

# WIPO



SCCR/19/15

ORIGINAL: English

DATE: June 28, 2010

# E

**WORLD INTELLECTUAL PROPERTY ORGANIZATION**  
GENEVA

## **STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS**

**Nineteenth Session**  
**Geneva, December 14 to 18, 2009**

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 nineteenth session in Geneva, from December 14 to 18, 2009.
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: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Czech Republic, Congo, Cuba, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Germany, Finland, France, Ghana, Greece, Haiti, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Kyrgyzstan, Lebanon, Lesotho, Lithuania, Malaysia, Mauritius, Morocco, Mexico, Monaco, Myanmar, Netherlands, Nepal, Nigeria, Norway, New Zealand, Oman, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, United Kingdom, Ukraine, Venezuela, Zambia, Zimbabwe (82).
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: International Labour Organisation (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), Arab Broadcasting Union (ASBU), South Centre, World Trade Organization (WTO), Council of Europe (CE) (6).
5. The following non-governmental organizations took part in the meeting as observers: American Bar Association, Brazilian Association of Intellectual Property (ABPI), German Association for the Protection of Intellectual Property (GRUR), Computer and Communications Industry Association (CCIA), Association of European Performers’ Organisations (AEPO-ARTIS), European Law Students’ Association (ELSA International), International Association of Broadcasting (IAB), International Association for the Protection of Intellectual Property (AIPPI), Association IQSensato (IQsSensato), International Literary and Artistic Association (ALAI), *Association nationale des artistes interprètes* (ANDI), British Copyright Council (BCC), Central and Eastern European Copyright Alliance (CEECA), Centre for Internet and Society (CIS), Centre for Performers’ Rights Administrations (CPRA) of GEIDANKYO, Centre for International Industrial Property Studies (CEIPI), International Chamber of Commerce (ICC), Chamber of Commerce of the United States of America (CCUSA), Civil Society Coalition (CSC), Actors, Interpreting Artists Committee (CSAI), International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), Consumers International (CI), Comité national pour la promotion sociale des aveugles ou amblyopes (CNPSAA), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Visual Artists (EVA), European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA), Ibero-Latin-American Federation of Performers (FILAIE), Canadian National Institute for the Blind (CNIB), International Video Federation (IVF), International Federation of the Phonographic Industry (IFPI), International Federation of Actors (FIA), International Federation of Library Associations and Institutions (IFLA), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers

Association (FIAPF), International Federation of Journalists (IFJ), International Federation of Musicians (FIM), International Center for Disability Resources on the Internet (ICDRI), International Federation of Reproduction Rights Organisations (IFRRO), International Group of Scientific, Technical and Medical Publishers (STM), Independent Film and Television Alliance (IFTA), Information Technology Association of America (ITAA), Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI), International Music Managers Forum (IMMF), Knowledge Ecology International, Inc. (KEI), Public Knowledge, Library Copyright Alliance (LCA), National Association of Commercial Broadcasters in Japan (NAB-Japan), North American Broadcasters Association (NABA), National Organization of Spanish Blind Persons (ONCE), The South African National Council for the Blind (SANCB), Asociación Civil Tiflonexos – Biblioteca Tiflolibros (Tiflolibros), African Union of the Blind (AFUB), Royal National Institute of Blind People (RNIB), Unión Latinoamericana de Ciegos (ULAC), Asia-Pacific Broadcasting Union (ABU), Union of National Radio and Television Organizations of Africa (URTNA), European Broadcasting Union (EBU), International Publishers Association (IPA), World Blind Union (WBU) (61).

## OPENING OF THE SESSION

6. The Chair opened the 19<sup>th</sup> session of the SCCR and stated that three items had been put on the agenda, namely exceptions and limitations, protection of audiovisual performances and protection of broadcasting organizations. Enough time had to be reserved at the end of the session for the item on future work and for conclusions. The objective of that session was to bring forward the work of the Committee.

7. The Director General of WIPO welcomed delegates and recalled that the item on exceptions and limitations had been discussed at each session of the Committee since November 2004. He referred to the documents submitted on the subject, namely the second revised draft questionnaire (document SCCR 19/2), an analysis of the most important features of limitations and exceptions based on the existing studies (document SCCR 19/3), and the five studies on exceptions and limitations in education (SCCR/19/4 to 8) which had been presented by their authors that day in the morning. As to the needs of the visually impaired (VIPs), he referred to the proposed draft treaty that had been tabled by the Delegations of Brazil, Ecuador and Paraguay during the previous session (SCCR/18/5) and a background document containing further explanation on the subject (SCCR/19/13), as well as the second interim report of the Stakeholders' Platform that had been held in Alexandria (SCCR/19/10). Those two initiatives had to be viewed as complementary. An enabling legal framework was of fundamental importance but practical results in favor of the VIPs that could be achieved on the ground were equally important. Those two initiatives were in no way a substitute one for the other but were complementary initiatives. He also referred to a document presented by the Delegation of Egypt which contained a report on the African Arab Seminar held in Cairo (document SCCR/19/14 prov.). The second main item on the agenda was the protection of audio visual performances. Many positive voices had urged to resolve the outstanding issues. The May 2009 session had been followed by some informal consultations, in particular an informal meeting in Geneva on September 8, 2009, chaired by the Delegation of Nigeria which had reported at the WIPO General Assembly meeting in September 2009 on the positive outcome of those informal consultations. Broadcasting was the third main issue and was also another subject that had been discussed for a long time. Broadcasting was an important element for shaping cultural identity, for ensuring public access to information and for promoting economic growth. A study of the socio-economic impact of broadcasting and lack of access had been requested by Member States during the previous SCCR session. The

Secretariat had decided to split the study into three parts. The first part dealt with market and technology trends in the broadcasting sector and had been made already available. The other two parts, which were under preparation, addressed the impact of signal piracy and the lack of access. Consultations had also been requested and were under consideration to take place in first semester of 2010. The request for captioning services at the Committee meetings had been taken very seriously and with sympathy. However, further consideration had to be given to whether the meetings were of a public or private nature and to how captioning could be introduced. Practices differed within among the UN system. In that regard, a recommendation would be available early 2010. Finally, he welcomed Mr. Trevor Clarke, who took up his duties as Assistant Director General in charge of the copyright and related rights sector; and expressed his appreciation for the services of Deputy Director General Mike Keplinger who had finished his services on November 30, 2009, as well as for Mr. Jorgen Blomqvist who was retiring at the end of 2009.

#### ADOPTION OF THE AGENDA OF THE NINETEENTH SESSION

8. The Committee adopted the draft agenda of the meeting.

9. In relation to the accreditation of new non-government organizations, the Chair indicated that requests had been introduced by the African Union of the Blind (AFUB), All India Confederation of the Blind (AICB), *Asociación Civil Tiflonexos – Biblioteca Tiflolibros* (Tiflolibros), Beneficent Technology, Inc. (Benetech), Canadian Library Association / *Association canadienne des bibliothèques* (CLA), Canadian National Institute for the Blind (CNIB), Caribbean Council for the Blind-Eye Care Caribbean - CCB/Eye Care Caribbean, Centre for Internet and Society (CIS), *Comité National pour la Promotion Sociale des Aveugles ou Amblyopes* (CNPSAA), DAISY Forum of India (DFI), International Center for Disability Resources on the Internet (ICDRI), *Organização Nacional de Cegos do Brasil* (ONCB), *Organización Nacional de Ciegos Españoles*/National Organization of Spanish Blind Persons (ONCE), Royal National Institute of Blind People (RNIB), The South African National Council for the Blind (SANCB), *Unión Latinoamericana de Ciegos* (ULAC) and Vision Australia. The Committee approved the accreditation of the non-governmental organizations.

#### ADOPTION OF THE REPORT OF THE EIGHTEENTH SESSION OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS

10. The Committee then approved the report of the 18<sup>th</sup> session of the SCCR. Technical corrections and amendment proposals to the draft report could be considered by the Secretariat until January 8, 2010.

#### *General Statements*

11. The Delegation of Ecuador, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), stated that there was a need to maintain the balance between the rights of the authors and the interests of the general public, in particular in relation to education and access to information as reflected in the Berne Convention. Concrete steps had been presented by GRULAC for the work of the Committee through Documents SCCR 16/2 and 18/5. The draft treaty proposal on limitations and exceptions aimed at the adoption of an

international treaty which would provide better access for the blind, visually impaired and other people with reading disabilities. It had been carefully prepared by the World Blind Union and deliberations of the proposal had to be started. The promotion and protection of Human Rights were vital elements and the draft treaty proposal was closely linked to the objectives of the UN Committee on the rights of people with disabilities. The proposal had a long background dating back to 1985 when the Executive Committee of the Berne Convention had published the report developed by a Canadian expert on problems and experiences by disabled people to obtain access to protected works. It recommended the adoption of a new international instrument to allow means to permit the production of materials and services in special ways for disabled persons without restrictions. The proposal put forward to the SCCR did not overlap with the broader work of the Committee but was rather of a complementary nature with other initiatives aimed at guaranteeing access to people with disabilities to protected work. Those proposals further contributed to the objectives established under the Development Agenda. It welcomed the consultations held on the protection of audiovisual performances. GRULAC was also pleased to hear about the organization of a regional meeting on broadcasting in the first semester of 2010.

12. The Delegation of Algeria, speaking on behalf of the Arab Group, expressed gratitude for the organization of the African-Arab seminar which had been held in Cairo. The access of blind and visually impaired persons to protected work was of critical importance. It was also essential that the topic of limitations and exceptions was dealt with also in connection with archives, libraries and other related institutions. The civil society had to be encouraged to participate more actively in discussions. There was also a need to produce all documents in Arabic language well ahead of time before the meetings, so that to help the Arab States to benefit from the analysis carried out and the studies prepared. All WIPO official languages had to be treated equally. The Secretariat was invited to provide all the necessary information on the cost of translation of documents and studies produced by the Committee into the six official UN languages.

13. The Delegation of Sweden, speaking on behalf of the European Union, and its Member states stated that the information session on exceptions and limitations for educational activities had provided a valuable contribution to future discussions. Extensive work had also been carried out to find a way forward on the protection of audio-visual performances and it was necessary to share an appropriate level of international protection in that area. Recent developments in that respect were expected to lead to a swift and successful conclusion of the matter. There was an obvious need to modernize the current legal protection of broadcasting organizations at the international level and strong interest existed in that respect. The Committee had to explore any possible way forward to find a swift solution to the current deadlock including the present conditions for convening a diplomatic conference. As regards the question of access to copyright protected works for visually impaired persons, it strongly endorsed the ongoing work within the WIPO Stakeholders' Platform and hoped that the work on that matter would lead to practical, effective and balanced solutions that considerably improved access to works in accessible formats.

14. The Delegation of Senegal, speaking on behalf of the African Group, welcomed the studies which had been prepared on the important issue of exceptions and limitations in education and reiterated its considerable attachment to the balance that had to be struck between the interests of authors and those of the wider public. That was a good opportunity to recall that copyright was not an obstacle in the way of access to knowledge or access to information. It contributed to creativity and provided reasonable access to diverse and high quality content. It was important to understand how exceptions and limitations provided for

in the Berne Convention addressed concerns related to educational activities, the activities of libraries, archive services and disabled people. It was also of interest in the digital environment to consider how to reconcile the application of exceptions and limitations in a digital technology framework. Exceptions and limitations had to be addressed in an all-embracing way and taking into account the recommendations in the WIPO Development Agenda plan. It looked forward to the report on the outcome of the VIP meeting held in Alexandria, Egypt.

15. The Delegation of Egypt endorsed the comments made by the Delegations of Senegal and Algeria. The cornerstone of intellectual property rights was the balance among rights. The SCCR had done its very best ever since the 12<sup>th</sup> session to ensure that its agenda included the very essential item on exceptions. Exceptions and limitations were closely related to the ability of developing countries to develop further and make headway on education, knowledge and research issues. The Seminar held in Alexandria had been an important contribution to the overall global dialogue as reflected in the conclusions reported in Document SCCR/19/14. All documents had to be provided on time in the Arabic language and some information relating to the cost of translating studies and documents for meetings into the six UN official languages still needed to be provided by the Secretariat.

16. The Delegation of Malaysia said that exceptions for the benefit of the visually-impaired people served a noble cause with humanitarian grounds. There was a need for international harmonization of limitations and exceptions to achieve the sharing of accessible books by reading disabled people's organizations. It hoped the Committee would make some progress and be in a position to report at the 2010 WIPO General Assembly with positive results.

17. The Delegation of Iran expressed its general satisfaction for the work carried out on exceptions and limitations by the SCCR. The work had to be balanced while taking into account the lack of intellectual property infrastructure in some countries, the level of technological facilities for the access to information and the diversity of judicial systems. Additional studies would be welcomed to enrich the discussion and help promote further advancement of the work of the Committee.

18. The Delegation of China congratulated the invited experts of the studies on limitations and exceptions for educational activities for providing good background information during the Information Meeting.

19. The Delegation of Japan stated that, on limitations and exceptions, it shared the view that the balancing of protection and the use of copyright had become one of the focal points of discussions in the field of copyright and related rights. The treaty for the protection of audiovisual performances was extremely important as well. The Delegation highly valued the discussions that were carried out at the information meeting on the protection of audiovisual performances held earlier in the month of September 2009 at WIPO. It further hoped that there would be in-depth discussions on the positions and issues by each country, which would accelerate an early adoption of the treaty. With regards to the Treaty for the Protection of Broadcasting Organizations, the Delegation supported the further advancement of those discussions. Signal piracy significantly harmed broadcasters all over the world and undermined the role of broadcasting in providing information to the public. It was necessary to provide means to counter signal piracy aimed at broadcasters.

20. The Delegation of the United States of America wished to engage constructively with the SCCR to move forward on the agenda items.

21. The Delegation of India hoped that the SCCR would make efforts to resolve the differences in norm setting for protection of audiovisual performances which would eventually pave the way for the adoption of an international instrument. Regarding the special provisions related to persons with disabilities in accessing copyrighted works, the Delegation praised the efforts made by the Secretariat in establishing the Stakeholders' Platform and suggesting a future plan of action. It also believed that there was a need to move towards positive international obligations to facilitate access to copyrighted material in special formats for disabled groups, and supported the draft treaty proposed by the Delegations of Brazil, Ecuador and Paraguay. As for the protection of broadcasting organizations, the Delegation reiterated its commitment to comply with the signal-based approach as mandated in the 42<sup>nd</sup> session of the General Assembly, which was to develop a treaty to protect broadcasting organizations in the traditional sense. The Delegation thanked the WIPO Secretariat and the Member States for consenting to its suggestion at the 18<sup>th</sup> SCCR to commission a socio-economic study on unauthorized use of signal and technology trends in the broadcasting sector and following it up with regional seminars and regional consultations before a draft instrument was discussed. The Delegation believed there was a need for international obligations to prevent unauthorized use of signals in the traditional broadcasting sector.

22. The Delegation of Mexico expressed its wishes for concrete results on the protection of audiovisual performances and the protection of broadcasting organizations, and urged all delegations present to work together so as to move forward in negotiations on those two important points.

23. The Delegation of Argentina supported the proposal to begin negotiations on a WIPO Treaty on better access for people who were visually impaired and those with other reading disabilities, based on the document SCCR 18/5.

24. The Delegation of Chile referred to the contribution of Chile on the issue of limitations and exceptions since 2004. It also referred to the proposals by Brazil, Chile, Nicaragua and Uruguay regarding a specific agenda on the topic, and was pleased to see that most of the activities proposed had been progressively taken up, particularly the briefings on exceptions and limitations and the questionnaire. Chile believed that there should be a complementary nature between the proposal for a treaty and the Stakeholders' Platform. The draft treaty under consideration was to be used as a basis to discuss the possibility of an international instrument.

25. The Delegation of Cuba believed the area of limitations and exceptions was the most important item on the agenda, and fully endorsed the general statements made by Ecuador, on behalf of GRULAC. It also fully supported the proposal submitted by Brazil, Ecuador and Paraguay on the WIPO Treaty for improved access for the blind, visually impaired and other reading disabled persons. Member States should consider positively that proposal as a contribution without precedent in the history of WIPO compatible with the principles of the Development Agenda. The Delegation recalled that, in 2006, the Convention on the Rights of Persons with Disabilities had been adopted to help the latter overcome the barriers to participate on an equal footing in social life, but the rights of persons with disabilities were still being abused. It further informed that the National Blind Organization of Cuba had endorsed that initiative. Finally, the Delegation urged the Committee to continue with the work plan on exceptions and limitations proposed by Brazil, Chile, Nicaragua and Uruguay during the 16<sup>th</sup> session of the SCCR.

26. The Delegation of Paraguay fully endorsed the statement made by the Delegation of Ecuador, on behalf of GRULAC. An international treaty would be an important step in promoting exceptions in favor of persons with visual impairments, which was already contemplated in the legal frameworks of many states. Those limitations and exceptions were also upheld in the Paraguayan legislation which already gave exemptions to teaching and education.

27. The Delegation of Ghana supported the statement made by the Delegation of Senegal, on behalf of the African Group. Ghana appreciated the initiative taken by Brazil, Ecuador and other countries to broaden the scope of the provisions related to the exemptions and limitations in favor of visually impaired and other disabled persons. It also expressed its willingness to further advance ongoing discussions on the protection of audiovisual performances and broadcasting organizations to reach a speedy conclusion.

28. The Delegation of Barbados aligned itself with the statement made by the Delegation of Ecuador, on behalf of GRULAC. With respect to the issue of limitations and exceptions to enhance access to copyright protected works by the visually impaired and other reading disabled persons, Barbados expressed its appreciation to WIPO for the work done with regards to the establishment of the Stakeholders' Platform and for the preparation of the various documents. It further thanked the Delegations of Brazil, Ecuador and Paraguay for tabling the World Blind Union's proposal to enhance in an appropriate manner access of the blind, visually impaired and other reading disabled persons to copyright protected works. Barbados reiterated its support for finding an effective solution to that matter at the international level, through negotiations on an internationally binding instrument.

29. The Delegation of Brazil believed that the inclusion of a permanent item on limitations and exceptions was an important contribution of the Committee in mainstreaming the Development Agenda recommendations. With regard to the draft treaty, Brazil believed that after more than 100 years of international negotiations, the international copyright system had achieved a degree of maturity that enabled it to develop a concrete and precise instrument to address the needs of the visually impaired. The time was right for WIPO to fulfill its mission as an UN-specialized agency in that respect. An international treaty was necessary and complementary to the work undertaken by the Stakeholders' Platform. The Delegation further informed that it had submitted a background document in six languages and also in Portuguese regarding the draft treaty (document SCCR/19/13).

