be issued as a document for full consideration at the next meeting of the Committee."
253. The Delegation of Chile requested clarification on how the whole chapter would be structured.
254. The Chair indicated that the introductory paragraph of six lines would be shortened to the following: "[t]he proposal by Brazil, Chile, Nicaragua and Uruguay which elaborates further the proposal by the delegation of Chile (SCCR/13/5) will be issued as a document for full consideration at the next session of the Committee." And then would follow: "[t]he Secretariat was requested to..." with reference to all the operative points. There would be no

further reporting on what happened in the meeting because it would all be in the Report anyway.

255. The Delegation of Chile, indicating that it had not spoken with the rest of proponents of the new proposal but was talking on its own, considered it preferable to find a solution along the lines of what the Delegation of the United States of America had expressed. In that way there would be a reference to the fact that many of the delegations supported the proposal and some or others had objections to some parts of the proposal.

256. The Chair explained that at the beginning there were three phrases, then there was the four-sentence version and finally a five-sentence version was outlined. All those sentences would be short. The Chair asked whether the Delegation of the United States of America could repeat the short version of the objections sentence.

257. The Delegation of the United States of America clarified that Group B never had a discussion beyond the first paragraph and there was concern about the following paragraph. A simple and elegant solution might simply be what the Chair had suggested. However, since the request had been made, a longer version could be tested along the lines of what had been previously discussed: “[o]ther delegations were not prepared or willing to engage in discussions on areas number 2 and number 3 of document SCCR/13/5”. It was not clear how that fitted into the whole paragraph and that was part of the reason why it was preferable to have a rather simple and elegant solution that would allow for a full discussion and in-depth consideration at the following session.

258. The Delegation of Brazil suggested building on the sentence proposed by the Delegation of the United States of America, with the following formulation: “[o]ther delegations expressed support or opposition to specific elements of document SCCR/13/5 as reflected in the Report of the meeting” or “as reflected in the interventions which are contained in the Report of the meeting”.

259. The Chair confirmed that the wording proposed corresponded to what was proposed by the Delegation of Chile, namely “Other delegations expressed support or objection...”.

260. The Delegation of Brazil agreed with the Chair and reiterated that the value added by its proposal was to mention the object of such support or objection, namely “to specific elements of document SCCR 13/5 as reflected in the Report of the meeting”. Moreover, for the last sentence on the visually impaired, it would be advisable to refer to the Committee as a whole instead of only to several delegations as there was a virtual consensus in that respect.

261. The Chair reminded that the last sentence started: “[s]everal delegations underlined the need for speedy action to improve...”, and what the Delegation of Brazil was asking was whether it could read: “[t]he Committee underlined”. There seemed to be acceptance.

262. The Delegation of the United States of America asked the Chair not to assume adoption. It was necessary to listen to the whole package as the debate had become quite complex.

263. The Chair indicated that the package would read: “Brazil, Chile, Nicaragua and Uruguay presented a proposal which elaborated further the proposal by the Delegation of Chile (SCCR/13/5). Many of the delegations who took the floor supported the proposal in all or in part. Other delegations expressed support or opposition to specific elements in document SCCR/13/5. Several delegations requested to be given more time to study the new

proposal. The SCCR underlined the need for speedy action to improve the access of visually-impaired persons to protected works.”

264. The Delegation of the United States of America requested an opportunity to consult with Group B before bringing the topic to closure.

265. The Chair indicated that there was no time for further consultation and clarified that all questions would be open in the following session. He invited delegations to take the risk of adopting that formula.

266. The Delegation of the United States of America questioned whether “the Committee” as a whole captured the feeling of delegations with respect to the final sentence of the first paragraph or whether it was indeed “several delegations” the expression that reflected better the views of Member States.

267. The Chair reformulated the sentence according to the suggestion from the Delegation of the United States of America. He thanked the delegations for their hard work and proceeded to the adoption of the set of conclusions as a whole.

268. The Delegation of Australia asked whether the Secretariat would inform delegations of the provisional dates for the next SCCR.