30. The Delegation of Mexico expressed its support for the work carried out on limitations and exceptions for the community and in the interest of the public, in particular for disabled persons. Mexico's national and federal laws on copyright contained a series of exceptions and limitations to copyright. The Delegation advocated the adoption of interpretation standards that could give legal certainty to the application of those exceptions.

31. The Delegation of Argentina thanked the Delegation of Brazil for the background paper that was presented, and supported the initiative as a useful move that would help in the discussions.

32. The Delegation of Uruguay supported the statement made by the Delegation of Ecuador, on behalf of GRULAC. The Delegation stressed that exceptions and limitations was the most important item on the agenda, and supported the initiative for a treaty to give greater access to the visually impaired.



33. The Delegation of Malaysia, referring to the proposal by Brazil, Ecuador and Paraguay, cited a census by the World Health Organization in May 2009. Its fact sheet number 282 mentioned that 340 million visually impaired people of whom 45 million were blind, about 87 per cent of the world's visually impaired people lived in developing countries; and 1.4 million blind children were below the age of 15. The Delegation sought clarification on understanding the areas of constraints in the proposed treaty and the means to move forward.

34. The Chair briefed the Committee on the proceedings to be followed.

35. The Delegation of Pakistan emphasized that social, economic and political conditions in developing countries, namely low access to information, literacy rates and lack of infrastructure should be kept in mind when incorporating limitations and exceptions into the national or the international legal system.

36. The Delegation of Indonesia reiterated its support to conduct further discussions on the substantial issues of the draft treaty. According to research conducted by the Centre of Statistics, Indonesia had a significant number of visually impaired or blind people numbering more than 17 percent from the total number of generally disabled people. One of the ways to provide a better future for that unfortunate group was by providing them with a robust policy in education, particularly related to the access of copyrighted works.

37. The Delegation of Venezuela supported the general statement made by GRULAC, and the work carried out on limitations and exceptions by the Committee.

38. The Delegation of Egypt asked in which item of the agenda the cost of translating documents into the six languages would be placed.

39. The Chair replied that that matter would be tackled slightly later in the program, at the suitable moment before the end of the meeting.

40. The Delegation of Ecuador hoped that the Committee would be able to overcome the shortcomings of the proposed treaty, if any.

41. The Delegation of Morocco raised some procedural matters with the Chair. The Delegation referred to the guidance from the Chair the previous day where he invited the Delegations to make general statements on item 4 on limitations and exceptions before entering into the details of the matter, and sought to know if that procedure was to be applied to all the other items as well. The Delegation supported the statement made by the Delegations of Senegal, on behalf of the African Group, as well as of Algeria on behalf of the Arab Group.

#### *Limitations and Exceptions*

42. The Chair invited the Secretariat to present documents SCCR/19/2 and SCCR/19/3.

43. The Secretariat explained that document SCCR/19/2 on the second draft questionnaire on limitations and exceptions, was a revised version of document SCCR/18/3. It took into account the comments sent by some Member States, and instead of the original 52 questions, the revised version contained 116 questions. As to document SCCR/19/3, the Secretariat

pointed out that it synthesized the findings of the studies commissioned by WIPO on the issue of limitations and exceptions until that moment, namely the studies prepared by Sam Ricketson, Nic Garnett, Judith Sullivan and Kenneth Crews.

44. The Delegation of Sweden, speaking on behalf of the European Union and its 27 Member States, reiterated that the questionnaire should be as focused as possible, and limited to exceptions and limitations related to educational activities, activities of libraries and archives, and provisions for disabled persons and digital technology in the field of copyright. A well-balanced and decisive questionnaire would be very useful for continued discussions on exceptions and limitations.

45. The Delegation of Egypt looked forward to receiving an update on the analytical documents in view of the studies that had been prepared on exceptions and limitations for educational uses.

46. The Delegation of Australia expressed reservations on the length of the questionnaire and also about the appropriateness of some of the questions. The questionnaire should seek to obtain factual answers from Member States. Some questions, such as questions 21 to 23, questions 53 to 55, questions 65 to 67 and questions 86 to 88 sought opinions rather than facts from Member States. Opinions or analyses were better to be sought from non-governmental bodies rather than from government bodies. The Delegation also queried whether questions relating to Free Trade Agreement negotiations should be appropriately included. It pointed out that having over a hundred questions was a major exercise, and to assist the Committee's work, it might be better to divide the questionnaire into topics where Member States be asked to respond to questions relating to, for example, persons with disabilities and educational activities in the first instance, and leave the other topics as they mature through the Committee's work for a later stage.

47. The Delegation of Switzerland shared the concerns of other Delegations in relation to the size of the questionnaire, and supported the position of the Delegation of Australia. The Delegation suggested including one more question in part 4 regarding questions 84 and 88 on the possible impediments for importing and exporting accessible materials.

48. The Delegation of China pointed out that both documents SCCR/19/2 and 3 would help the Standing Committee to resolve the issues on limitations and exceptions and enhance national legislation and research in that area.

49. The Delegation of the Republic of Serbia, speaking on behalf of the Group of Central European and Baltic States, supported further work on analyzing the full relevant questions with regard to the exceptions and limitations with the aim of achieving positive outcome in that field.

50. The Delegation of Argentina supported both documents SCCR/19/2 and 3.

51. The Delegation of the United States of America expressed support for serious, rigorous, empirical work in the intellectual property field. It expressed three concerns regarding document SCCR/19/2. First, as the Delegation of Australia had pointed out, there were some questions for which a meaningful answer required expertise outside that of the government circle. Second, because of the growth of the questionnaire, some of the questions were not in the best order. The third was the length of the questionnaire that contained more than 110

questions. Breaking the questionnaire into multiple questionnaires might allow it to be best addressed by different parts of government.

52. The Delegation of India pointed out that the questionnaire was only intended as a tool for data collection to facilitate an analysis of the status of limitations and exceptions. Since that was the first time that such an important exercise was undertaken in that Committee and in that Organization, it believed that it should not be the length of the questionnaire but the usefulness and relevance of the questions that should be the determining factor.

53. The Delegation of Japan expressed some concerns that considerable time would be necessary to complete the draft questionnaire due to the number of questions. Moreover, it contained questions about ongoing FTA negotiations which could be a confidential matter not to be disclosed at that stage.

54. The Delegation of New Zealand aligned itself with the comments and suggestions made by the Delegation of Australia with regards to the draft questionnaire. It questioned the appropriateness of items 53 and 54. Questions on the social-economic reality of a country implied a value judgment that should not be part of the exercise. It also pointed out that document SCCR/19/7, which contained the study prepared by Daniel Seng on limitations on educational uses in Asia and the Pacific, referred to the analysis of the New Zealand law of 2007. It recalled that, in 2008, New Zealand had amended its copyright legislation quite substantially to take account of digital developments and that included various amendments relating to the exceptions for educational purposes. The Delegation offered to work with the author or the Secretariat to update the study accordingly.

55. The Delegation of Iran pointed it had sufficient ground for moving towards the harmonization of international minimum standard of Exceptions and Limitations. The Delegation recommended identifying the common points of studies and the view points of Member States for simplifying and arranging the common points in order to discuss them in a clear and concrete manner.

56. The Delegation of Senegal indicated that the questionnaire had the merit of covering a range of issues by taking a holistic approach. The African group expressed a preference for the new version of the questionnaire.

57. The Delegation of Brazil echoed the statements made by the Delegations of India and Senegal with regard to the questionnaire. The questionnaire should be inclusive and with a holistic approach.

58. The Delegation of Ecuador shared the concern expressed by the Delegations of Australia and the United States of America that the number of questions to be submitted by a single date might lead to the replies not being as detailed as necessary. A possible solution could be to divide the questionnaire in different parts and to submit it at different dates. It pointed out that question 105 should specify whether reference was made to quotations of the whole works or just a part of fragment of the work. It would also be interesting to know what kind of works might be quoted or if any restraint existed in regard to the class of work subject to quotation.

59. The Delegation of Venezuela stressed the need for producing a comprehensive, holistic questionnaire that addressed the concerns of all stakeholders and Governments. It was not a

problem if the questionnaire was long. Different deadlines of submission for different parts would also be confusing.

60. The Delegation of Egypt supported the statement made by the Delegation of Senegal, on behalf of the African group, particularly regarding two aspects. First, the questionnaire covered all exceptions and limitations. Secondly, it appeared presumptuous to judge what any government would be able to assimilate and respond to and what they might not be able to do. Flexibility should be the guiding principle in that exercise as Governments knew better what to answer and when to answer, if they would answer.

61. The Delegation of Angola indicated that the questionnaire was well balanced. There was no problem with sending out the questionnaire as it was.

62. The Delegation of Chile agreed with the Delegations of Brazil and India on that the questionnaire must be a holistic and comprehensive exercise. It also shared the views of Australia, suggesting that questions should come up with factual responses. It also shared the suggestion made by the Delegation of Egypt. The questionnaire should not only be focused on exceptions and limitations related to education activities, libraries and archives, but it should also include the information on limitations regarding copyright and digital technologies.

63. The Delegation of Cuba supported the second draft questionnaire, as it was presented in document SCCR/19/2. It shared the comments made by the Delegations of Brazil, Egypt, Angola, India, Chile and the African group.

64. The Delegation of the Russian Federation did not object the approval of the text of the Second draft questionnaire on exceptions and limitations and its further distribution among the Member States for replies and noted that the questions should be of fact-finding nature and the responses should be based on national legislation.

65. The Delegation of Mauritius supported the suggestion made by the Delegation of Egypt aimed at circulating the questionnaire for appropriate action.

66. The Secretariat recognized that it was impossible to meet the multiple needs of Members with that small number of questions. Nevertheless, at the previous meeting the first draft consisted of fifty two questions, while currently they were dealing with one hundred and sixteen questions. As indicated by the Delegations of Australia and the United States of America, some Members might not answer the hundred and sixteen questions. But a good aspect of the questionnaire was its presentation, subdivided in seven different parts. In consequence, Governments could take different parts and pass them to the relevant interested parties (either private or public). Those seven parts could still be improved by making them even clearer. Members were free to answer the parts they considered relevant to them and leave the others aside. Reaching a decision on the questionnaire and moving it forward was in the interest of all Members. The Secretariat proposed to make the adjustments outlined and suggested that those Members who had concerns about particular questions provided feedback to the Secretariat within the following weeks.

67. The Chair suggested a deadline to accomplish both tasks. Comments on the studies and the questionnaire should be sent by January 8, 2010. Also, an updated version of the analytical document on the studies on limitations and exceptions would be prepared by the

WIPO Secretariat, taking into account the five new studies. He invited the Secretariat to present document SCCR/10/10.

68. The Secretariat referred to document SCCR/19/10 on the second interim report of the Stakeholders' Platform related to a meeting of the platform held in Alexandria, Egypt on November 3 that year. WIPO had funded the participation of stakeholders coming from developing and least-developed countries. The report of that meeting was structured in two parts. Firstly, it dealt with the outcome of the trusted intermediary subgroup and basically it referred to two proposals, namely, the guidelines on the trusted intermediaries and a pilot project to test those guidelines. The second part of the report dealt with a subgroup dealing with enabling technologies. The technology subgroup presented a proposal for an enabling technologies framework, which was proposed by WIPO, together with two international standards bodies, namely the DAISY Consortium and EDItEUR. Consequently, the Committee was invited to note of the contents of that report (document SCCR/19/10), including that the Secretariat submitted a further report to the next SCCR session.

69. The Chair proposed to consider the draft treaty proposal by Brazil, Ecuador and Paraguay.

70. The Delegation of Ecuador endorsed the statements made by the Delegations of Brazil and Paraguay. The core of the text could be found in articles 4, 5, 7 and 8. The treaties administered by WIPO recognized the importance of the balance between the rights of the author and the public interest. The Munich Declaration on the three-step test of July 2008 had been endorsed by a number of eminent personalities from different universities throughout the world. The declaration stated that exceptions and limitations to copyright was the most important mechanism to achieve a good balance of interests. The analytical report prepared by the Secretariat (document SCCR/19/3) covered in paragraph 79 the principle of territoriality applicable to copyright as embedded in international copyright conventions. The same document covered on paragraph 80 the complexity and unclear nature of private international law in determining the legality of cross-border transactions. The number of works in accessible format for people with visual impairments, globally speaking, was extremely low. Thereby wherever those accessible works existed, they should be allowed to freely circulate and that could be achieved by the harmonization of limitations and exceptions covering that subject. Difficulties arose from the current divergence among the national laws of different WIPO Member States.

71. The Delegation of Brazil fully supported the statement of Delegation of Ecuador and emphasized that apart from the cross-border aspect there was an evident lack of rules related to exceptions and limitations within national laws.

72. The Delegation of Paraguay fully supported the statements from Ecuador and Brazil. It was also important to bear in mind the obligations established by the Convention on the Rights of Persons with Disabilities.

73. The Chair invited the representatives of the World Blind Union (WBU) and the International Publishers Association (IPA) to give complementary information on the Stakeholders' Platform items.

74. The representative from the World Blind Union (WBU) stated that accessibility for blind people was a very complex challenge that needed to be addressed through both the Stakeholders' Platform and the proposed treaty so as to find a comprehensive solution. On

the stakeholder platform, WBU was fully committed to working for the convergence on operational issues such as designing the trusted intermediary model and developing enabling technologies that bring accessibility features into the front end of publishing software.

75. The representative from the International Publishers Association (IPA) said that the Platform was a very young institution which had met for the first time in January 2009 but had made a lot of progress regarding the principles of trusted intermediaries and enabling technologies. He expressed the hope that the necessary funding would be available to take the trusted intermediaries pilot project forward. A document on frequently asked questions and a file transfer agreement were also under preparation by the Platform. In some countries, such as Brazil, it had been possible to get the local publishers and charities to work together to develop sophisticated and successful digital delivery platforms of accessible works in Portuguese. He noted the great spirit and enthusiasm that stakeholders had shown in moving forward.

76. The Delegation of Brazil commended the transparency of the work of the Platform. As an observer in the meeting organized in Alexandria last November 2009, it could confirm that the sense of the Development Agenda had been really mainstreamed in the Organization. It also stressed the complementarity of the Platform and the proposed treaty. However, it pointed out that there were two fundamental obstacles regarding access to knowledge and culture by visually impaired people that still needed to be overcome. One was the lack of adequate national legislation on exceptions and limitations for the benefit of visually impaired people, particularly in developing countries; and the other was the need of addressing the issues of cross-border movement of works in accessible formats.

77. The Delegation of Sweden, on behalf of the European Union and its member States, informed that the European Union and the European Commission had recently set up a stakeholders forum concerning the needs of persons with disabilities, in particular visually impaired persons, to consider possible policy responses. It strongly supported the work carried out within the WIPO Stakeholders' Platform aiming at exploring concrete needs, concerns and suggested approaches to achieving the goal of facilitating access to works in alternative formats for people with disabilities. Its aim must be to arrive at practical, effective and balanced solutions that considerably improved access to copyright protected material for visually impaired persons. There were clearly international aspects to be addressed but, at the same time, there were many examples of existing and well functioning systems and practices at national level. It was important to benefit from both experiences in continued discussions. It suggested that the WIPO Secretariat put together an information document outlining such successful examples.

78. The Delegation of Senegal, on behalf of the African Group, stated that the objective of the treaty proposal put forward by the Delegations of Brazil, Ecuador and Paraguay was very laudable. However, it noted that the key issue in dealing with limitations and exceptions was to find a balance between rightholders and users but also, at the same time, a balance among the users themselves. The African Group reiterated its preference for a global approach to address the needs of all persons with disabilities.

79. The Delegation of the European Commission stated that its submission actually covered wider issues than just the visually impaired. The legal framework at the European level Directive 2001/29 on copyright and related rights in the information society, set out exclusive rights and exceptions to those rights. Exceptions for persons with disabilities allowed member States to provide for a limitation to the reproduction right for uses which were

directly related to the disability and of a non-commercial nature, to the extent required by the specific disability. In July 2008, the European Commission had launched a public consultation in the form of a green paper on copyright and the knowledge economy. That consultation had yielded almost 400 responses and had been consolidated in a communication published in October 2009 identifying three priority areas, namely print access for persons with disabilities, orphan works and digital preservation and dissemination of out-of-print works. A first meeting of a stakeholders' dialogue on the issue of persons with disabilities had taken place in Brussels in December 2009, which had brought together representatives from the European Blind Union, the European Federation of Publishers, the European Writers Council, the Publishers Licensing Agency, the International Federation of Reproduction Rights Organization, the European Disability Forum (DEDICON), and various European Commission departments. A memorandum of understanding on measures to improve the on-line and off-line distribution of works in accessible formats would be published in the summer of 2010, including the steps towards establishing trusted intermediaries in every European Union member State with guidelines on their functioning, the setting up of an electronic inventory of available works and the free circulation of legally produced copies in the Union. Other recommendations in the above communication referred to orphan works and out-of-print works. The European Commission had held a public hearing on orphan works in October 2009 to assist future policy decisions on digital conservation of Europe's cultural heritage and its making available to libraries, the research community and the public at large. To focus the debate on a single market for creative content on-line, the European Commission had published a reflection paper for public consultation on consumer access, commercial users' access and the protection of rightholders.

80. The Delegation of the United Kingdom stated that its national law included an exception to copyright for the benefit of visually impaired people, which had been introduced in October 2003, and was known as the Copyright Visually Impaired Persons Act of 2002. That exception allowed accessible copies of copyright material to be made by, and also on behalf of, people with visual impairments. The definition of visual impairment was broad enough to also cover those who were unable, due to physical disabilities, to hold or manipulate a book. The copyright exception could be used by support organizations only in the absence of a relevant licensing scheme. Equally, the law ensured that any licensing scheme must not undermine the requirements of the copyright exception. The copyright exception did not apply in cases where authors and publishers produced an accessible format work themselves. A free collective licensing scheme was offered by rightholders so most copying was made by organizations such as the Royal National Institute of the Blind (RNIB) under license rather than under an exception. The Delegation presented some examples of initiatives at national level. The first example was the Booker Prize for Fiction had introduced a new rule requiring publishers to submit, within two weeks of the short list announcement, an electronic version to RNIB, which would act as a trusted intermediary in order to produce the titles in an accessible format. The second example was a focus scheme, launched in April 2009 and supported by prominent publishers, such as BBC Audio Books, Harper Collins, Random House and Penguin, as well as many high-profile authors, to demonstrate that there was a market for books printed in a larger font size. The third example was the transcription of more than 200 popular national newspaper magazine titles in a range of accessible formats, prepared by volunteers for the registered charity National Talking Newspapers and Magazines. The fourth example was a seminar organized by publishing organizations and the RNIB, held at that year's London Book Fair, to explore the challenges which publishers faced in creating and publishing e-books in varying accessible formats. The United Kingdom Government also recognized the need to work at international level to ensure

that works made accessible at national level could also benefit reading disabled people overseas and vice versa.

81. The Delegation of Australia noted that there had been fruitful national discussions on the merits of the proposed treaty as well as positive stakeholders' developments. The key question was whether the proposed treaty, in the form in which it had been presented to the Committee, was the most effective mechanism to achieve the dual aims of possible mandatory exceptions to copyright, to supply copyright material in acceptable format and mechanisms and to allow for the import and export of accessible works. Without commenting on specific articles, the Delegation thought that the treaty would benefit from being simpler and clearer in its objective and scope. Also, investigation of options such as developing model guidelines, model laws and/or developing central repositories might also be beneficial. It supported the suggestion made by the Delegation of the European Union regarding an information document on successful national examples. Finally, it endorsed the next steps outlined by the Secretariat in relation to the work of the Stakeholders' Platform.

82. The Delegation of Spain highlighted the importance of the involvement of all stakeholders, both at national and international level, when considering any solution. It cited the example of ONCE, the Spanish National Organization of the Blind, which had reached agreements with local publishers regarding the free access to files of teaching materials and books. Publishers provided the files in PDF format so that ONCE could directly convert them into Braille without scanning the materials page by page.

83. The Delegation of Kenya endorsed the statement of the Delegation of Senegal regarding the need to take a holistic approach. Kenya was in the process of amending the national law and amendments included exceptions and limitations for the visually impaired among other beneficiaries. Empirical studies carried out in eight African countries showed that it was very difficult to isolate one particular area to the detriment of the others.

84. The Delegation of New Zealand supported the work undertaken by the Stakeholders' Platform and looked forward to an acceptable solution on the issue of the visually impaired. It seemed only logical to also look at international mechanisms that could underpin any practical measure. In that regard, the Delegation welcomed the intention behind the proposed draft treaty, but the instrument needed to carefully differentiate between the concept of rights and the concept of exceptions. The Delegation also expressed some concerns regarding Article 2(d) which provided that contracting parties could implement in their laws more extensive protections for the visually impaired and reading disabled than those required by the treaty itself. That article did not consider the application of the 3-step test. Also, Article 4(a) allowed non-profit entities to make accessible copies of copyright works provided that the entity had lawful access to the work and the copies were exclusively for supply to visually impaired persons. There was no requirement in that provision for the entity to have made reasonable efforts to obtain an accessible copy or that such a copy might only be made if an accessible copy was not available within a reasonable time at an ordinary commercial price.

85. The Delegation of Japan said it was important to carefully consider and respect each country's domestic situation when considering concrete limitations and exceptions.

86. The Delegation of Uruguay welcomed the proposal for a draft treaty. As the Delegation of Brazil had pointed out, only a few laws in developing countries covered such exceptions and the problem of the import and export of works to facilitate access to the visually impaired. It also sought clarification regarding proposed Article 4(c) of the draft treaty.



87. The Delegation of the United States of America referred to the series of specific exceptions and limitations in the national copyright law. Qualified non-profit organizations in government agencies were free to reproduce and distribute published literary works under copyright in specialized formats for use by blind persons or persons with other print disabilities. The National Library Service distributed two million Braille and audio-book copies to nearly 800,000 users each year. The Delegation recognized the ongoing work of the WIPO Stakeholders' Platform and expressed its appreciation for the draft treaty prepared by the World Blind Union, submitted as a formal proposal by the Delegations of Brazil, Ecuador and Paraguay. The Delegation also referred to the national process initiated in 2009, namely a Notice of Enquiry, a public roundtable with stakeholder representatives and a further public comment period. It believed that the time had come for WIPO Members to work towards some form of international consensus on basic necessary limitations and exceptions and copyright law for persons with print disabilities. It could take the form of a model law endorsed by the SCCR, or a detailed joint recommendation to be adopted by the WIPO General Assemblies, or a multilateral treaty. In that regard, a work program could begin with a series of focused consultations aimed at producing a carefully crafted Joint Recommendation of the Berne Assembly and the WIPO General Assembly. That initial Joint Recommendation could be a step towards the development of a treaty establishing basic copyright limitations and exceptions for persons with print disabilities, particularly regarding the free exportation and importation of special format materials for persons with print disabilities in all countries. International consensus could be reached within the framework of Article 9(2) of the Berne Convention and corresponding provisions of the TRIPS Agreement, the WCT and the WPPT. Finally, the Delegation expressed its commitment to work on both better exceptions and better enforcement of copyright law.

88. The Delegation of Turkey said that the Turkish Copyright law permitted exceptions for facilitating the access by visually impaired persons to copyrighted materials. It supported the work of the Stakeholders' Platform and supported a positive approach regarding the negotiation on a treaty.

89. The Delegation of Morocco pointed out that access to knowledge was basic for any development process. It supported not only a treaty on limitations and exceptions for the visually impaired but also a holistic approach as the African and Arab states Groups had already stated.

90. The Delegation of Iran welcomed the treaty proposal and stressed the need to maintain the balance between rights of authors and the large public interest.

91. The Delegation of Mexico said the Mexican federal law on copyright permitted the reproduction, translation and adaptation of works in order to make them accessible to the blind, visually impaired and deaf. Mexico had also ratified the United Nations Convention on the Rights of Persons with Disabilities.

92. The Delegation of Angola said that any proposal on exceptions to copyright should take into account several types of disabilities, such as Down's Syndrome or hearing impairments. Perhaps instead of a treaty, the Committee should consider the adoption of a protocol.

93. The Delegation of Canada referred to its statement made during the 18<sup>th</sup> session of the SCCR. It believed that any solution to the problems of access by visually impaired persons to copyright works should allow for a variety of means for domestic production of accessible

material including for example exceptions, compulsory licensing or conditional exceptions. There might also be different types of limitations and exceptions for different type of accessible material, even in one country. Having different types of limitations and exceptions in different countries or for different types of accessible material would not prevent the international exchange of such materials.

94. The Delegation of the Russian Federation said that limitations and exceptions for the blind and visually impaired persons had been reflected in the new Russian Civil Code. It supported the work of the Stakeholders' Platform. The proposal of a draft treaty from Brazil, Paraguay and Ecuador was somewhat premature. There could be very different approaches to solve existing problems. It could be very positive to have an exchange of opinion on what could be done at national level and put forward a proposal acceptable to as many countries as possible in a short period of time.

95. The Delegation of the Republic of Korea said that international measures on limitations and exceptions should consider the technical solutions to prevent unauthorized copying and specially designed formats for visually impaired persons.

96. The Delegation of Norway thanked Mr. Jorgen Blomqvist for the work done for WIPO and its Member States during 17 years. It emphasized the need for a treaty proposal with a clear objective, and also supported the Stakeholders' Platform.

97. The Delegation of Ghana supported the statement of the Delegation of Senegal, on behalf of the African group, and would join any effort that the international copyright community would make to provide easy access to knowledge to the blind and visually impaired.

98. The Delegation of Greece reiterated what it had stated during the 18<sup>th</sup> session of the SCCR. It pointed out that Greek legislation provided exceptions not only for people with defective or reduced vision, but also for deaf-mute persons. It described the main characteristics of those national exceptions.

99. The Delegation of Azerbaijan stated that any international standard would have had a positive effect on national laws.

100. The Chair invited the non-governmental organizations to take the floor.

101. The representative of the International Federation of Journalists (FIJ) favored enhanced access to information. Copyright was not the real barrier to accessibility to works for people with disabilities, the barriers were funding and will. The answer was to build more transparent licensing schemes and to ensure fair access and remuneration.

102. The Representative of Civil Society Coalition (CSC), speaking also on the behalf of the American Council of the Blind, shared the frustration that many of his blind peers around the world on a daily basis incurred when trying to access publications or other printed works in ultimate formats. Access to such information was essential to education, and greater employment opportunities. The Stakeholders' Platform and the treaty could move together and not be mutually exclusive.

103. The representative of the International Video Federation (IVF) recognized the importance of balanced copyright protection including appropriately crafted exceptions and

limitations. Specific examples in the audiovisual sector included deals with archives on preservation and close captioning on DVDs. Further innovations were being developed in the context of digital cinema. The argument for change therefore seemed to suggest that that flexibility was a bad thing. Often the issue was not the law but an issue of funding. He supported the idea of practical solutions that could facilitate both licensing and the functioning of existing exceptions.

104. The representative of Knowledge Ecology International (KEI) welcomed the statement made by the Delegation of the United States of America.

105. The representative of International Center for Disability Resources on the Internet (ICDRI) particularly supported the proposed treaty regarding limitations and exceptions. She highlighted the lack of understanding regarding the application and use of screen reading software with a synthetic voice, which was an assistive technology tool that had been in use for over two decades for people with visual mobility and cognitive disabilities.

106. The representative of the Latin American Union for the Blind (ULAC) pointed out that in the course of previous sessions of the SCCR many Delegations recognized the importance to find the necessary balance between the rights of rightholders and the rights of users. A group of authors in Latin America, in the United States of America, Canada and the United Kingdom had addressed an open letter to WIPO emphasizing the need to solve the problems of blind and visually impaired people to access culture and information materials through an international legal instrument. The Platform was a very useful setting to exchange opinions and experiences that could help to find concrete solutions but it had to be complemented with the development of a specific international instrument.

107. The representative of the International Federation of Reproduction Rights Organizations (IFRRO) was pleased to see all the good results produced by the Platform. IFRRO also believed that the Platform permitted to bridge the differences standing between the stakeholders concerned and enabled to work more diligently on identifying appropriate solutions to the request by the World Blind Union and others in providing appropriate access to copyright works by persons with print disabilities. The Platform had developed a set of tools including approved guidelines for trusted intermediaries. Those guidelines addressed two scenarios: copies made under licensing agreements and also copies produced under an exception. Both could be transmitted across borders in a secure environment in conformity with the trusted intermediaries' guidelines. Cross-border transfer was the essence of the trusted intermediaries' guidelines. The Stakeholders' Platform had also addressed the issue of technology components so that persons with print disabilities in the future could have had the same product at the same time as others. What was important was to allow those tools to be further developed to offer permanent solutions for the future.

108. The representative of International Federation of Musicians (FIM) recognized the importance of the issues under discussions for the search of a balance between the interests of the public, on the one hand, and the interests of creators and other rightholders on the other. The problem of disabilities particularly visual disability for people trying to have access to copyrighted works should be solved in a balanced way. The introduction of the three-step test in international legal provisions was an important step forward. FIM believed in its efficacy and thought it would help to bring into national legislations the necessary limitations and exceptions. That was proved by the various countries which had advanced provisions in the national legislation already able to meet the needs of disabled persons, libraries and archives. Artists and performers from underprivileged backgrounds were one of the groups of workers

most hard hit by the informal economy, the lack of legal protection or the difficulty of obtaining legal protection in practice. FIM hoped that initiatives taken on exceptions and limitations by the SCCR would not ignore the progress which still needed to be made to benefit performers.

109. The representative of the Ibero-Latin-American Federation of Performers (FILAIE), speaking in relation to exceptions and limitations for blind and the visually impaired people, recognized that there was a very large community world-wide that needed support and assistance. He stressed the importance of making better use of the Berne Convention, WCT and WPPT articles, and agreed that the blind and visually impaired had the right to access but the intellectual property protection aspects had to be taken into account as well. In respect to the questionnaire that was distributed, FILAIE suggested that question number 89 which started by reference to religious, cultural and social associations, should also refer to official acts of the State.

110. The representative of the International Federation of Film Producers Association (FIAPF) noted the existing international conventions were entirely adequate with respect to exceptions and limitations and that deficiencies only existed at the level of some national laws. Normative negotiated agreements between parties were often useful alternatives to exceptions and limitations imposed by legislation. He cited the agreement between FIAPF and the Association of European Cinematics, signed in Spring 2009, which had represented a major update on a similar agreement dating back to 1971 to adapt the conditions of access to archives, define the number of authorized users and include the possibility of consultation by individuals for educational research purposes on the archive premises including in Intranet. It also allowed the remote access to films for research and educational purposes and defined the secure framework for public screenings within the archive film theatres. Access by visually impaired people to audiovisual works was an on-going concern of the international audiovisual industry as attested by the growing number of versions of films and television series made available on air or as packaged product with audio script.

111. The representative of the International Group of Scientific, Technical and Medical Publishers (STM) informed that STM had contributed to making works available in accessible formats on a voluntary basis for a long time. STM had experience with UN inter-agency cooperation programs in relation to Research for Life which made over 5,000 scientific journals available in developing countries at no cost to the user in approved institutions. For example, the University of Kinshasa in the Democratic Republic of Congo had the same access as the University of Chicago based on those arrangements. STM also participated very actively in the Stakeholder's Platform and believed that was the most promising initiative to substantially deliver more access to more visually impaired people around the world. The Platform offered solutions that were market-driven and also a back up solution through the trusted intermediaries, precisely when there was no market copy available that could be enjoyed by persons with a visual disability.

112. The representative of South African National Council for the Blind (SANCB) noted that the South African Disability Alliance, a group of 13 national disability structures in South Africa, had endorsed and supported the initiative for the World Blind Union treaty. Unfortunately, there was a book apartheid in South Africa as in the previous year over almost 18,000 new publications had been released, but there were only 900 that were in accessible format produced by the non-profit sector and that 900 did not consist of new titles but of titles that had been released in the past. The SANCB therefore urged the South African Delegation to use the leadership skills, displayed in the ratification of the UN Convention on the Rights

of Persons with Disabilities, and to engage with the African Group to look at the issue in terms of accessibility as well as cross-border exchange of shared material.

113. The representative of the Computer and Communication Industry Association (CCIA) noted that voluntary agreements on model laws had to be viewed as complements to and not a substitute for binding international norms. The global nature of problems relating to cross-border exports and imports of works for example demonstrated the need for international harmonization of minimum levels of access.

114. The Delegation of South Africa supported the statement made by the Delegation of Senegal, on behalf of the African Group, and recalled that the debate of the Committee should not be viewed in isolation from discussions in other WIPO committees, and in particular, should take into account the recommendations contained in the WIPO Development Agenda. It noted that useful recommendations had been made regarding copyright of works in accessible formats, optimization of digital technologies and exportation of works.

115. The representative of Consumers International (CI) reiterated its strong support for the draft treaty for the visually impaired. Limitations and exceptions in international law had to remain an open subject matter for discussion. It was not appropriate that rightholders interests had been dealt with through international norms setting, whereas consumers' interests only had been dealt with through the exchange of best practices.

116. The representative of the International Center for Industrial Property Studies (CEIPI) stated that it had long been working on the crucial issue of limitations and exceptions to copyright, and more generally on how to reconcile protection for intellectual property, on the one hand, and fundamental rights, on the other. The three-step test was an instrument that was both effective and ambiguous because not only it prevented too broad interpretations of limitations and exceptions being made, but also generated many questions about the scope of the limitations and exceptions that States could be entitled to introduce. The adoption of a binding international instrument on limitations and exceptions to copyright could ensure greater legal certainty by guaranteeing a certain amount of leeway for States in maintaining or introducing appropriate limitations and exceptions in order to ensure the protection of other fundamental interests including the right to information, to development and to education. The adoption of a treaty on limitations and exceptions for the benefit of visually impaired persons would be an important first step to ensure their access to copyright protected materials. Further thought should be given to negotiation of a general treaty on limitations and exceptions.

117. The representative of the International Confederation of Music Publishers (ICMP) supported the various initiatives aimed at advancing collective knowledge of the scope of protection granted by copyright law around the world in relation to persons with disabilities and the visually impaired in particular.

118. The representative of the Centre for Performers' Rights Administrations (CPRA) of GEIDANKYO shared the view expressed by the International Federation of Musicians (FIM).

119. The representative of the Electronic Frontier Foundation (EFF) expressed support for the negotiations on the proposed draft treaty for the visually impaired as the first part of a work plan on copyright exceptions and limitations which had been discussed at the 16<sup>th</sup> session of the Committee. There was a chronic lack of material in formats accessible to the world of the visually impaired and print disabled citizens. A treaty with mandatory minimum

exceptions and international agreement on the cross-border transfer of accessible works was needed to provide guidance to Member States and to increase the quantity of accessible material for the visually impaired. Voluntary licensing agreements and improvements in technology standards could provide at best a partial solution but could not be seen as a replacement for binding norm setting.

120. The representative of the National Blind Organization of Spain (ONCE) stated that with two main centers in Madrid and Barcelona, it had managed in 2008 to adapt about 13,000 works into Braille or audio which represented about 3.5 per cent of the new books published in Spain that year. One hundred per cent of their production was carried out thanks to the national exception in our national intellectual property law. Spanish was spoken as a second or first language by 500 million people throughout the world, and it was ridiculous to produce the same accessible copies in each country.

121. The representative of the Royal National Institute of the Blind (RNIB) served two million people with sight loss in the United Kingdom and provided a library of some 40,000 books in audio, large print and Braille. Most accessible books were made by specialized organizations even in cases where publishers provided licenses or the source files, which had limited resources and were often charities. Such efforts had been frustrated by the national nature of copyright exceptions for reading disabled people. For example, books made available to reading disabled people in the United States of America had not become available in the United Kingdom territory. Bookshare in the United States of America had some 40,000 books and only around 5,000 were available to its United Kingdom members. Bookshare had endeavored to obtain licenses from publishers which had not always proven possible.

122. The representative of Electronic Information for Libraries (eIFL.net) stated that the blind and the visually impaired had the same needs of information as sighted people and libraries had long played the role of support to that community. The signature of a treaty could be an opportunity to solve the problem of access to knowledge and information by allowing the use of cross-border sharing of already available contents.

123. The representative of the International Federation of Library Associations (IFLA) stated that the commissioned studies had evidenced the role of libraries in supporting education. Exceptions for libraries and education were an international issue which required urgent attention. National solutions could no longer work in the global digital and networked world. The draft treaty proposed for reading disabled people was a good example of a forward-looking thinking. The statement of the Delegation of the United States of America and its commitment to better exceptions in copyright law was part and parcel of a balanced system of intellectual property.

124. The representative of the Library Copyright Alliance (LBA) stated that the draft WIPO treaty for the blind and visually impaired was needed to resolve the global accessibility issues that had been under discussion since the early 1980s. The current situation constituted both a market and an international policy failure. The Delegation of United States of America had provided a very thoughtful and positive statement supporting efforts for the benefit of persons with print disabilities, as well as had expressed a sincere commitment to achieving an international consensus on cross-border distribution.

125. The representative of *Corporación INNOVARTE* noted that exceptions and limitations were one of the main pillars of the intellectual property system. In spite of the existing

flexibility in multilateral agreements, only a few countries had included provisions on exceptions. He proposed that the Committee adopt first an international treaty that could facilitate the production, distribution, communication of works in a suitable format for reading disabled people.

126. The representative of the International Music Managers Forum (IMMF) expressed full support for the introduction of the treaty for the visually impaired, as well as for any sensible suggestions, international harmonization and universal minima for limitations and exceptions.