269. The Chair indicated that provisionally the dates would be from November 3 to 7, 2008, and noted that the Committee had adopted the following Conclusions:

“Protection of audiovisual performances

“The outcome of the deliberations in the course of the sixteenth session of the SCCR will be reported to the General Assembly.

“The delegations who took the floor expressed their willingness to take up further discussions on the substance, with the aim of finding a way forward. Some delegations stressed the importance of finding a way to resolve the outstanding substantive issues.

“The Secretariat was requested to prepare a factual document summarizing the outcome of the activities organized in accordance with the request of the General Assembly and a stocktaking of positions of members of the SCCR.

“The Secretariat will continue to organize seminars on the regional and national level, and was requested to organize an information meeting in the context of the next session of the SCCR.

“The matter will be maintained on the Agenda of the next session of the SCCR.

“Exceptions and limitations

“Brazil, Chile, Nicaragua and Uruguay presented a proposal, which elaborated further the proposal by the Delegation of Chile (SCCR/13/5). Many of the delegations who took the floor supported the proposal in whole or in part. Other delegations expressed support or opposition to specific elements in document SCCR/13/5. Several delegations requested to be

given more time to study the new proposal. Several delegations underlined the need for speedy action to improve the access of visually impaired persons to protected works.

“The Secretariat was requested to make, in addition to the existing study reports, a study on exceptions and limitations for the benefit of educational activities, including distance education and the trans-border aspect in it.

“The Secretariat was requested to organize, in conjunction with the next session of the SCCR, an informative session on existing and forthcoming studies.

“The Committee will consider a more detailed work plan on this item in its next session including the organization of seminars on regional and national level.

“The matter will be maintained on the Agenda of the next session of the SCCR.

“Protection of broadcasting organizations

“The delegations who took the floor expressed their support in continuing the work on this item in consonance with the mandate of the General Assembly, and many delegations showed their interest towards the conclusion of a treaty.

“The Chair will prepare an informal paper, based on the mandate of the General Assembly, rendering his understanding of the main positions and divergences, to be dealt with in the next session of the SCCR.

“The matter will be maintained on the Agenda of the next session of the SCCR.

“Future work of the Committee

“Many delegations expressed their will to tackle and accelerate unfinished business first. Several delegations suggested items for future work. Many delegations expressed a wish to receive further clarification of such proposal before making a decision. Other delegations suggested that the SCCR focus on limitations and exceptions as a priority. Several delegations also expressed the view that the items should be dealt with in a balanced way, and an excessive workload of the Committee should be avoided.

“Consideration on the future work and the work plan of the Committee will continue in the next session of the SCCR, on the basis of the outcome of the discussion in the present session.

“Next session of the SCCR

“The next session of the SCCR will be convened from November 3 to 7, 2008.”

OTHER MATTERS

270. The Chair noted that there were no requests for the floor.

CLOSING OF THE SESSION

271. The Chair closed the session.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

(dans l'ordre alphabétique des noms français des États/
in the alphabetical order of the names in French of the States)

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Mohinder S. Grover, Deputy Permanent Representative, Permanent Mission of India, Geneva

IRAN (RÉPUBLIQUE ISLAMIQUE D')/IRAN (ISLAMIC REPUBLIC OF)

Seyed Ali MOUSAVI, General Manager, Director General, Legal Department, Islamic Republic of Iran Broadcasting (IRIB), Tehran

Hassan SOLEIMANI, Legal Expert, Ministry of Foreign Affairs, Tehran

Gholamreza RAFEEI, Legal Advisor, Ministry of Justice, Tehran

IRAQ

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ITALIE/ITALY

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Laura MANCUSO (Miss), Stagiaire (???)

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MALAYSIA

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MOLDOVA

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NICARAGUA

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NOUVELLE-ZÉLANDE/NEW ZEALAND

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Muhammad Munir KHAN, Permanent Mission of Pakistan, Geneva

PARAGUAY

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Carlos Cesar GONZÁLEZ RUFFINELLI, Director, Nacional del Derecho de Autor, Asunción

PAYS-BAS/NETHERLANDS

Cyril VAN DER NET, Expert Legal Adviser, Ministry of Justice, The Hague

PÉROU/PERU

Maria Soledad FERREYROS CASTAÑEDA (Sra.), Vocal de la Sala de Propiedad Intelectual, Lima

PHILIPPINES

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POLAND

Malgorzata PEK, Deputy Director, Legal Department, National Broadcasting Council, Warsaw

PORTUGAL

Nuno Manuel da Silva GONZALVES, Directeur, GPEARI. Service du Droit D'Auteur, Lisbon

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

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SEO Jae Kweon, Research Associate, Legal Research Team, Copyright Commission, Seoul

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

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ROUMANIE/ROMANIA

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Rawca TIGAU (Ms.), Ministry of Foreign Affairs, Bucharest

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ROYAUME-UNI DE GRANDE BRETAGNE ET D'IRLANDE DU NORD/UNITED KINGDOM OF GREAT BRITAIN AND NORTH IRELAND

Duncan WEARMOUTH, Director, Copyright and IP Enforcement Directorate, Newport

SÉNÉGAL/SENEGAL

Ndeye Abibatou Youm DIABE SIBY (Mme), directeur général du Bureau sénégalais du droit d'auteur, Dakar

SERBIE/SERBIA

Zorica GULAS (Ms.), Head, Department for Copyright and Related Rights, Intellectual Property Office, Belgrade

SINGAPOUR/SINGAPORE

Kelvin SUM, Senior Assistant Director and Legal Counsel, Legal Policy and International Affairs Department, Intellectual Property Office, Singapore

SLOVAQUIE/SLOVAKIA

Jan VARŠO, Director, United Nations Office and United Nation Agencies Department, Ministry of Foreign Affairs, Bratislava

Anton ŠKREKO, Head, Copyright and Cinematography Unit, Ministry of Culture, Bratislava

Fedor ROSOCHA, First Secretary, Permanent Mission of Slovakia, Geneva

SLOVÉNIE/SLOVENIA

Miha TRAMPUŽ, Legal Counsel, Slovenian Intellectual Property Office (SIPO), Ministry of Economy, Ljubljana

Petra BOŠKIN (Ms.), Undersecretary, Legal Department, Slovenian Intellectual Property Office (SIPO), Ministry of Economy, Ljubljana

Janja FELC, Slovenian Intellectual Property Office (SIPO), Ministry of Economy, Ljubljana

SOUDAN/SUDAN

Magid ABDELRAHIM MOHAMAD, Executive Manager, Federal Council for Literary and Artistic Works, Ministry of Culture, Youth and Sports, Khartoum

Mohamed Hassan KHAIR, First Secretary, Permanent Mission of Sudan, Geneva

SUÈDE/SWEDEN

Henry OLSSON, Special Government Advisor, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

Anders OLIN, Legal Advisor, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

THAILAND

Supavadee CHOTIKAJAN, First Secretary, Permanent Mission of Thailand, Geneva

TUNISIE/TUNISIA

Mehdi NAJAR, chargé de la perception et de la répartition à l'Organisme tunisien de protection des droits d'auteurs (OTPDA), Tunis

Mohamed Abderraouf BDIQUI, conseiller, Mission permanente de la Tunisie, Genève

TURQUIE/TURKEY

Abdulvahap DARENDELI, Vice President, Turkish Radio and Television Supreme Council, Ankara

Mehmet DADAK, Member, Turkish Radio and Television Supreme Council, Ankara

Neslihan KOC (Miss), Expert Assistant, Turkish Radio and Television Supreme Council, Ankara

Gunay KIRACI, Ministry of Culture and Tourism, Ankara

Yesim BAYKAL, Legal Advisor, Permanent Mission of Turkey, Geneva

UKRAINE

Tamara DAVYDENKO (Ms.), Head, Division of Copyright and Related Rights Issues (SDIP), State Department of Intellectual Property, Ministry of Education and Science, Kyiv