127. The representative of the Copyright Research and Information Center in Japan (CRIC) stated that limitations and exceptions were the most important issue for shaping a balance between private rights and public interests. Discussions on international standards should be developed based on facts with a view to securing a flexible framework.

128. The representative of the Center for Internet and Society (CIS) stated that it had submitted a detailed paper to the Government of India on the question of the legality and need of exceptions and limitations for persons with impairments and on the necessity to carry out a campaign on the right to read. The Indian visually impaired community had submitted a document to the WIPO Director General in November 2009 stressing its needs and concerns. India had seventy two hundred million persons who were unable to read print material. At present the Indian Copyright Act did not provide any provision for conversion of material into accessible formats and it was not possible to make use of resources in other countries. Pointless time and effort was spent in duplicating works which had already been done in other countries. An international treaty would have great merit, because it would facilitate access to copyrighted works in accessible format cross-border.

129. The representative of the International Confederation of Authors Rights Societies (CISAC) stated that creators recognized the importance of striking a balance between their rights and the interests of users. CISAC was ready to open the dialogue with interested parties to strike the needed balance, particularly regarding the needs of the visually impaired.

130. The representative of the African Union for the Blind (AFUB) stated that in the course of its work it had come to the conclusion that between 17 and 20 million print disabled people lived in Africa without any access to published works. That 20 million included persons who were blind, persons who had low vision, albinism, dysplasia and persons who had learning difficulties. Article 30 of the Convention on the Rights of Persons with Disabilities provided that contracting parties should take all appropriate steps in accordance with international law to ensure that laws protecting intellectual property rights did not constitute an unreasonable discriminatory barrier to persons with disabilities. The UN Millennium Development Goal on access to education could not be realized by 2015 if people with disabilities were not given the opportunity to access literature and information.

131. The representative of the National Association of Broadcasters of Japan, (NAB – Japan) stated that exceptions and limitations were an important topic which needed to be tackled globally to reach a balanced solution. In order to accelerate the discussion, national situations which varied from country to country had to be carefully studied. Further studies and analyses of each national situation were necessary.

132. A representative of Public Knowledge said that the proposed treaty represented a positive step towards ensuring greater access to knowledge and information for the visually

impaired. Ensuring such access would be in accordance with the Universal Declaration Human Rights and the Convention on the Rights of Persons with Disabilities.

133. A representative of IQsensato referred to the African Copyright and Access to Knowledge Project. That was a project that had explored for over two years, through empirical research, the relationship between national intellectual property frameworks, particularly the copyright environments, and access to knowledge in eight African countries, namely Egypt, Ghana, Kenya, Morocco, Mozambique, Senegal, South Africa and Uganda. The work of the Standing Committee needed to provide a framework for the countries studied to incorporate into their copyright laws clear and access-enabling provisions. Cross-border issues were critical, which was why the discussions related to exceptions and limitations generally and with respect to a treaty for the visually impaired persons should be seen as particularly important for Africa.

134. A representative of the International Publishers Associations (IPA) mentioned that publishers were fully committed to the goal of full equal access to literary works for all people, irrespective of physical ability or disability. While compassion and generosity should shape its goals and intentions, the logic of reason would guide its choice of tools, in particular when exploring legislation and binding international legal instruments. He mentioned that nothing in the Berne Convention or in other WIPO Treaties prevented national laws from providing appropriate national copyright exceptions. In the area of importing and exporting, the Committee was exploring an entirely unknown territory, with no experience with the international exchange of digital files under copyright exceptions. There was neither precedence nor existence of bilateral or multilateral agreements. An international treaty, while being the most powerful tool was also the heaviest arsenal that an international organization had. It was hard to change something in an international binding treaty once it was concluded, and would therefore be a great risk. The previous Monday, Amazon had announced that they were developing a Kindle e-Book reader that would be fully accessible for persons with print disabilities. For the first time there would be a device which visually impaired and visually enabled persons could use almost the same way.

135. The representative of the *Association littéraire et artistique* (ALAI) associated with all the other delegations to express its very strong support for appropriate measures to facilitate access by the visually impaired to works, but noted that the existing international conventions provided sufficient flexibility to already cover those needs. More than 50 countries already included relevant exceptions in their legislation and the main obstacle was the problem of cross-border flows of accessible copies. Under the Berne Convention and TRIPS Agreement it might be possible to introduce international legislation on exceptions allowing the legal import of works in an appropriate format. That was based on an analysis of Article 16 of the Berne Convention, and Articles 34, 50 and 51 of the TRIPS Agreement, which dealt with the right of exhaustion. A draft treaty might contradict Article 20 of the Berne Convention, as well as the three-step test.

136. A representative of the British Copyright Council raised an issue relating to the application of limitations and exceptions for educational activities, based on the study presented by Professor Xalabader and the Analytical Document prepared by the Secretariat. Paragraph 44 of the Analytical Document described an option as a half-way house, where a non-remunerative exception could in effect be overridden by a licensing scheme. But a rights holder could set up and operate along side the legislative provision otherwise relevant to the exception. The BCC had provided the Secretariat with a statement, available to delegates, which briefly outlined the way in which the half-way house option within the UK had



operated for the benefit of both rights holders and users. It was an option which had brought together a wide range of rights holders in a forum known as the Educational Recording Agency. That had enabled new licensing arrangements to be developed, and had facilitated access for distance learning. The new license agreements and arrangements had been welcomed by users. The legislative support for those schemes was also being developed. The BCC hoped that the benefits of the half-way house option for educational exceptions would be taken into account by the Secretariat in the context of the questionnaire.

137. A representative of the World Blind Union mentioned that it strived to achieve a world where people who were blind or partially sighted could take part in all aspects of social, political, cultural and economical life on an equal basis with all citizens. Access to information was a key and significant way of achieving that. Back in 1985 a recommendation was made to develop an international instrument to address the barriers faced by people who were blind or partially sighted. Much had been happening since, but it had not changed the situation. A total of 57 countries had national legislation on exceptions and limitations. Several organizations around the world were bearing the total cost to produce documents in alternative formats, work which was being duplicated by similar organizations around the world because the documents could not be shared. That was unacceptable and outrageous. WBU respected the rights of rights holders, but access to information was a human right. Many countries had signed or ratified the UN Convention on the Rights of Persons with Disabilities. The representative cited several articles of that Convention, and stressed that the work being done within WIPO on the treaty proposed by WBU was a perfect illustration of all of those articles. The representative commended the statement made by the WIPO Director General in his opening remarks that the Stakeholders' Platform and the proposed treaty were complementary. The representative reminded that whatever amount of money was thrown at the situation, or however much technology was used, there would always be issues of diagrams, maps, graphs and tables in publications that would need a description. And it wouldn't be the role of the author or the publisher to give such descriptions to the print disabled community. WBU wanted that to be addressed. The representative thanked the Delegations of Brazil, Ecuador and Paraguay for bringing the issue to the profile it deserved and for committing to resolve the problem. WBU urged all to work together to support the treaty and get the text right to change the lives of the millions of people in the world with print disability.

138. A representative of the United States Chamber of Commerce (CCUSA) shared fully the view that access to copyright works for the visually impaired and other persons with disabilities should be increased. CCUSA commended and endorsed the position taken by Japan and other delegations over the previous two days. The Stakeholders' Platform was a constructive forum to pursue practical solutions and to enhance the use of the three-step test as a credible and effective tool. It shared the perspectives of the United States of America, the UK, Australia, and Senegal on behalf of the Africa Group. While the international framework and its enabling environment had produced good outcomes, more could be done at the national level, while working to enhance cross-border access in order to expand access for visually impaired persons. CCUSA expressed readiness to work on practical ways to support expedited access for the visually impaired and disabled community.

139. A representative of the National Committee for the Social Promotion of the Blind and the Visually Impaired (CNPSAA) stated that it had been working for the blind and visually impaired since the passing of the law of 2005 on the law of equal opportunity for people with disabilities in France. It noted that the number of works that had been made available to such persons was insufficient. If access was facilitated, it would lead to savings in time and files

that were in standard format could be made accessible to all. Regarding the proposed WBU treaty, while Article 2 was important, Article 4 on limitations and exceptions was also essential. It should be complemented by Article 8 which would prevent what many people feared. With the adoption of the treaty, all would be able to have access to books or documents. And since education was a basic right, the treaty should be adopted.

140. A representative of the North American Broadcasting Association (NABA) stated that members of the North American Broadcasters Association were committed to providing service to all members of their communities including those with disabilities. Hence, NABA applauded the advocacy work of organizations such as the World Blind Union which were committed to helping those with visual disabilities to gain access to various services including those provided by broadcasters. NABA members had a long history of working to expand access to their services throughout Canada, Mexico and the United States of America. Their focus was on practical solutions. For example, in the United States of America, National Public Radio Labs was recommending receivers manufactured with the following features: auditory displays; tactile symbols on keys to show their functions, allowing consumers to identify and locate keys using touch alone; and controlled features to increase accessibility. Equally important was research and development of a captioning service for digital radio. In Canada through the national broadcast reading services, the accessible-channel premium programming and movies were aired with descriptive audio providing accessibility to those with visual impairments. While fully supporting the goal of increasing access to broadcast services for all, NABA did not believe those goals would be best accomplished through the creation of exceptions to intellectual property law. Experts agreed that the prevailing system of limitations and exceptions was already sufficiently flexible to support a range of measures to provide increased access to protected works, including through voluntary mechanisms that facilitated cooperation between service providers and effective communities, and through much needed investments to counter the lack of financial and physical resources which were primary barriers to access. Based on the comments submitted to the US Copyright Office following its request for comments regarding the WBU Treaty, NABA had not seen evidence that disabled communities were being denied access in any systemic way that could be remedied through changes to copyright law. The existing framework for exceptions and limitations allowed for robust provision of access, such as under the national laws of NABA member countries. NABA viewed the promotion of robust national provisions consistent with the prevailing legal framework, together with practical market-based solutions and new resources, as the best approach to assure access to the visually impaired and other disabled communities.

141. A representative of the Canadian National Institute for the Blind (CNIB) mentioned that Canada was fortunate to have a national copyright exception that allowed them to produce in alternative formats for those who were print disabled any published work available in regular print for sighted Canadians. CNIB recognized the value of alternative formats in library collections to those with print disabilities in other parts of the world. CNIB had been asked by some in developing countries to make such formats available. With a completely digital collection, that was indeed technically possible. However, the lack of copyright exceptions in many countries frustrated that effort. About 50% of the Canadian population had mother tongues other than English or French. Canada's print disabled clients required access to materials in other languages such as those of India and China and European countries. An international instrument was required to allow trusted organizations such as CNIB around the world to share its alternative format collections for the benefit of all who were print disabled. The aim of the Global Accessible Library Initiative was to provide eligible library users anywhere with access to the collective alternative format collection of the world. The CNIB

and the Global Accessible Library Initiative stood with the World Blind Union in seeking a harmonized solution as proposed in the treaty submitted by Brazil, Ecuador and Paraguay, and to facilitate access to alternative format materials for those with print disabilities in countries which had so little available for their print disabled citizens.

142. The Chair opened the floor to the government delegations to react or offer complementary considerations.

143. The Delegation of Ecuador sought the Chair's permission to allow the Delegation of Chile to speak first as Ecuador wanted to respond to the comments on the text by New Zealand, Uruguay and Chile.

144. The Delegation of Chile stated that the text proposed by Brazil, Ecuador and Paraguay was an excellent basis to start negotiations in a specific and concrete way without prejudice to the final decision of the Committee on the proposed treaty. The Delegation welcomed the fact that like other international treaties administered by WIPO the text submitted had a preamble which described the spirit behind the proposal on which the provisions of the proposed treaty were based. It stressed that the text of the preamble would have to be consistent with the articles eventually agreed upon. Regarding the objective in Article 1, the Delegation felt that it had to be clarified in all its aspects. The Delegation was not quite clear whether it was proposed to apply the treaty both to copyright and to related rights or just to copyright alone. The Delegation also commented on the articles that Ecuador indicated as being central, which were Articles 4, 5, 7 and 8. On Article 4 in general, the Delegation believed that it was essential in order to achieve greater certainty to base the proposed exceptions in the Treaty on the traditional ways used to define the scope of specific rights covered in the treaties on copyright specifically. On the issue of accessible formats, the Delegation sought clarification if that referred to copying, providing or making available. The Delegation also sought clarification as to the meaning of the phrase "any intermediate means," and felt there should be more certainty on that concept. The Delegation also proposed including an article containing definitions in another place. It further suggested that the same article should not limit copying the work to the visually impaired persons, without prejudice to the fact that it was exclusively the person with the disability who could make use of that work for his or her own benefit. On the distinction made between "non-profit activities" and "for profit organizations or bodies," the Delegation sought clarification on both concepts. On Article 5 the Delegation reminded that in some countries, as in Chile, the moral rights included authorizing or prohibiting the defamation or mutilation of the work without the author's consent. The Delegation sought to know what was to be included by a way of moral concepts in that provision. On Article 7 regarding the essence of the exception, the Delegation felt it would mean that the authorization of a third party would not be required in order to benefit from it. Therefore the Delegation called for more clarity as regards the meaning and scope of that norm. On the need to refer to contractual binding and conditions regarding the treaty, the Delegation wished to be informed if the exporting country would comply with the requirements, and should it be specified that the user would have no barriers put in his way.

145. The Delegation of Ecuador stressed that exceptions and limitations were very important parts of the copyright system, and asked whether there was any international instrument that did not involve risks, and stressed that any international instrument, from the strongest to the weakest, involved some kind of risk. The Delegation quoted the statement made by the Delegation of New Zealand as having some doubts over Article 2(d) of the proposed treaty which established a kind of extensiveness and broadness as regards to the protection of the

visually impaired and reading disabled. It responded that the article expressly stated that contracting parties might, but would not be obliged to provide more extensive protection; in other words that was optional. The Delegation pointed out that Article 4(c)(3) would require that the work or the copy of the work to be made in an accessible format was not reasonably available in an identical format. The Delegation agreed that the activity had to be undertaken on a for-profit basis but only to the extent that those uses fell within the normal exceptions and limitations to exclusive rights. Profit-making bodies could rely on those limitations, provided the limitations were in conformity with what normally existed in those countries. The act of producing accessible formats was not for profit, even though it was carried out by a profit-making body. On Articles 1 and 4, the Delegation of Ecuador said that the wording could be made clearer, with the purpose of allowing the visually impaired to have access to the work. The Delegation drew attention to Article 15 which when defining persons with disabilities stated that the limitations could also include people with other disabilities. On the subject of moral rights, the Delegation was not able to recall any case where the author's honor or dignity was affected only because the work was converted into accessible format. On Article 7 regarding contracts, the intention was to avoid a contract being used to circumvent that treaty or get around the limitation provided for in that treaty. The Delegation also expressed its willingness to advance the work consistent with the statement of the United States of America made the previous day. It called for a working group that would lead towards a possibly treaty. The final objective would be to have an international instrument that would cover those exceptions and limitations and achieve what the three-step test could never achieve, namely the harmonization of limitations and exceptions, allowing for free circulation of work in accessible formats.

146. The Delegation of Brazil echoed the statements of Ecuador. The Convention on the Rights of Persons with Disabilities provided a legal basis for an international instrument. There was also a 20-year old report from UNESCO, and a 25-year old report from WIPO, recommending an international instrument with limitations and exceptions for the benefit of visually impaired people. Brazil welcomed all the delegations that expressed their opinion, which only showed the importance of that issue for each and every Member States and the NGOs represented there. It also appreciated the exchange of information coming from European countries on their own national legislation. The Delegation mentioned that if all countries applied their legislation on limitations and legislations together, there could be a super-national framework. The Delegation expressed pleasure that all Delegations expressed their intention to be constructive in future deliberations, and supported a working group as proposed by Ecuador. As the proposal for a treaty was not written in stone, Brazil was open to concerns and suggestions.

147. The Delegation of El Salvador stated that balance was a key factor in the copyright system. The copyright law of El Salvador contained a whole chapter devoted to limitations, with provisions dealing with visually impaired persons, libraries and education. El Salvador supported the declaration of GRULAC in favor of the WBU proposal submitted by Brazil, Paraguay and Ecuador. It was necessary to open as soon as possible discussions on that document. It was also important to make progress in regard to limitations in the field of education, libraries and the promotion of innovation as proposed in the sixteenth SCCR by Chile, Brazil, Nicaragua and Uruguay.

148. The Delegation of Guatemala supported the proposal made by Brazil, Ecuador and Paraguay.

*Protection of Audiovisual Performances*

149. The Chair opened the floor on the protection of audiovisual performances.

150. The Delegation of Ukraine indicated that its copyright legislation was fully in line with the Berne and Rome Conventions and also with WCT. As far as European standards were concerned, Ukrainian legislation was currently being adapted to meet the requirements of EU directives. Audiovisual matters in Ukraine were dealt with by copyright law, legislation on phonograms and other relevant pieces of legislation. In all of those, the basic principles and conditions were established in regard to remuneration of the different interested parties involved in audiovisual performances. In that context the scope of the rights to control the use of performances was also established. In consequence the problems in Ukraine related not so much to legislation but to enforcement, and how to ensure that the right holders' interests were duly upheld. Problems related, among others, to cable broadcasters. In Ukraine the audiovisual sector was not subject to collective management. In consequence only music composers were able to get their fees, due to existence of a collective management system. WIPO was cooperating with the relevant departments in Ukraine in order to improve the situation. In June 2009 the Ukrainian Government and WIPO organized a seminar on the protection of audiovisual performances. Various international experts on IP matters attended the meeting and also representatives from producers of films and actors, including collective management organizations and unions. Government representatives from Armenia, Belarus, Georgia, Moldova and the Russian Federation were also present. Practical problems were discussed and a wealth of information was shared. A number of important conclusions were reached which will then be used in further research and focused meetings among national stakeholders in order to find the best solutions. Ukraine was greatly involved in trying to combat piracy. Different Ministries were involved in working together in the fight against piracy, which was especially relevant for the audiovisual sector. The problem was especially serious in regard to films and the way that films were shown, whether by means of theatrical release, DVD distribution or broadcast, particularly over the Internet. Many legal issues had to be resolved at international level, possibly including updating the protection granted under some of the treaties already in force. To that end, a diplomatic conference needed to be convened.

151. The Chair reminded the delegations that, at the last meeting, the Committee took note of the seminars that had been organized and encouraged the Secretariat to continue that activity. The Committee reaffirmed its commitment to work on developing international protection on audiovisual performances and requested the Secretariat to prepare a background document on the main questions and positions. It also requested the Secretariat to organize in Geneva informal open-ended consultations among all members of the Committee on possible solutions to the current deadlock. The Committee had decided that the issue be carried forward to the agenda of the next meeting. Informal open-ended consultations took place on September 8, 2009, and the background document of the main questions and positions had been prepared and published as document SCCR/19/9. The Secretariat was invited to present the background document and refer to the informal consultations.