URUGUAY

Alfredo SCAFATI FALDUTI, Presidente, Consejo Derechos de Autor, Montevideo

VENEZUELA

Alessandro PINTO DAMIANO, Second Secretary, Permanent Mission of Venezuela, Geneva

II. AUTRES MEMBRES/
NON-STATE MEMBERS

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

Luis FERRÃO, Principal Administrator, DG Information Society & Media Digital Libraries and Public Sector Information Unit, European Commission, Luxembourg

Sergio BALIBREA SANCHO, Counsellor, European Commission, Brussels

Barbara NORCROSS-AMILHAT (Ms.), Copyright and Knowledge-Based Economy Unit, Internal Market and Services Directorate General, Brussels

CONSEIL DE L'UNION EUROPÉENNE/EUROPEAN UNION COUNCIL

Johan LILLIEHÖÖK, Counsellor, Conseil de l'Union Européenne, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

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

Petya TOTCHAROVA (Mrs.), Legal Officer, Section for the Diversity of Cultural Expressions, Paris

* 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.

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

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

IV. ORGANISATIONS NON GOUVERNEMENTALES/
NON-GOVERNMENTAL ORGANIZATIONS

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and Communications Industry Association (CCIA): Nick ASTON-HART (Representative); Matthew SCHRUERS (Senior Counsel, Litigation and Legislative Affairs, New York); Anoine AUBERT (New York)

Association of Commercial Television in Europe (ACT): Tom RIVERS, Legal Adviser (Brussels)

Association des organisations européennes d'artistes interprètes (AEPO-ARTIS)/Association of European Performers' Organisations (AEPO-ARTIS): Guenaëlle COLLET (Ms.) (Head, AEPO-ARTIS Office, Brussels)

Association européenne des étudiants en droit (ELSA International)/European Law Students' Association (ELSA International): Rudolf Christoph REIET (Germany); Patrick LEIMIG (Germany); Eneli ÕIS (Ms.) (Estonia)

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB): Edmundo Omar RÉBORA (Presidente del Comité de Derecho de Autor, Montevideo); Alexandre JOBIM (Presidente del Comité Jurídico Permanente, Brasilia); Andrés Enrique TORRES (Asesor Jurídica, Buenos Aires); Nicolás NOVOA (Asesor Jurídico, Buenos Aires);

Association internationale pour la promotion de l'enseignement et de la recherche en propriété intellectuelle (ATRIP)/International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): François CURCHOD (représentant, Genolier, Suisse)

Association international radiodiffusion comite de derecho de autor (AIR): Edmundo REBORA (President, Buenos Aires)

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI): Victor NABHAN (Chairman, Ferney-Voltaire); Silke VON LEWINSKI (Ms.) (Head, International Law Department, Munich)

Association romande de propriété intellectuelle (AROPI): Alliana HEYMANN (Mme) (Président de la Commission “Droits internationaux de l’AROPI”, Genève)

Audio-Visual Producers’ Rights Management Association (EGEDA): Juan MARIN (Madrid)

Business Software Alliance (BSA): Benoît MULLER (Director, Software Policy, Europe, Brussels)

Central and Eastern European Copyright Alliance (CEECA): Mihály FICSOR (Chairman, Budapest)

Centre d’administration des droits des artistes interprètes ou exécutants (CPRA) du GEIDANKYO/Centre for Performers’ Rights Administrations (CPRA) of GEIDANKYO: Yoshitaka HORI (Chairman, Legal Committee, Director, Executive Committee of CPRA); Samuel Shu MASUYAMA (Director, Legal and Research Department CPRA, Tokyo)

Centre de recherche et d’information sur le droit d’auteur (CRIC)/Copyright Research and Information Center (CRIC): Shin-ichi UEHARA (Visiting Professor, Graduate School of Kokushikan University, Tokyo); Noriko NAMIKOSHI (Ms.) (General Manager, International Relations Division, Planning and Promotion Department, Digital Content Association of Japan (DCAJ), Tokyo)

Centre international pour le commerce et le développement durable (ICTSD)/International Center for Trade and Sustainable Development (ICTSD): Ahmed Abdel LATIF (IP and Technology Programme Manager, Geneva), Naomi FORTIS (Research Assistant, Geneva)

Center for International Environmental Law (CIEL): Dalindyabo SHABALALA (Director, Project on Intellectual Property and Sustainable Development, European Office, Geneva)

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC): David FARES (Vice-President, E-Commerce Policy, News Corporation, New York); Bradley SILVER (Senior Counsel, Intellectual Property, Time Warner, Inc, New York)

Comité “acteurs, interprètes” (CSAI)/Actors, Interpreting Artists Committee (CSAI): José María MONTES RELANZÓN (Managing Director, Legal and International Affairs, Madrid)

Computer and Communications Industry Association (CCIA): Antoine AUBERT (European Copyright Policy Counsel, Brussels)

Conseil de coordination des associations d'archives audiovisuelles (CCAAA)/ Co-ordinating Council of Audiovisual Archives Associations (CCAAA): Kurt DEGGELLER (Convenor, Bern, Switzerland)

Consumers International (CI): Ann-Catherine LORRAIN (Mrs.), (IP Policy Officer, Brussels)

Electronic Frontier Foundation (EFF): Gwen HINZE (Ms.) (International Policy Director, London); Eddan KATZ (International Affairs Director, London)

Electronic Information for Libraries (eIFL.net): Teresa HACKETT (Ms.) (Project Manager, Rome); Mariana HARJEVSCHI (Ms.) (Director, Chisinau, Moldova)

Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA): Juan José MARÍN LÓPEZ (Madrid)

European Cable Communications Association (ECCA): Gilone D'UDEKEM (Ms.) (Regulatory Affairs Officer, Brussels)

European Digital Rights (EDRi): Ville OKSANEN (Co-Chair EDRI IPR-Working Group, Helsinki)

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); José Luis SEVILLANO (Madrid); Carlos LÓPEZ SÁNCHEZ (Asesor Jurídico, Madrid)

Fédération internationale de la vidéo/International Video Federation (IVF): Michael SHAPIRO (USPTO, Washington, D.C.); Philipp RUNGE (Deputy Legal Counsel, Brussels); Scott MARTIN (Legal Advisor, Los Angeles)

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI): Shira PERLMUTTER (Ms.) (Executive Vice-President, Global Legal Policy, London)

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA): Stuart HAMILTON (Senior Policy Adviser IFLA, The Hague, Netherlands); Barbara STRATTON (Ms.) (Senior Policy Advisor, CILIP, London); Winston TABB (Sheridan Dean of University Libraries, Johns Hopkins University, United States of America); Ben WHITE (Copyright Compliance and Licensing Manager, British Library, London)

Fédération internationale des associations de distributeurs de films (FIAD)/International Federation of Associations of Film Distributors (FIAD): Antoine VERENQUE, (General Secretary, Paris)

Fédération internationale des organismes gérant les droits de reproduction (IFRRO)/International Federation of Reproduction Rights Organizations (IFRRO): Olav STOKKMO (Chief Executive and Secretary General, Brussels); Franziska SCHULZE (Ms.) (Deputy Secretary General, Brussels); Tarja KOSKINEN-OLSSON (Ms.) (Honorary President, Ystad)

Fédération internationale des journalistes (FIJ)/International Federation of Journalists (IFJ): Pamela MORINIÈRE (Ms.) (Programme Officer for Authors' Rights, Gender and Projects, Brussels); Mathieu FLEURY (Brussels)

Independent Film and Television Alliance (IFTA): Lawrence SAFIR (Vice President - European Affairs, Los Angeles)

Information Technology Association of America (ITAA): Loreto REGUERA (Attorney, European Legal Department, Intel Corporation (UK) Ltd., Wiltshire)

Innovation and Access to Knowledge Programme (IAKP): Viviana Carolina MUNOZ TELLEZ (Programme Officer, IAKP, Geneva)