152. The Secretariat indicated that the intervention by the Chair and by the Director General of WIPO the previous day had provided an optimal background to its introductory remarks. The intervention by the Delegation of Ukraine illustrated some of the activities in regard to national and regional seminars, outlining their focus on improving the situation of performers at national and regional level. The background document to the main questions and positions concerning international protection for audiovisual performances contained a first,

introductory part describing the international protection in its present state. In the international conventions that were currently in place, namely the Rome Convention and the WIPO Performances and Phonograms Treaty there was no protection for fixed audiovisual performances. The second part of the document described the process of negotiation to reach international protection for audiovisual performances. The lack of meaningful protection had been addressed in the course of numerous negotiations, in the framework of the 1961 Rome Convention, then again in the 1996 negotiations leading to the adoption of the WIPO Performances and Phonograms Treaty, and finally in the diplomatic conference on the protection of audiovisual performances which took place in December 2000. The background document provided as a third element the description of the main topics discussed during the 2000 diplomatic conference, and in an annex the result of that diplomatic conference, i.e., the agreement with 19 articles that were provisionally adopted on that occasion. Finally the background document contained a section on recent developments in the WIPO discussions, which had been already outlined by the Chair. The background document was similar to that which was discussed during the informal, open-end consultations on September 8, 2009, which had been updated in three respects. Firstly it had been updated in regard to the issue of the transfer of rights from the performer to the producer, including updated information on the practices and legislation in some jurisdictions and notably in the United States in respects of the *work made for hire* doctrine. Secondly the document contained new information on management of the rights of performers in regard to the so-called rule of *no collection without distribution*, which was discussed in the year 2000. And in that regard a number of precedents and reference material were presented concerning experiences in different national jurisdictions, such as Columbia and Switzerland. In the same context there was a reference to discussions in WIPO that had addressed similar concerns. The third update referred to evolution in the discussions in WIPO since the informal consultations took place.

153. The Chair recalled that during the informal, open-ended consultations held at WIPO on September 8, 2009, discussions took place on the possibility to convene a Diplomatic Conference, and noted that some delegations had outlined concrete steps to that effect. The present discussion could thus focus on the means employed by the Secretariat for promotion of audiovisual performances, and on whether and how the process to proceed to the conclusion of a treaty could be activated. In the previous meeting, the highest ever number of delegations expressed a clear opinion that that matter should be brought to a successful conclusion.

154. The Delegation of Switzerland, on behalf of Group B, expressed its appreciation for the organization of the informal open-ended consultations among all members of the committee that took place in WIPO last September. It thanked the Secretariat for preparation of the background document on the main questions and positions. Group B members were pleased that during the consultations of last September, and in the last WIPO General Assembly, WIPO Member States had shown more flexibility and openness to achieve an international instrument on the protection of audiovisual performances. The time was right for evaluating the possibility of convening a diplomatic conference based on the result achieved at the diplomatic conference of December 2000. Due to the importance of international protection of audiovisual performances for cultural and economic development and the promotion of cultural diversity, Group B members were willing to contribute constructively to a positive outcome on that issue and hoped that concrete steps might soon be decided by the Committee.

155. The Delegation of Sweden, speaking on behalf of the European Union and its 27 member States, was pleased that the issue of international protection of audiovisual

performers was on the agenda of the Standing Committee. The European Union and its member States thanked the WIPO Secretariat for the continued and extensive effort that it had made to find a way forward on the issue. The background document on the main questions and positions prepared by the WIPO Secretariat, as well as the fruitful informal open ended consultations, had contributed to a positive and encouraging development on the issue. The European Union and its member States attached great importance to achieving an appropriate level of international protection for audiovisual performances which was in line with the protection for musical performances under the WPPT. The latest developments at WIPO would hopefully create new possibilities to resolve the outstanding issues and achieve consensus on an international legal framework. The European Union and its member States were committed to fully participate in continued discussion on the protection of audiovisual performances with the view to reaching an agreement as soon as possible.

156. The Delegation of Senegal, speaking on behalf of the African Group, thanked the Secretariat for the document prepared for the meeting. While international protection for music performances was provided by the Rome Convention, performances that were fixed audiovisually did not enjoy any international protection. Since 1996 the international community had been committed to achieve an international instrument that would afford protection to audiovisual performances. At the international conference convened in 2000, the solution to the issue was really at hand. However, as the result of divergences of views on one article it was not possible to reach agreement on adopting the treaty as a whole. Then there were more and more TV and computer screens, and mobile phones, leading to an unprecedented increase in demand for audiovisual product. The broadcasting of films, clips, concerts and documentaries was becoming increasingly important. Rights over performances were subject to transfer but not in an appropriate manner, which would promote diversified high quality content. It was possible to reach an international agreement that would protect audiovisual performances while retaining the public right to information. In order to establish appropriate norms, due account should be taken of disparities in levels of development in accordance with the recommendations of the Development Agenda. It appeared appropriate for the Committee to resolve to conclude the discussion on the issue and transmit a recommendation to the WIPO General Assembly with the view to reconvening a diplomatic conference.

157. The Delegation of Mexico stressed that it was important to continue making progress on that item, so that audiovisual performances could be protected and performers received fair and appropriate remuneration. In that light, the Committee was urged to continue to discuss the issue with a focus on the so-called transfer of rights, which was left unresolved in 2000. In that way the process leading to a diplomatic conference would build on the progress achieved so far.

158. The Chair recalled that there had been two important efforts to establish protection for audiovisual performances. The 1996 Diplomatic Conference on the protection of audiovisual performances represented a first attempt, as its basic proposal contained an option to protect audiovisual performances. The second attempt was the diplomatic conference in 2000. The intervention of Mexico stressed the importance of highlighting what should be the basis for discussion, and whether the 19 articles provisionally adopted could serve as the basis for discussions.

159. The Delegation of the United States reaffirmed its long standing support for adoption of a treaty to protect audiovisual performances. The United States appreciated the effort of the WIPO Secretariat to advance deliberations on such a treaty since the last meeting of the

Standing Committee. The open-ended consultations among all delegations held in Geneva in September 2009, as well as the informal consultations in August 2009 with the major US motion picture studios and performers' unions, were very constructive. In general the United States supported the proposal to establish the work program and time table for further concrete steps in 2010. With respect to such an effort the United States supported the proposal to move forward to reconvene a diplomatic conference working from a specific limited mandate. The first part of the mandate would involve the adoption of the results provisionally agreed at the 2000 diplomatic conference. Apparently some countries were concerned that the provisionally agreed 19 articles were almost a decade old. While that concern could be discussed it was important not to move backwards. In addition it appeared necessary to address the key unresolved issue from the 2000 Diplomatic Conference, namely, the transfer or consolidation of rights. The issue was related to mutual recognition among the Member States of how their respective legal regimes and business practices allowed for the consolidation of economic rights in audiovisual works. Such consolidation or centralization of economic rights was basic to the functioning of the audiovisual industries and the development of creativity in the audio visual world for all countries. It should be possible to reach consensus on language that at some level would embody respect for the national systems of fellow Member States as unfamiliar and complex as those occasionally could seem at a distance. With respect to any timetable for reconvening the diplomatic conference, the United States did support taking further concrete steps. In that regard any suggestion, idea or proposal that the Secretariat had for moving forward was welcomed. The reminder of the Chair regarding previous attempts to achieve protection appeared pertinent, as any further commitment required certainty in regard to that third attempt.

160. The Delegation of Japan reiterated its commitment to move forward on the discussion of an audiovisual performances treaty. Japan appreciated the effort by the Secretariat in organizing consultations in September. Significant steps had been taken in the direction of a consensus. At the diplomatic conference in 2000, despite arriving at tentative agreement on 19 out of 20 articles, the issue of transfer of the economic rights in the performance could not be agreed upon. Japan considered that the tentative agreement on 19 articles reached at the diplomatic conferences should be maintained. It was necessary for the Committee to continue intensive discussion on those matters in order to reconvene a diplomatic conference at the earliest opportunity.

161. The Delegation of Australia supported the adoption on a draft treaty on the protection of audiovisual performances. The regional and national seminars, as well as the recent open ended consultations with relevant stakeholders, had proved to be very positive in understanding the various issues and identifying potential ways of overcoming the pending difficulties. The background document prepared by the Secretariat provided a good assessment of the issue. The recent momentum and the importance of the issue justified adopting a work program to achieve a successful conclusion on the basis of the 19 articles provisionally agreed.

162. The Delegation of Barbados thanked the Secretariat for preparing the background document on the main questions and positions concerning the international protection on audiovisual performances, and reiterated its support for negotiating and concluding an international instrument which would protect audiovisual performances. The international instrument must enable an appropriate balance between protecting the rights of performers on the one hand and the public interest on the other. The 19 articles on which there was provisional agreement in 2000 could provide a solid basis for negotiations.



163. The Chair indicated that the interventions had until that point covered whether or not the committee should proceed forward on the basis of 19 articles, and the question of timing and what steps or work program in the SCCR should be adopted.

164. The Delegation of Malaysia recalled that the rights of performers had been defined in the Rome Convention which however had not been revised since 1961. Article 19 of the Rome Convention was determinative in limiting the rights of audiovisual performers. However, in 2000, a treaty on audiovisual performers was almost concluded. At a recent WIPO-Malaysia national seminar focused on the film industry, the request for protection of audiovisual performances was raised quite strongly. To achieve that objective WIPO should focus on the 19 articles provisionally agreed.

165. The Delegation of Brazil was ready to contribute constructively to the discussion in order to reach a concrete result. Ten years after the diplomatic conference, the provisional agreement should be considered in light of technological advances and the Development Agenda recommendations in WIPO. In consequence, while the 19 articles of the provisional agreement were a good basis for negotiation, any final outcome should reflect the latest developments. As the United States rightly pointed out, two attempts had been made without success, so before launching a third attempt it was very important to be ready to agree.

166. The Delegation of Kenya concurred with the position of the Delegation of Senegal on behalf of the African Group and other delegations. It was notable that the audiovisual industry had grown exponentially in the last 10 years, and it was important to have an international treaty to address the issue. The Delegation supported the proposal to reconvene the diplomatic conference based on the agreed articles; it also appreciated that there had been several developments, especially in the digital environment.

167. The Delegation of Ecuador stated that because copyright was aimed at increasing creativity, there should have been no discrimination against creative persons. It therefore supported any progress on the protection of such persons, namely performers, and agreed with the positions of Brazil and the USA that consensus should be achieved before making another legislative attempt. It also noted that in the Andean Community, a supra-national norm, Decision 351, recognized the right of public communication including some moral rights to all performers without discrimination. That supra-national norm in the Andean Community defined the performer in a general and broad way, which included any person that acted and performed or read any work. That led to the conclusion that in the Andean Community, there was at present protection for performers of audio-visual works.

168. The Delegation of Ghana supported the statement that Senegal had made on behalf of the African Group. Additionally, it commended the Secretariat for the open-ended consultations that were held in September and the excellent and comprehensive background information that the Secretariat provided to the Committee. The document provided information regarding the genesis and the effort that the Committee had made before and after the 1996 diplomatic conference to provide protection for audiovisual performances. In that session the Committee must have identified any outstanding divergent issues, including the transfer of rights issues which prevented the 2000 diplomatic conference from concluding the treaty to protect audiovisual performances. The Committee should have maintained the provisions that were agreed upon in 2000 and then should have attempted to work on existing outstanding issues. The Delegation was of the view that in 10 years, the Secretariat and the Member States had done enough consultations and the SCCR should have been able to fix an early date to convene a diplomatic conference to conclude the treaty.

169. The Delegation of Angola pointed out that the document under discussion included a mention of the consultations that had taken place on the 8<sup>th</sup> of September 2009, prior to the WIPO General Assembly. The Delegation asked whether the Secretariat had prepared a document reporting on those consultations. It would have been a good idea if each Delegation could have access to such a document. The Delegation did not take part in those consultations, so for the purposes of knowing how many and which countries had taken part in them, the requested document was essential. It added that performers should be protected and that the diplomatic conference should take place.

170. The Chair noted that there was general willingness to move forward on that matter; but the Committee had to decide on the work program to be established. The next meeting of the SCCR would take place presumably in May or June of 2010. Some inter-session activities might be necessary, and also some consultation activities focusing on the main outstanding issues, which seemed to be the question of transfer of rights. There were two platforms where those issues were being tackled. There were stakeholders engaged in discussions, representatives of performers on the one hand, and representatives of producers on the other hand. From that platform, which was outside of the competence of the Member States the picture should have been clarified, as was requested by United States and Brazil. The other platform where consultations were taking place was among the Members States of WIPO.

171. The Secretariat responded to Angola by clarifying that because of their informal nature, there was no record of the informal consultations in September, but the Chair had given a report to the WIPO Assembly, so there was a short paragraph in that report. Another issue was how to proceed on the issue of the protection of audiovisual performances. The Committee could not afford to fail a third time, so it had to seriously consider when it was the appropriate moment to move forward. The Secretariat had the impression that there was a strong willingness to move forward. On the basis of the Delegations' interventions on that matter, the Secretariat noted that the 19 articles clearly reflected a significant compromise on the part of the Member States and suggested to not re-open such discussion, unless there was an element of substantial significance that they really couldn't accept. The Secretariat reminded that Mexico proposed to discuss the outstanding article; and Australia proposed to draw up a work program to resolve that outstanding issue; the United States requested respecting the national systems while consolidating the economic rights; and Brazil raised some concerns with respect to the 19 articles. It hoped that there was willingness to come up with an agreed statement that captured the real will of the Committee, so that Member States could come to the following session of the SCCR able to move forward, with the consolidation of 19 articles, and with a statement concerning respect for all national systems in a way that would not require reopening the 19 articles.

172. The Delegation of Angola expressed surprise that WIPO had undertaken consultations and had informed the General Assembly of the outcome without having anything on paper. It was not aware of which countries participated in the informal consultations. The Delegation stated that it had not received notification that the consultations were taking place. It wanted to make progress in protecting the rights of performers, but it believed that the procedure was already flawed and that was going to cause future problems. In order to discuss the basis of those consultations, having a written report was considered essential. Officials from capitals would need written documents. The Delegation requested at least the list of participants and a summary of the content and the outcomes of those consultations.

173. The Secretariat made clear that all Member States were invited to the informal consultation meeting, the Assistant Director General was personally present, and the policy of not preparing a report on consultations was in order to encourage participants to speak openly and freely, an approach that was widely used in many international organizations.

174. The Delegation of China recalled that a background document describing the main questions and positions concerning the international protection of audiovisual performances had been drafted, in accordance with decisions taken at the previous sessions of the SCCR. The document provided an overview of discussions focused on the possible adoption of an international instrument on the protection of audiovisual performances. In addition the document gave an account of various activities undertaken by WIPO in that field, including the informal consultations that were held in September. It also facilitated a clear picture of the questions upon which there were divergent views. China continued to support the efforts of WIPO to conclude an international instrument on the topic, and thanked the Secretariat for its work. The Delegation supported the position that had been taken by Brazil to the effect that the Committee should undertake discussions on the basis of the 19 articles that were provisionally adopted in the year 2000. However, it was important to bear in mind that over the past decade some substantial changes in the situation might have taken place, and it believed that the Committee should convene a diplomatic conference as early as possible but only when all necessary conditions were fulfilled. The Delegation of China had taken the floor because some delegations asked for clarification about the protection of audiovisual performances and it was necessary to reiterate its position. It supported the idea of maintaining the 19 articles passed in 2000 as a basis for discussion, and if there were substantive changes that had occurred in the previous ten years, they should be taken into consideration. However, if there was no substantive change, the result of the diplomatic conference in 2000 should not be rejected.

175. The Delegation of Brazil reiterated that it believed that the 19 articles formed a good basis for negotiation, but it had to take into consideration that ten years had passed and that there were changes in the technological arena and also in the way Member States believed WIPO should work. It did not intend to stop the process and it supported the idea of convening a third diplomatic conference, when conditions for its success were met.

176. The Chair stated that the delegations had demonstrated a broad will to move forward on the issue of the protection of audiovisual performances. There was a proposal that a work program would be established for WIPO to make the process move forward; but there were not so many steps needed. Consultations had to be allowed to take place between the right holders, and consultations should take place between the Delegations, so that the 19 articles could be maintained as a basis for the negotiations.

#### *Protection of the Rights of Broadcasting Organizations*

177. The Chair introduced item 6 on the agenda, “protection of rights of broadcasting organizations”. At the request of the Committee, the Secretariat had organized an information session on developments in broadcasting at the previous session of the SCCR. The Committee had also requested the Secretariat to commission a study on the socio-economic dimensions of unauthorized use of signals, including the impact of lack of access on the one hand, and the need for effective protection for broadcasters on the other hand, to be discussed at the 20<sup>th</sup> session of the SCCR. The Secretariat had commissioned the requested study, the first part of which was available. At the previous SCCR session, the Committee reaffirmed

its willingness to continue work on the protection of broadcasting organizations, using a signal-based approach as mandated by the General Assembly. The Committee had invited the Secretariat to organize national seminars upon request of Member States or regional groups, on the specific scope and the objectives of a possible draft treaty. The complete study would be presented at the next session of the SCCR. The Committee would take stock of the prevailing situation, positions and developments. The Chair opened the floor for discussion of the protection of broadcasting organizations.

178. The Delegation of Sweden, on behalf of the European Union and its 27 Member States, welcomed the fact that the issue of the protection of broadcasting organizations remained on the agenda of the SCCR. They were looking forward to the study on the socio-economic dimension of unauthorized use of signals, commissioned by the WIPO Secretariat. There was an obvious need to modernize legal protection for broadcasters at the international level. The Delegation therefore considered it a priority for the Committee to explore possible ways forward in order to find a swift solution to the current stalemate. At the 2009 WIPO General Assembly, the European Union and its member States had noted that the conditions for convening a diplomatic conference as laid down by the General Assemblies of 2006 and 2007 were very strict; they still believed that those conditions made it very difficult to establish a new basis for the conclusion of a treaty to update the protection of broadcasting organizations. They would therefore welcome a discussion within the SCCR on a possible revision of the conditions for convening a future diplomatic conference. Another way of moving the negotiations forward could be to examine the objectives, specific scope and object of protection of a possible draft treaty each on its own merits. That exercise could be done within the framework of regional consultations organized by the WIPO Secretariat. The European Union and its member States placed a high priority on breaking the current deadlock, and would look favorably on other suggestions on how to move the issue forward. They remained committed to work towards the consensus that would enable broadcasting organizations to be given adequate protection at the international level.

179. The Delegation of Japan reiterated that it continued to strongly support moving forward the discussions for the protection of broadcasting organizations. Japan believed that in the digital network society, protection of broadcasting organizations had become a highly important aspect of copyright and related rights. Signal piracy significantly harmed broadcasters all over the world and undermined their role in publicly providing information. It hoped that the Secretariat and each Member State would strengthen efforts towards an early conclusion of the broadcasting treaty. Although it seemed discouraging that 10 years of negotiations to date had not reached a final agreement, Japan strongly hoped that the item would be maintained on the SCCR agenda.

180. The Delegation of Mexico, as in previous meetings of the Committee, stressed that the protection of broadcasting organizations was extremely important. It stressed the importance of making progress at the current session towards the negotiation of an international instrument to combat the piracy of signals. In the same way and as agreed at the seventeenth session of the SCCR, the negotiation of that international instrument should have taken into account the decision of the General Assembly, which was that the Committee should try to reach agreement and finalize the negotiation on the objectives, the specific scope of application and the object of protection, so as to submit to a possible diplomatic conference a revised version of the basic proposal on a signal-based approach.

181. The Delegation of Iran stated that the negotiation on the protection of rights of broadcasting organizations, taking into account the nature of subject matter and diversity of

interests of different stakeholders, had had its own specific process. It was very important to use the experiences of all previous sessions of the Committee, namely procedural and substantial ones, to balance the interests of all Member States and use all efforts to narrow the articulated differences. In the process of negotiating on the protection of broadcasting organizations, according to past experience the outcome of any kind of consultation should have been reported to Member States with an informative nature and without any formal impact on the process. It was committed to continue the discussions on that item with a hope of finding agreement on the object, scope and objective of the treaty as mandated by the General Assembly. The Delegation was also open to discuss the various methods of consultation.

182. The Delegation of Barbados thanked the Secretariat for the work done on the study on the socio-economic dimensions on unauthorized use of signals, including the impact of the lack of access on the one hand and the need for effective protection for broadcasters on the other. It was looking forward to receiving the completed study to inform its thinking on how and at what pace the Committee could move forward to conclude an internationally binding agreement to protect signals from piracy. It expressed support that the protection of the rights of broadcasting organizations remained on the SCCR agenda until such agreement was concluded.

183. The Delegation of the United States recalled that it had supported all efforts to update protection for broadcasting, cablecasting and webcasting organizations provided that such protection did not interfere with the public interest, or the rights of underlying content owners. It continued to believe that a new treaty might be needed to update the provisions on broadcasting under the 1961 Rome Convention, particularly in regard to the protection of broadcast signals from piracy. Therefore it supported retaining discussions about the treaty for the protection of broadcasting organizations on the agenda of the Committee. Until the terms of the mandate were fulfilled, the United States could not agree to any relaxation of the 2006 WIPO General Assembly mandate in any effort to proceed to a diplomatic conference. Under that mandate the Standing Committee Members must have reached an agreement on the objectives, specific scope and object of protection in a signal based approach to a treaty for the protection of broadcasting organizations, before a diplomatic conference should be convened. Substantively the United States remained firm in its position that any discussions about a proposed treaty must go beyond the consideration of protection of traditional broadcasting, cablecasting and satellite casting entities to include protection for internet casters. Any such treaty must have at a minimum extended protection to traditional broadcasters against the unauthorized transmission of programs over the internet. During the discussion on a prior subject, references were made to ten years of possible technological change in relation to the audiovisual performances treaty. The same thoughts must be applied to this item. The United States believed that any treaty for the protection of broadcasting organizations should be platform neutral, oriented for the present and for the future, and provide the same protection for the same sorts of economic activities across different technologies, present and future. Procedurally, it believed that the terms of the 2006 General Assembly mandate were consistent with well-established WIPO policy and practice for convening a successful diplomatic conference. The 2000 diplomatic conference for the protection of audiovisual performances remained a clear example of lack of success at a diplomatic conference because of haste and possible misunderstandings in its preparatory work. The United States also believed that further departure from established WIPO practice would set an unfortunate precedent for the SCCR and other WIPO Committees.

184. The Delegation of India reiterated its commitment to comply with the signal-based approach as mandated at the 42<sup>nd</sup> sessions of the General Assembly in October 2006, to develop a treaty to protect broadcasting organizations in the traditional sense. It thanked the Secretariat and the Member States for agreeing to the suggestion of India in the previous meeting of the SCCR to conduct a study on the socio-economic aspects of unauthorized use of signals and technology trends in the broadcasting sector, and for organizing regional seminars and consultations before a draft instrument was discussed by the SCCR. India was ready to engage in constructive discussion to forge an agreement on the nature, scope and object of protection of broadcasting organizations, as it believed there was a need for international obligations following the signal-based approach to prevent unauthorized uses of signals in the traditional broadcasting sector. It agreed with the United States that a convergence on the basic elements and principles of such an agreement was essential before convening a diplomatic conference.

185. The Chair noted that the protection of broadcasting organizations was a matter on which there was no willingness to have an enormous debate at that stage. There was a general will to move forward, to maintain the item on the agenda of the following meeting, and also to consider ways and methods to resolve the outstanding issues. A number of delegations had reiterated the conditions on which they were willing to proceed forward; references had been made to the 2006 decisions and conditions set by the General Assembly.

186. The Delegation of Malaysia was of the view that a treaty for protection of broadcasting organizations was of paramount importance. Member States had met in many SCCR meetings and exchanged views with openness and frankness. Much concern had been expressed by both proponents and opponents. Much time, effort and energy had been exerted in that area. After much deliberation, compromise, accommodation and adaptations the SCCR had settled on the signal-based approach, and finally it seemed to be making some headway. There was a need for effective protection of broadcasting organizations against signal piracy, which was more than a national problem. The rapid development in technology not only had precipitated an easier exchange of information but had also increased the threat of piracy for broadcasting organizations. Signal piracy had increased at a rate of 11 per cent a year in Asia, corroding the ability of the industry to grow. The piracy of channels by unlicensed cable operators, underdeclaring of subscriptions by license operators, and illegal unblocking by cable operators, amounted to losses of more than 1.2 billion dollars a year in the Asian region. Also many free to air channels were suffering from signal theft. Broadcasters were currently suffering from primary and secondary signal piracy. Secondary signal piracy occurred when cable operators pirated direct to home (DTH) satellite services, which had already pirated the transmission of free to air broadcasters. To overcome that problem it was appropriate that the Secretariat held regional seminars, deliver studies and then organize informal regional consultations. It was believed that once the illegal broadcast by the DTH operator stopped, it would become evident that most of the unauthorized re-transmission by the provisional cable operators would also be prevented. The risk was that signal theft could become a major source of trade losses to owners of broadcast content. The inclusion of an exclusive right to prevent unauthorized decryption of encrypted program-carrying signals could stop the manufacture or distribution of devices used to decrypt. Malaysia hoped that the protection of rights of broadcasting organizations remained on the SCCR agenda. The time had come for all Member States to decide on the future course of action.

187. The Chair stated that the intervention of Malaysia concluded the discussion on the protection of broadcasting organizations. A written draft of the conclusions would be

presented to the Delegations. Before proceeding with the discussion on the conclusions, NGOs would be given the floor.

188. The Chair confirmed the accreditation by the Committee of the: “*Federacion Nacional de Ciegos de Ecuador*” (FENCE) and Transatlantic Consumer Dialogue (TACD) as observers, and opened the floor to the Non-Governmental Organizations (NGOs).

189. The Representative of the *Comité de Seguimiento Actores e Intérpretes* (CSAI) thanked the Secretariat for its efforts to make progress on an issue that had been blocked for far too long. The NGOs representing audiovisual performers considered that it was absolutely critical that a Treaty was achieved. Adequate protection of audiovisual performances was needed not only for exploitation in the digital environment but for traditional means of distribution of the same performances. There was an urgent need for an international instrument which guaranteed fair and equitable remuneration for all exploitations of fixed audiovisual performances at international level. That minimum regulation would be universally accepted by all members of WIPO, and would serve as an incentive for those countries which still did not adequately protect audiovisual performances. The 2000 provisional agreement included substantive provisions related to the intellectual property rights of audiovisual performers. Had the instrument containing 19 articles been adopted in 2000, performers would have a comprehensive range of acceptable protection in terms of both economic and moral rights, and would also have the necessary flexibility in order to exploit their performances both in analogue and digital formats. National legislation could also build on the minimum protection of the Treaty by raising the level of protection for performers. Hence, the provisional agreement was still a solid foundation upon which to base the international protection of audiovisual performances, and it was not necessary to further delay the convening of another Diplomatic Conference.

190. The Representative of the Asia-Pacific Broadcasting Union (ABU) noted that international treaties such as the Brussels Satellites Convention and the TRIPS Agreement recognized the neighboring rights of broadcasting organizations in the same manner that the neighboring rights of producers of phonograms had been recognized and protected under different international treaties. Beyond the economic and financial investments which the broadcasters made, the international community had recognized in those instruments the vital role of broadcasting in the daily lives of people. Radio and TV broadcasting played a key role in social change. Although broadcasters continued to invest in order to improve the quality of their emissions, broadcasting organizations could not perform their role well unless governments recognized that radical changes must be made to stop the lawlessness which was eroding the broadcasting industry. As governments had strongly intervened on other copyright issues, they could also act to stop global misappropriation of the property rights of broadcasters.

191. The Representative of the *Asociación Nacional de Intérpretes* (ANDI) said that it was time to call for a Diplomatic Conference to address the issue of the protection of audiovisual performers. Hundreds of thousands of performers had no protection for their audiovisual contributions. It was time to recognize that there was an important sector of intellectual creation which had been unprotected for many years, the performance. ANDI requested representatives of the various countries to listen to the views of the performers in each of their countries. Finally, ANDI supported progress towards a broadcasting treaty which would protect the signal in which the contributions of performers were embodied.

192. The Representative of the International Video Federation (IVF) recalled that in December 2000, after a long process of preparation the WIPO Member states engaged in contentious negotiations and made serious compromises on a number of very difficult issues. Although they were not able to reach final agreement on a full package, they did reach provisional agreement on 19 articles. Nevertheless, they could not further compromise on one very important issue, namely the consolidation of exclusive rights in the producer. The IVF agreed that audiovisual performers deserve protection at the international level and supported those 19 articles. That process could only go forward on the basis of those provisions, which were still as relevant as in the year 2000.

193. The Representative of the International Music Managers Forum (IMMF) was very encouraged by the many delegations who had spoken in favor of bridging the gap between the rights of “audio only” performers, protected by the provisions of the WPPT, and the rights of audiovisual performers, which were considerably weaker. The IMMF congratulated the WIPO Director General on his supportive intervention during the 18<sup>th</sup> session of the SCCR regarding progress towards a treaty on audiovisual protection. All Member states should accept the 19 articles that had already been provisionally agreed.

194. The Representative of the Centre for Internet and Society (CIS) stated that provisions in existing international treaties, including Article 14 of the TRIPS Agreement, were sufficient to protect the interest of broadcasters. Thus, discussions on the broadcasting treaty, undertaken for more than a decade without progress were, as the Chair had observed in SCCR 15, an expenditure of “time, energy and resources to no avail”. Any issue related to webcasting and netcasting should be kept out of the ambit of the broadcasting treaty, even if limited to “retransmission” of broadcasts, since by its very nature webcasting was very different from broadcasting. Webcasting was currently quite vibrant. A recent report by Arbor Networks estimated that around ten per cent of all web traffic consisted of streaming video, making webcasting the fastest growing application on the Internet. Given that situation, a strong case had to be made to show that an international treaty was required to protect and promote webcasting, which had not been done. Specifically, Paragraph 16 of the WIPO Development Agenda, which related to preservation of a vibrant public domain, would be endangered by a right being given to webcasters which was separate from the underlying content of the transmission.

195. The Representative of the International Federation of Actors (FIA) and the International Federation of Musicians (FIM) expressed their appreciation to WIPO Member States for their commitment and determination to finalize an audiovisual performances treaty. Both federations encouraged WIPO to reconvene the Diplomatic Conference in 2010. Films and other audiovisual works conveyed stories that preserve cultural diversity, promote significant values and social cohesion and could also generate substantial economic wealth contributing to the well-being of society at large. Therefore, protection was needed for performances which contributed enormously to those works. However, due to the current legislation few performers were yet in a position to negotiate anything beyond a mere performance fee. Indeed, many performers had to seek casual employments in order to make a living. Digital technologies were boosting new demand for content distribution, many new business models were delivering income to new players and intermediaries, and yet performers remained excluded from a fair share and profit. The need to improve that situation had been acknowledged within the SCCR several times. The 19 articles provisionally approved by the 2000 WIPO diplomatic Conference were still relevant, and a treaty should be finalized without further delay.



196. The Representative of eIFLnet, speaking on behalf of Electronic Information for Libraries, The International Federation of Library Associations and the US Library Copyright Alliance, referred to the protection of the rights of broadcasting organizations. There was no compelling public policy reason for a treaty on broadcasting. Any new set of rights affecting access to content was of concern to librarians because it would impose an additional barrier to access to knowledge, particularly for content already in the public domain. If, however, further work was to be done on the proposed treaty, it was essential that it be limited to prohibiting signal piracy as mandated by the General Assembly. Expanding protection to right holders who had not created the original content was a paralyzing precedent. It would be unreasonable and unjustified for protection of the broadcast vehicle to be applied in any way to the content itself. However, if that happened, a number of exceptions and limitations would be necessary for libraries, educational activities and persons with disabilities.

197. The Representative of the Electronic Frontier Foundation (EFF) opposed a rights-based broadcasting treaty as discussed at many previous sessions of the Committee. Concerns with that proposed treaty were numerous. Firstly, the treaty was not limited to signal protection, and would give broadcasters and cablecasters intellectual property rights over the use of transmissions *after* fixation of signals, rather than providing measures against intentional theft of broadcasters' signals. Consequently, it was not a "signal-based approach" which met the 2006 WIPO General Assembly's mandate. Very constructive interventions had been made by the United States and Canada on the need to look at alternative signal-based models, such as the Brussels Satellite Convention. Secondly, the Treaty would restrict citizens' freedom of expression and the free flow of information on the Internet, as a recent UNESCO report noted. Granting broadcasters and cablecasters intellectual property rights that apply independent of copyright, together with legally enforced technological protection measures (TPMs), would allow broadcasters to restrict access to public domain works, and to prohibit the use of material that would be permitted under national copyright law. That was likely to endanger education, research, user-generated content and Creative Commons-licensed content on the Internet. Granting incumbent broadcasters and cablecasters rights over Internet retransmissions was likely to add unnecessary complexity to copyright clearance regimes and harm new forms of citizen broadcasting on the Internet, such as podcasting, at a time when it was not clear what the future of broadcasting would be. The critical role of citizen journalism on the Internet should be noted. Member States would recall that over 1,500 podcasters from around the world sent an open letter to the Second Special SCCR Session in June 2007, expressing their concerns about the treaty. Any treaty should include mandatory exceptions equivalent in scope to those in the Rome Convention and TRIPS Agreement to protect currently lawful activity. While Article 14 of the TRIPS Agreement permitted signatories to recognize non-exclusive broadcasting rights, it did not condition the creation of exceptions to those rights on satisfaction of the three-step text. There was no justification for doing so in the proposed treaty. The Treaty would harm innovation and lawful consumer activity. Consumers could currently time-shift and retransmit lawfully acquired television programming within their homes under many countries' copyright laws. Creating a layer of rights independent of copyright would give broadcasters the right to restrict how broadcasts, cablecasts and Internet transmissions could be used in a consumer's home, overriding lawful consumer activity. Broadcasters and cablecasters would be able to exert control over broadcast-receiving devices such as the TiVo digital video recorder and the Slingbox, and prevent the development of innovative new consumer technologies and home networking devices. Article 19 was likely to require technology-mandate laws where broadcasters used TPMs. Government-mandated TPMs harm innovation because they required technology companies to seek permission from broadcasters before releasing innovative technologies. Finally, the need for a rights-based treaty was still unconvincing; the presentation of the study

that had been commissioned by the International Bureau would be very helpful in that regard. Member States seemed no closer to agreement on the basic justification for and key elements of the treaty despite over 10 years of negotiations. Everyone agreed that signal piracy was wrong. That was why it was illegal in many countries. Broadcasters claimed to need a treaty to remove unauthorized television content on the Internet. However, that could be done using existing national copyright laws, as demonstrated by the daily requests made by television networks to remove unauthorized content from video hosting websites like YouTube.

198. The Representative of the International Federation of Music Producers (IFPI) said that the Committee should keep firmly in mind its central mission to ensure appropriate incentives and respect for creativity. That meant that the existing international protections for creators and for those who invest in bringing their creations to the public should be updated to ensure that they continue to be adequate and meaningful in today's technological environment. IFPI therefore supported the conclusion of treaties on both audiovisual performances and on broadcasting. On audiovisual performances, the treaty's goal should be to bring audiovisual performers' rights at the international level up to par with those of musical performers under the WPPT. To reach it, they needed to proceed from the agreement on 19 out of 20 articles of the year 2000. The one central issue still left to be resolved was how to deal with the issue of transfer or consolidation of rights. Reopening the provisional agreement was not good; although nine years had elapsed, none of those provisions was outdated. Moreover, they shared the spirit of similar provisions in both the WCT and the WPPT. There were serious risks in reopening those provisions in terms of slowing the negotiation. Secondly, changes in established language that paralleled the WCT and WPPT could call into question the implementation of those treaties in more than 80 countries around the world. And finally, on the broadcasters' treaty it appeared clear that the goal should be to prevent signal theft, in particular using technology that had developed since the Rome Convention, especially the Internet. That was not necessarily an easy task but with all of the expertise and intelligence in the Committee it should be possible to achieve it.

199. The Representative of Copyright Research and Information Center (CRIC-Japan) stressed the importance of broadcasting and its role not only in daily life, but also in preventing damages in catastrophes such as earthquakes or tsunamis. Broadcasting was a technology that could not be substituted by the Internet which was used only by 20% of the population of the whole world. In order to preserve such a convenient tool for public access to information and knowledge, a Diplomatic Conference on the broadcasting treaty was needed. Concerning the protection of audiovisual performances, the convening of a diplomatic conference in the near future was also justified.