International Federation of Film Producers Association (FIAPE): Bertrand Moullier (Head of delegation, Paris)

International Federation of Musicians (FIM): Benoit MACHUEL (General Secretary, Paris)

Information Technology Association of America (ITAA): Loreto REGUERA (Technical Expert, ITAA Standing Committee on WIPO and Attorney, Intel Corporation, Arlington, United States of America)

Information Society Project (ISP), Yale Law School: Sisule F. MUSUNGU (Senior Samuelson Fellow, Associate Research Scholar, Yale Law School, Connecticut)

International Federation of Horseracing Authorities (IFHA): Maurits BRUGGINK (Executive Director, Paris)

International Federation of Actors (FIA): Dominick LUQUER (Secretary General, London)

International Intellectual Property Institute (IPI): Molly TORSSEN (Ms.) (Vice President, Washington, D.C.)

International Music Managers' Forum (IMMF): David Richard STOPPS (Director of Copyright and Related Rights, Buckinghamshire), Gillian BAXTER (Legal Advisor, London)

International Publishers Association (IPA): Holger Nikol GEHRING (Geneva)

Knowledge Ecology International, Inc. (KEI): James LOVE (Director, Washington, D.C.); Manon RESS (Director, Information Society Projects, Washington, D.C.); Thiru BALASUBRAMANIAM (Geneva Representative); Vera FRANZ (Ms.) (KEI Fellow, Washington, D.C.)

Library Copyright Alliance (LCA): Lori DRISCOLL (Ms.) (Associate University Librarian and Chair Access Services, Florida); Carrie RUSSELL (Ms.) (Copyright Specialist, Washington, D.C.)

National Association of Commercial Broadcasters in Japan (NAB-Japan): Hidetoshi KATO (Copyright Department, TV Tokyo Corporation, Tokyo)

North America Broadcasting Association (NABA): Erica REDLER, Legal Consultant, Head of Delegation), Alejandra NAVARRO GALLO, Zug, Switzerland)

Arab States Broadcasting Union (ASBU) : Lyes BELARIBI (Directeur du Centre d'Echanges, Bouzereah, Alger)

Public Knowledge: Sherwin SIY (Staff Attorney, Director, Global Knowledge Initiative, Washington, D.C.)

Sports Rights Owners Coalition (SROC): Brian DAVEY (Associate, APCO Worldwide, Brussels); Oliver WEINGARTEN (Secretariat, Brussels)

Third World Network (TWN): Riaz Khalid TAYOB (Researcher, Geneva)

Union Africaine de Radiodiffusion (UAR)/African Broadcasting Union(ABU): Madjiguene-Mbengue MBAYE (Mrs.) (conseiller juridique, radiodiffusion-television-senegalaise, Dakar)

Union Européenne de Radio-Télévision/European Broadcasting Union (EBU): Heijo RUIJSENAARS (Legal Adviser, Legal and Public Affairs Department, Geneva)

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU): Junko MORINAGA (Ms.) (Copyright and Contracts Officer, Copyright and Archives Center, Nippon Hoso Kyokai (NHK-Japan), Tokyo)

Union internationale des éditeurs (UIE)/International Publishers Association (IPA): Antje SORENSEN (Ms.) (Deputy Secretary General and Legal Counsel, Geneva)

Union mondiale des aveugles/World Blind Union (WBU): Christopher Edward B. FRIEND (Chairman, Copyright and Right to Read WG, W. Sussex, United Kingdom); Judith Anne FRIEND, Personal Assistant to Chairman, Copyright and Right to Read, W. Sussex)

V. BUREAU/OFFICERS

Président/Chair: Jukka LIEDES (Finlande/Finland)

Vice-présidents/

Vice-Chairs: Abdellah OUADRHIRI (Maroc/Morocco)
Luis VILLARROEL, (Chili/Chile)

Secrétaire/Secretary: Jørgen BLOMQVIST (OMPI/WIPO)

VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/
INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL
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[Fin de l'annexe et du document/
End of Annex and of document]