200. The Representative of Public Knowledge urged the Committee not to expend further time and resources on the proposed Broadcast Treaty. A consensus on the objective, specific scope and object of protection had eluded the Committee despite 10 years of negotiations. If the Committee decided to pursue a treaty, that must be done pursuing a signal based approach. That approach would not grant exclusive rights to broadcasters in the content of the broadcast. A treaty based on granting IP-style exclusive rights to broadcasters would pose several concerns for copyright owners, consumers, educational institutions, follow-on creators, Internet Service Providers and device makers. Broadcasters' exclusive rights in content would conflict with copyright owners' exclusive rights in content. The exclusive right of reproduction would harm home recording rights, or the right to make private copies that many national copyright laws granted to their citizens. The right to authorize retransmission or deferred retransmission would adversely affect the activities of libraries and distance education. Granting broadcasters a new set of exclusive rights in content would require

follow-on creators, such as documentary film-makers, to seek licenses from two sets of rights owners – the copyright owner and the broadcaster – further complicating an already complex licensing environment. If re-transmission over the Internet were to be part of a treaty, internet service providers could be held liable for their customers' infringement. If, in addition to granting exclusive rights, the treaty were to require Member States to prevent circumvention of technological protection measures and prohibit the marketing of devices that permit circumvention, any limitations and exceptions that a possible treaty may craft would be rendered useless. All those provisions had been part of previous drafts of the treaty, and Member States should not pursue a treaty with similar provisions. A signal based approach could focus on prevention of intentional misappropriation and theft of signals.

201. The Representative of the North American Broadcasters Association (NABA) recalled the need to update the Rome Convention. The viability of some broadcast operations was being eroded. In Canada for example, some over-the-air television stations closed in 2009. Whereas in 2007 an opportunity to reach consensus for a diplomatic conference was missed, it would be useful to consider the reasons for that failure. One factor in the failure was the rigid mandate of the General Assembly in regards to that work. While no doubt intended to provide guidance and protect against another failing diplomatic conference, it had in fact proven to be an obstacle to progress. As the European Union stated, that mandate was too strict. Requiring complete consensus on all the elements of a treaty proposal at a Committee level seemed unrealistic. Literal interpretation of the wording of the mandate had blocked exploration of proposals that could ultimately lead to acceptable provisions. The term "signal-based approach" in the mandate had not provided the helpful guidance intended. Rather, it had led to distracting debates about what the term meant. Did it mean to distinguish the protection in the broadcast signal from the broadcast content? Did it mean literally protecting the electro-magnetic waves or the bits and bytes, which would not be an IP issue? NABA hoped that the mandate could be interpreted as a simple safeguard against failure. The method for moving forward was unclear. Some document old or new, setting out questions, or issues, or proposals, would be helpful to focus discussions on matters of substance. NABA could support a treaty on audiovisual performers. A meaningful treaty should address the important matter of the transfer or consolidation of economic rights.

202. The Representative of the International Federation of Film Producers Associations (FIAPF) thanked the Secretariat for document SCCR 9/19, which provided a fair and accurate summary of the issues in progress in the audiovisual field. Films and audiovisual works were the result of a positive collaborative dynamics between film producers and other creative contributors. Audiovisual performers were one of the essential contributors to the creative process, and their call for international protection was amply justified. It was encouraging to see that Member States appeared committed not to throw away the political capital gathered during the process which led to the diplomatic conference of 2000. Provisional agreement was achieved then on 19 articles and there was no doubt that forward momentum would depend on maintaining that consensus. Conversely, the unresolved issue under Article 12 in the 2000 Diplomatic Conference should be given the full attention it deserved and be treated as a pivotal question for the economic viability of cinema. The consolidation of the economic rights of creative contributors in the producer was a practical and necessary adaptation to the economic and legal structure of the audiovisual industry. The producer had title over those rights in order to be able to license those in one coherent bundle to the distributors, who would take the economic risk of releasing the films in their respective national markets. The producer would pre-sell the licenses to local distributors before the film was finished, and sometimes before the film had even started production. The producer could then go to a bank and raise financial resources to make the film happen. The mechanism described was vital to

make sure movies could be made, marketed and distributed to the public, and could earn revenue that could be returned to all the creative contributors in the film including performers. It was also a vital mechanism for all national film industries and especially those formative industries in the developing world. Diverse films of different levels of budget were largely financed using that precarious pre-licensing model, which was based on the ability of the producer to centralize creative rights in order to license them effectively and expediently. Whichever configuration was adopted, the treaty must provide Member States with explicit legal guarantees that they would remain free to adopt whatever mechanism they wished in order to provide for the necessary centralization of rights under the aegis of the producer. They must also be given legal certainty that those mechanisms would be respected when the films were pre-sold and distributed internationally. Finally, FIAPF supported forward momentum on the broadcaster's treaty on the basis that it would be a task focused exclusively on the protection of broadcast signals, without prejudice to those who own the rights in the underlying content.

203. The Representative of Knowledge Ecology International (KEI) highlighted the opportunities the Internet had provided for creators to distribute their music directly to consumers, and recognized the challenges of dealing with authorized uses of digital works. A new understanding was needed between consumers and creative communities in order to provide new policy direction to support both access and creative and inventive efforts. In the WPPT audio performers were granted equitable remuneration when their recordings were broadcast or played in public, unless a Member State made a reservation to Article 15. The United States was one of the Member States that had made such a reservation and KEI was encouraged to see the progress of the Performance Rights Act in that country. The equitable remuneration right was not extended to audiovisual performers, which left audiovisual performers at a distinct disadvantage compared with their audio-only counterparts. In order to ensure that all performers whether they were audio-only or audiovisual had the same level of rights, KEI supported the proposed audiovisual treaty and hoped to proceed to a diplomatic conference without delay.

204. The Representative of the Union of National Radio and Television Organizations of Africa (URTNA/AUB) said that the Rome 1961 Convention was inadequate. As a consequence, broadcast piracy had become routine business. Indeed, the advent of digitalization and the accompanying proliferation of new media platforms had heightened the instance or misappropriations of broadcasts. It had been demonstrated that piracy of broadcasts was a global phenomenon, and had started taking its toll on AUB member organizations with serious social and economic implications. The more the updating of broadcasters' rights was delayed, the more broadcasters would suffer.

205. The Representative of the International Confederation of Authors and Composers Societies (CISAC) supported the rights of performers. Authors were particularly mindful of the position of performers, since many creators also perform their creations and therefore there was solidarity between composers and performers. CISAC never opposed protection for performers, provided that it did not infringe or impinge on the rights of the creator. Protection for broadcasting organizations was also necessary to take into account rapid changes in technology. Strengthening broadcasters' rights would provide the necessary economic incentive and would stimulate further cultural development.

206. The Representative of the Association of European Performers' Organization (AEPO-ARTIS) said that the lack of protection of audiovisual performers was a problem that needed to be solved. It was not possible to grant protection to broadcasters without protecting the

content of the broadcast first, where of course the role of the performer was critical. On the question of transfer of rights, a balance must be maintained between performers and producers. Beyond the results that a treaty might achieve, the Committee must keep in mind the importance of implementation of the rights granted. Hence the issue would not stop merely by reaching a treaty.

207. The representative of the German Association for Intellectual Property and Copyright Law (GRUR) agreed with the opinion of the EU, and welcomed the initiative of WIPO for the conclusion of a new international treaty on the protection of signals of broadcasting organizations. GRUR considered the convening of a diplomatic conference to be necessary to agree on the scope of application of the new treaty, which should be in accordance with the Rome Convention and the Brussels Convention relating to the distribution of program carrying signals transmitted by satellite. In that regard, it was important, as proposed already in Article 16 of the draft, also to protect those signals used by broadcasters that were not intended for direct reception by the public, so-called pre-broadcast signals. Therefore it recommended changing the naming and the title of the draft proposed treaty into the designation 'WIPO treaty on the protection of signals of broadcasting organizations'. With regard to national treatment, the principle should be applied for the protection of broadcasting organizations in the same way as under the WPPT. In the view of GRUR, the scope of signal protection should include, in addition to traditional rights such as re-transmission, communication to the public, fixation, and post-fixation reproduction, distribution, and transmission, also the exclusive right of authorizing the making available to the public of their signals from fixations by wire or wireless means. With regard to limitations and exceptions, the term of protection, and the obligation concerning technical measures and obligations concerning rights management information, it was believed that rules similar to those included in the WPPT should be applied. Enforcement must be implemented, and no reservations to the treaty by the contracting parties should be permitted.

208. The representative of the National Association of Commercial Broadcasters in Japan (NAB Japan) reiterated that broadcasters have played a crucial role in disseminating information to the public. Whenever a major event occurred, for example a big typhoon, broadcasting organizations were ready to provide news and information. While broadcasting organizations were playing a very important role in access to information on the one hand, they had been fighting an uphill battle in the war against unauthorized use of their signals, on the other hand. Many examples of signal piracy were noticeable on websites. A colleague at NAB Japan, who was participating in the current session of the Committee, used his PC for investigating signal piracy. For the purpose of the investigation, his PC displayed many TV channels transmitted simultaneously from Japan over the Internet by certain software using peer to peer technologies. Such serious signal piracy had exponentially increased in recent years. The need for protection of broadcasting organizations was becoming more urgent day by day, and it was good for public access to information as well.

209. The representative of the European Broadcasting Union (EBU) recalled that the broadcasters' issue had been under discussion for twelve years. Broadcasters had had no first try at updating international protection during the diplomatic conference of 1996, simply because there had not been sufficient time to deal with the issues. Broadcasters did not have the luxury of having only one outstanding issue, unlike audiovisual performers, and other articles had already been properly negotiated. Therefore, as the European Union pointed out it was not justified to require full agreement on any possible provision, even before serious negotiations could take place. The mandate by the General Assembly was intended to put focus into the discussions. It was not intended to start diplomatic negotiations at the level of

the Standing Committee. The second point was that at the last SCCR meeting an overwhelming number of delegations stressed that the broadcasting issue should be moved forward, and, together with the performers' issue, should have priority. Finally, the representative thanked WIPO for the first part of the study on the broadcasting sector, which was published before the meeting. It could be argued that protection of broadcasters in the Rome Convention was an example of a signal-based approach, or simply because in 1961 the signal was delivered by the broadcasters itself. Nowadays, the signal was delivered on the broadcaster's behalf by a third party, but that third party was not responsible for the broadcaster's activity, and in its view there was agreement that such party was not the entity the SCCR wished to protect. That point was addressed in the EU treaty language proposal. A re-transmitter was not a broadcaster.

210. The representative of the Ibero-Latin-American Federation of Performers (FILAIE) felt that the discrimination faced by audiovisual performers was very unfair. The Rome Convention and the WPPT did not protect audiovisual performances of any kind. Agreeing with many prior interventions, it believed that the 19 articles of the provisional agreement of the year 2000 included all the substantive issues concerning intellectual property rights of performers in audiovisual fixations. The discrimination between performances was based upon the form in which those performances were presented. The substantive provisions of the provisional agreement of the year 2000 seemed to be acceptable, and would provide a minimum basis upon which national legislation could be built.

211. The representative of the Computer and Communications Industry Association (CCIA) raised two questions in relation to the discussions on the broadcasting treaty: first, which type of misuse of broadcasts could not be resolved through enforcement of rights in the underlying programs, and which would therefore require additional protection of signals at the international level; and second, why were existing provisions of international treaties intended to protect signals, such as the Brussels Satellite Convention, insufficient. With respect to the first question, rampant piracy of broadcasts had been asserted for years, yet the examples usually given related to the use of fixations of programs that were the object of broadcasts, not to the signals themselves. With regard to the second question, answers provided, such as that it was preferable to enforce one's own rights instead of those of others, or that rights provided to others should also be provided to broadcasters, were not persuasive. Concerns related to broadcasts of live sporting events were understandable, but discussions on that issue would be very different from the discussions presently taking place. The representative had not detected any change in the political landscape on that issue, in fact there was no consensus on the object of protection, scope of protection, or even who the beneficiaries would be. Some day there might actually be a real problem that could not be resolved by the use of present legal protections, but that day was not close in time. With respect to the audiovisual question, CCIA did not have a precise position. And it was looking at the situation internally. In the future CCIA would consider the issue on its merits, but also in the broader context of all the issues being discussed at the SCCR.

212. The Chair noted that a useful series of interventions had been delivered covering the protection of audiovisual performances and the protection of rights of broadcasting organizations.

*Future Work of the Committee; Other Matters*

213. The Chair did not invite delegations to take the floor on item seven on the agenda, because a clear decision to give priority to unfinished business had been taken in previous SCCR meetings. On item eight, “other matters,” an issue was raised by the Delegation of Egypt concerning the costs of translations of documents. The Secretariat had provided information on the matter.

214. The Secretariat recalled that the question of the Delegation of Egypt was related to the cost of translating the studies on limitations and exceptions to copyright into Arabic, Chinese and Russian. When the question was raised at the previous session of the SCCR, there were four studies that the Chair had referred to as the ‘old studies,’ namely, the Ricketson study, the Garnett study, the Crews study and the Sullivan study. Altogether, translation of those four studies into three languages had cost 246,982 Swiss francs. The amount was based on United Nations outsourcing rates, and it did not include any overhead which could have been more complex to calculate. Since the question was raised again at the present session, information had been obtained regarding those studies which were on the agenda for the present meeting. The translation into three languages of the studies on limitations and exceptions for education, and also the first part of the study regarding social and economic aspects of protection of broadcasting organizations, cost a total of 340,292 Swiss francs. The total cost for the translation of all the studies was thus 587,275 Swiss francs. The Secretariat drew the Committee’s attention to the request made by the WIPO Assemblies for a study on the language policy of WIPO, with the objective of extending translation coverage to Arabic, Chinese and Russian for various committees. That study, which would contain more precise information than it was possible to convey at the present stage, would be submitted to the next meeting of the Program and Budget Committee.

*Conclusions*

215. The Chair thanked the Secretariat for the response and stated that the final item to be dealt with by the Committee was the final conclusions. A set of draft conclusions had been distributed to the Committee in three languages, which were English, French and Spanish.

216. The Committee discussed the draft conclusions in detail. Delegations taking the floor during that discussion were: Sweden, Ecuador, Switzerland, Serbia, Kyrgyzstan, Thailand, Argentina, Islamic Republic of Iran, Pakistan, India, Angola, United States of America, the Representative of the European Commission, Senegal, Brazil, Chile, Egypt, the Republic of Korea, Kenya, Canada and the Russian Federation, Norway, Australia, Barbados, Ghana, Indonesia, Morocco and Algeria.

217. When agreement was reached on the text, the Chair thanked all for their efforts and noted that the Standing Committee unanimously adopted the following conclusions:

**LIMITATIONS AND EXCEPTIONS**

*New studies:* The Committee expressed its appreciation for the studies prepared by outstanding experts, and thanked them for their presentations in the Information Meeting on

Limitations and Exceptions for Educational Activities, organized on the first day of the meetings.

- The study by Professor Joseph Fometeu, Université de Ngaoundéré, Ngaoundéré, Cameroun, covering the African countries;
- The study by Professor Juan Carlos Monroy, Universidad Externado de Colombia, Bogota, covering the Latin American and the Caribbean countries;
- The study by Professor Victor Nabhan, University of Ottawa, Ottawa, covering the Arab countries;
- The study by Professor Daniel Seng, National University of Singapore, Singapore, covering the Asian and the Pacific countries (in his absence, a summary of the study was made available on the webpage of the Information Meeting); and
- The study by Professor Raquel Xalabarder, Open University of Catalonia, Barcelona, Spain, covering North America, Europe, Caucasus, Central Asia and Israel.

In order to update and complement the studies, Member States and the European Union are invited to submit to the Secretariat any supplementary information regarding their national laws by January 8, 2010. The Secretariat will consult with the experts on the necessary updates of their studies.

*Analytical document:* The Committee expressed its appreciation to the Secretariat for the preparation of the Analytical Document on Limitations and Exceptions. The Committee requested the Secretariat to update the document, taking into account the information and analyses contained in the new studies.

*Questionnaire:* The Committee examined the Second Draft Questionnaire on Limitations and Exceptions, and invited delegations to send comments on it to the Secretariat by January 8, 2010. On the basis of the comments and the discussions of the Committee, the Secretariat will finalize the questionnaire without any substantial changes in the content of the questions, and while retaining the seven chapters, and submit it to the Member States and the European Union by February 10, 2010 for replies. The Member States are invited to submit their replies by May 10, 2010, and the Secretariat shall prepare a consolidated paper for the Twentieth Session of the SCCR.

The Committee reaffirmed its commitment to continue without delay its work in a global and inclusive approach, including the multifaceted issues affecting access of persons with print disabilities to protected works.

*Access to protected materials by persons with print disabilities:* The Committee welcomed the Second Interim Report of the Stakeholders' Platform, and encouraged the Secretariat to continue the work of the platform and report on its activities during the twentieth session of the SCCR.

The Committee examined the Proposal by Brazil, Ecuador and Paraguay Relating to a WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled



Persons, which includes the text prepared by the World Blind Union (WBU). Many delegations expressed their support for working towards the establishment of an appropriate international instrument. Other delegations, while not opposing the proposal, expressed their preference for a global approach. Some delegations made comments, suggestions and asked questions about the substantive content of the proposed text, and the proponent countries provided responses. The consideration of the proposal, together with other possible proposals and contributions by the Members of the Committee, will continue at the next session of the SCCR.

The Committee accepted the initiation of focused open ended consultations in Geneva aimed at producing an international consensus regarding copyright limitations and exceptions for persons with print disabilities.

A number of delegations offered information on examples of practices, activities and solutions at national level in the Member States for the benefit of persons with print disabilities. The Committee requested the Secretariat to prepare an information document on examples of such practices and other measures at national level.

All aspects concerning limitations and exceptions will be maintained on the Agenda of the twentieth session of the SCCR with the aim of establishing a work program concerning those limitations and exceptions, following a global and inclusive approach, and taking into account their equal importance and different level of maturity, while recognizing the need for concurrently addressing all the issues with a view to achieving progress on all of them.

## PROTECTION OF AUDIOVISUAL PERFORMANCES

The Committee expressed its appreciation for the national and regional seminars organized by the Secretariat and encouraged the Secretariat to continue that activity.

The Committee expressed its appreciation to the Secretariat for the preparation of the Background Document on the Main Questions and Positions Concerning the International Protection of Audiovisual Performances.

The Committee reaffirmed its commitment to continue the work towards developing the international protection of performances in audiovisual media, and decided on the following work program to this effect.

The Secretariat is requested to organize in Geneva open-ended consultations needed to resolve remaining issues.

The Committee will, at its twentieth session, consider the next steps and evaluate if there is consensus on a possible recommendation to the General Assembly of WIPO to convene a diplomatic conference with a view of concluding a WIPO treaty for the protection of audiovisual performances. The Committee noted that the Diplomatic Conference of 2000 adopted a recommendation according to which there was a provisional agreement on nineteen articles. The Committee considered that those articles provided a good basis for negotiations on the treaty. A number of Delegations took the view that the nineteen articles should not be reopened. Other Delegations stressed that the treaty should reflect the changes that have occurred during the last ten years.

The protection of audiovisual performances will be maintained on the Agenda of the twentieth session of the SCCR.

#### PROTECTION OF BROADCASTING ORGANIZATIONS

The Committee noted the publication of the first part of the Study on the Socio Economic Dimension of the Unauthorized Use of Signals, addressing current market and technology trends in the broadcasting sector. The Committee noted with approval the forthcoming second part of the study to be presented to the Committee at its twentieth session.

The Committee reaffirmed its willingness to continue its work on the protection of broadcasting organizations according to the mandate of the 2007 General Assembly.

The Secretariat will organize regional seminars upon requests from Member States to ascertain views on the objectives, specific scope and object of protection of a possible draft treaty following a signal-based approach. A report of the seminars will be presented to the Committee at its twentieth session.

The protection of broadcasting organizations will be maintained on the Agenda of the twentieth session of the SCCR.

#### NEXT SESSION OF THE SCCR

The twentieth session of the SCCR will take place from June 21 to 25, 2010.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS/STATES

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

AFGHANISTAN

Abdul SATTAR, Manager of Registration, Department of Copyright, Ministry of Information and Culture, Kabul

Akhshid JAVID, Third Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Mohamed BOUDRAR, directeur général, Office national des droits d'auteur et des droits voisins (ONDA), Ministère de la communication et de la culture, Alger

Hayet MEHADJI (Mme), premier secrétaire, Mission permanente, Genève

ALLEMAGNE/GERMANY

Eike NIELSEN, Judge, District Court, Division for Copyright and Publishing Law, Federal Ministry of Justice, Berlin

Antoinette MAGET-DOMINICÉ (Ms.), Federal Ministry of Justice, Berlin

ANGOLA

Makiesse KINKELA AUGUSTO, troisième secrétaire, Mission permanente, Genève

ARABIE SAOUDITE/SAUDI ARABIA

Abdulmohsen ALOTAIBI, Copyright, Ministry of Information, Riyadh

ARGENTINE/ARGENTINA

Graciela Honoria PEIRETTI (Sra.), Subdirectora, Dirección Nacional del Derecho de Autor, Buenos Aires

Inés Gabriela FASTAME (Sra.), Primer Secretario, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Helen Elizabeth DANIELS (Ms.), Assistant Secretary, Copyright and Classification Policy, Attorney-General's Department, Canberra

AUTRICHE/AUSTRIA

Günter AUER, Advisor, Justice Department, Federal Ministry of Justice, Vienna

AZERBAÏDJAN/AZERBAIJAN

Isayev NATIG, Head, International Relations Department, Copyright Agency, Baku

BARBADE/BARBADOS

Corlita BABB-SCHAEFER (Ms.), Counsellor, Permanent Mission, Geneva

BELGIQUE/BELGIUM

Gunther AELBRECHT, attaché, Office de la propriété intellectuelle, Service affaires juridiques et internationales, Bruxelles

Marc THUNUS, conseiller, Mission permanente, Genève

BOSNIE-HERZÉGOVINE/BOSNIA AND HERZEGOVINA

Ines SUŽNJEVIĆ (Ms.), First Secretary, Permanent Mission, Geneva

BRÉSIL/BRAZIL

Marcos Alves DE SOUZA, Director, General Coordination of Copyright, Ministry of Culture, Brasilia

José VAZ DE SOUZA FILHO, General Coordination of Copyright, Collective Management and Mediation, Ministry of Culture, Brasilia

Mayara SANTOS (Ms.), Third Secretary, Intellectual Property Division, Ministry of Foreign Affairs, Brasilia

Thaís VALÉRIO DE MESQUITA (Ms.), First Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

BULGARIE/BULGARIA

Georgi Alexandrov DAMYANOV, Director, Copyright Department, Ministry of Culture, Sofia

BURKINA FASO

Derme MOUMOUNI, directeur régional, Bureau burkinabé du droit d'auteur (BBDA), Ministère de la culture, des arts et du tourisme, Ouagadougou

Sibdou Mireille KABORE SOUGOURI (Mme), attachée, Mission permanente, Genève

BURUNDI

Alain Aimé NYAMITWE, premier conseiller, Mission permanente, Genève

CAMEROUN/CAMEROON

Joseph LOBE, inspecteur, Ministère de la culture, Yaoundé

CANADA

Bruce COUCHMAN, Senior Advisor, Copyright and International Intellectual Property Policy Directorate, Department of Industry, Ottawa

Catherine BEAUMONT (Ms.), Senior Policy Analyst, Legislation and Negotiations, Copyright Policy Branch, Department of Canadian Heritage, Ottawa

Darren SMITH, Second Secretary, Permanent Mission, Geneva

CHILI/CHILE

Andrés GUGGIANA, Asesor Legal, Ministerio de Relaciones Exteriores, Santiago

Marcela Verónica PAIVA VÉLIZ (Sra.), Asesora Legislativa, Consejo Nacional de la Cultura y las Artes, Santiago

CHINE/CHINA

XU Chao, Senior Counselor, Department of Copyright Administration, General Administration of Press and Publication, National Copyright Administration (NCAC), Beijing

ZHANG Youli, Director, General Affairs Division, Copyright Department, General Administration of Press and Publication, National Copyright Administration (NCAC), Beijing

YANG Ying (Ms.), Deputy Director, Department of Regulation, General Administration of Press and Publication, National Copyright Administration (NCAC), Beijing

LIU Li, Director, Intellectual Property Division, Laws and Regulations Department, State Administration of Radio Film and Television (SARFT), Beijing

CONGO

Célestin TCHIBINDA, deuxième secrétaire, affaires administratives, consulaires et culturelles, francophonie, OMPI et UIT, Mission permanente, Genève

CUBA

Alina ESCOBAR DOMÍNGUEZ (Sra.), Tercera Secretaria, Misión Permanente, Ginebra

DANEMARK/DENMARK

Martin KYST, Special Advisor, Ministry of Culture, Copenhagen

DJIBOUTI

Djama Mahamoud ALI, conseiller, Mission permanente, Genève

ÉGYPTE/EGYPT

Nival M. NABIL, Manager, Legal Department, Egyptian Patent Office, Academy of Scientific Research and Technology (ASRT), Ministry of Scientific Research, Cairo

Esmat Ali ABDELLATEEF, Acting President, Egyptian Patent Office, Academy of Scientific Research and Technology (ASRT), Ministry of Scientific Research, Cairo

Doaa El WY ZAKI, Receptionist, Receiving Office, Egyptian Patent Office, Academy of Scientific Research and Technology (ASRT), Ministry of Scientific Research, Cairo

Marwan S. YOUSSEF, Lawyer, Egyptian Patent Office, Academy of Scientific Research and Technology (ASRT), Ministry of Scientific Research, Cairo

Mohamed GAD, First Secretary, Permanent Mission, Geneva

EL SALVADOR

Rodrigo RIVAS MELHADO, Ministro Consejero, Misión Permanente ante la Organización Mundial del Comercio (OMC), Ginebra

ÉQUATEUR/ECUADOR

Luis VAYAS, Primer Secretario, Misión Permanente, Ginebra

Flavio José AROSEMENA BURBANO, Director Nacional de Derecho de Autor, Instituto Ecuatoriano de la Propiedad Intelectual (IEPI), Quito

ESPAGNE/SPAIN

Jaime de MENDOZA FERNÁNDEZ, Jefe de Área, Subdirección General de Propiedad Intelectual, Ministerio de Cultura, Madrid

Raúl RODRÍGUEZ PORRAS, Vocal Asesor de Propiedad Intelectual, Ministerio de Cultura, Madrid

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Justin HUGHES, Senior Advisor to the Undersecretary, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria

Michael SHAPIRO, Senior Counsel, Office of Intellectual Property Policy and Enforcement, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria,

Jean A. BONILLA (Ms.), Director, Office of Intellectual Property Enforcement, United States Department of State, Washington, D.C.

Michele J. WOODS (Ms.), Senior Counsel for Policy and International Affairs, United States Copyright Office, Library of Congress, Washington, D.C.

Nancy WEISS (Ms.), General Counsel, Institute of Museum and Library Services (IMLS), United States Chamber of Commerce, Washington, D.C.

Otto Hans VAN MAERSSSEN, Consellor, Economic and Science Affairs, Permanent Mission, Geneva

Deborah LASHLEY-JOHNSON (Ms.), Intellectual Property Attaché for Economic and Science Affairs, Permanent Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Ivan A. BLIZNETS, Rector, Russian State Institute of Intellectual Property, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Zaurbek ALBEGONOV, Head of Division, International Cooperation Department, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Natalia BUZOVA (Ms.), Deputy Head of Division, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Yury IZBACHKOV, Deputy Head of Department, Ministry of Culture, Moscow

FINLANDE/FINLAND

Jukka LIEDES, Director, Division for Cultural Policy, Ministry of Education and Culture, Helsinki

Jorma WALDÉN, Government Counsellor, Legal Affairs, Culture and Media Division, Ministry of Education and Culture, Helsinki



FRANCE

Hélène DE MONTLUC (Mme), chef du bureau de la propriété littéraire et artistique, Sous-direction des affaires juridiques, Ministère de la culture et de la communication, Paris

Catherine SOUYRI-DESROSIER (Mme), Régulation de l'audiovisuel extérieur, Sous-direction de l'audiovisuel extérieur et des technologies de communication, Ministère des affaires étrangères et européennes, Paris

GHANA

Bernard Katernor BOSUMPRAH, Copyright Administrator, Copyright Office, Ministry of Culture, Accra

GRÈCE/GREECE

Maria-Daphne PAPADOPOULOU (Ms.), Counsellor-at-Law, Hellenic Copyright Organization, Ministry of Culture, Athens

Stella KYRIAKOU (Mrs.), Attaché, Permanent Mission, Geneva

HAÏTI/HAITI

Pierre Mary Guy ST. AMOUR, conseiller, Mission permanente, Genève

HONGRIE/HUNGARY

Péter MUNKÁCSI, Deputy Head, Copyright Section, Legal and International Department, Hungarian Patent Office, Budapest

Péter LA'BODY, Specialist, Department of Intellectual Property, Ministry of Justice and Law Enforcement, Budapest

INDE/INDIA

K. NANDINI (Ms.), First Secretary (Economy), Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Yasmi ADRIANSYAH, First Secretary, Permanent Mission, Geneva

Hosea Richardo BOKKAK, Attaché, Permanent Mission, Geneva

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

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

Hossein MEHDIZADEH KASRINEH, Counsellor, Ministry of Culture and Islamic  
Guidance, Tehran

Hekmatollah GHORBANI, Legal Counsellor, Ministry of Foreign Affairs, Tehran

IRAQ

Alaa Abdul-HASSAN AL-ALLAQ, Managing Director, Ministry of Culture, Baghdad

Ahmed AL-NAKASH, Third Secretary, Permanent Mission, Geneva

IRLANDE/IRELAND

Brian HIGGINS, Second Secretary, Permanent Mission, Geneva

ISRAËL/ISRAEL

Shirley AVNER (Ms.), Head, Legislation and Legal Counsel, Ministry of Justice, Jerusalem

Ron ADAM, Deputy Permanent Representative, Permanent Mission, Geneva

ITALIE/ITALY

Vittorio RAGONESI, Legal Advisor, Ministry of Foreign Affairs, Rome

JAPON/JAPAN

Koichiro MIYANO, Assistant Director, Promotion for Content Distribution Division, Information and Communications Bureau, Ministry of Internal Affairs and Communications, Tokyo

Atsuko YOSHIDA, Deputy Director, International Affairs Division, Agency for Cultural Affairs, Tokyo

Hiroshi KAMIYAMA, Deputy Director, International Affairs Division, Minister's Secretariat, Ministry of Education, Culture, Sports, Science and Technology, Tokyo

Masahiro OJI, Director, International Affairs Division, Agency for Cultural Affairs, Government of Japan, Tokyo

Shinichi UEHARA, Visiting Professor, Interdisciplinary Intellectual Property Laws, Graduate School, Kokushikan University, Tokyo

Kiyoshi SAITO, First Secretary, Permanent Mission, Geneva

KAZAKHSTAN

Darkhan AZIMKHAN, Head, Department of the Property Community, Ministry of Justice, Astana

KENYA

Marisella OUMA (Ms.), Executive Director, Kenya Copyright Board, Office of the Attorney General, State Law Office, Nairobi

Nilly H. KANANA, First Secretary (Legal), Permanent Mission, Geneva

KIRGHIZISTAN/KYRGYZSTAN

Askhat RYSKULOV, Counsellor, Permanent Mission, Geneva

LESOTHO

Tsotetsi MAKONG, First Secretary, Permanent Mission, Geneva

LIBAN/LEBANON

Wissam EL AMIL, Intellectual Property Rights Specialist, Intellectual Property Protection Office, Ministry of Economy and Trade, Beirut

LITUANIE/LITHUANIA

Nijolė Janina MATULEVIČIENĖ (Ms.), Head, Copyright Division, Ministry of Culture, Vilnius

MALAISIE/MALAYSIA

Kuljit SINGH, Director of Copyright, Intellectual Property Corporation of Malaysia (MIPO), Kuala Lumpur

MAROC/MOROCCO

Abdellah OUADRHIRI, directeur général, Bureau marocain du droit d'auteur (BMDA), Rabat

MAURICE/MAURITIUS

Tanya PRAYAG-GUSADHOR (Ms.), Second Secretary, Permanent Mission, Geneva

MEXIQUE/MEXICO

Manuel GUERRA ZAMARRO, Director General, Instituto Nacional del Derecho de Autor (INDAUTOR), Ciudad de México

Luis Alejandro BUSTOS OLIVARES, Director General Jurídico Corporativo, Televisa, S.A., Ciudad de México

Maria del Carmen QUINTANILLA MADERO (Sra.), Directora Jurídica Propiedad Intelectual, Televisa, S.A., Ciudad de México

Alejandra NAVARRO GALLO (Sra.), Departamento Legal, Jurídica Propiedad Intelectual, Televisa, S.A., Ciudad de México

MONACO

Gilles REALINI, troisième secrétaire, Mission permanente, Genève

MYANMAR

Hnin THI DAR AYE (Ms.), Assistant Director, Ministry of Science and Technology, Yangon

Khin Thidar AYE (Ms.), First Secretary, Permanent Mission, Geneva

NÉPAL/NEPAL

Dhruba PRASAD SAPKOTA, Under Secretary, Legal Section, Ministry of Industry,  
Kathmandu

NIGÉRIA/NIGERIA

Adebambo ADEWOPO, Director General, Nigerian Copyright Commission (NCC), Abuja

Mike O. AKPAN, Prosecution Department, Nigerian Copyright Commission (NCC), Abuja

NORVÈGE/NORWAY

Tore Magnus BRUASET, Senior Advisor, Department of Media Policy and Copyright,  
Ministry of Culture and Church Affairs, Oslo

Stian FAGERNAES, Senior Advisor, Ministry of Culture and Church Affairs, Oslo

NOUVELLE-ZÉLANDE/NEW ZEALAND

Silke RADDE (Ms.), Acting Manager, Intellectual Property, Competition, Trade and  
Investment Branch, Ministry of Economic Development, Wellington

OMAN

Khadija AL ZADJALI-KHADIJA ABDUL MAJEED (Ms.), Head of Copyright, Intellectual  
Property Rights Department, Ministry of Commerce, Muscat

PARAGUAY

Federico GONZÁLEZ, Embajador, Representante Permanente, Misión Permanente, Ginebra

Juan Ángel DELGADILLO, Ministro Diplomático, Misión Permanente, Ginebra

Raúl MARTÍNEZ VILLALBA, Segundo Secretario, Misión Permanente, Ginebra

PAYS-BAS/NETHERLANDS

Cyril VAN DER NET, Legal Advisor, Ministry of Justice, The Hague

PÉROU/PERU

Giancarlo LEÓN, Segundo Secretario, Misión Permanente, Ginebra

POLOGNE/POLAND

Jacek BARSKI, Head Expert, Media and Copyright Law Division, Legal Department,  
Ministry of Culture and National Heritage, Warsaw

PORTUGAL

Nuno Manuel DA SILVA GONÇALVES, Director, Copyright Service, Ministry of Culture,  
Lisbonne

Luis SERRADAS TAVARES, Legal Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

KIM Min Ah, Deputy Director, Ministry of Culture, Sports and Tourism, Seoul

CHO Jung-Hyun, Assistant Manager, International Cooperation Division, Korea Copyright  
Commission, Seoul

CHO Min-kyung, Assistant Director, Division of Rights Promotion for Persons with  
Disabilities, Ministry for Health, Welfare and Family Affairs, Seoul

YOON Jongsoo, Chief Judge, Nonsan Branch of Daejon District Court, Daejon

PARK Seong-Joon, First Secretary, Permanent Mission, Geneva

RÉPUBLIQUE ARABE SYRIENNE/SYRIAN ARAB REPUBLIC

Nouha SULEIMAN (Mme), vice directeur du département de droit d'auteur, Ministère de la  
culture, Damascus

Souheila ABBAS (Mme), première secrétaire, Mission permanente, Genève

RÉPUBLIQUE DE MOLDOVA/REPUBLIC OF MOLDOVA

Belei OLGA (Mme), directeur, Département de droit d'auteur et des droits voisins, Agence  
d'État pour la propriété intellectuelle, Chisinau

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Adéla FALADOVÁ (Mrs.), Deputy Director, Copyright Department, Ministry of Culture, Prague

Andrea PETRÁNKOVÁ (Mrs.), Third Secretary, Permanent Mission, Geneva

ROUMANIE/ROMANIA

Rodica PÂRVU (Ms.), Director General, Romanian Copyright Office, Bucharest

ROYAUME-UNI/UNITED KINGDOM

Steve ROWAN, Deputy Director Copyright Policy, Copyright and IP Enforcement Directorate, Intellectual Property Office, London

Adam John WILLIAMS, Head, International Copyright, Intellectual Property Office, London

SÉNÉGAL/SENEGAL

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

Elhadji Ibou BOYE, deuxième conseiller, Mission permanente, Genève

SERBIE/SERBIA

Zorica GULAS, Head, Copyright and Related Rights Department, Belgrade

SINGAPOUR/SINGAPORE

Jeffrey WONG, Senior Assistant Director, International Affairs Division, Intellectual Property Office of Singapore, Singapore

Deena BAJRAI (Ms.), Legal Counselor, Permanent Mission, Geneva

SLOVAQUIE/SLOVAKIA

Zuzana ADAMOVÁ (Ms.), Copyright and Cinematography Unit, Media, Audiovisual and Copyright Department, Ministry of Culture, Bratislava

SUÈDE/SWEDEN

Christoffer DÉMERY, Deputy Director, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

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

SUISSE/SWITZERLAND

Emanuel MEYER, chef, Service juridique, Droit d'auteur et droits voisins, Institut fédéral de la propriété intellectuelle (IFPI), Berne

Alexandra GRAZIOLI (Ms.), conseillère juridique senior, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IFPI), Berne

Damian SCHAI, avocat, Lenz Caemmerer (LC), Bâle

THAÏLANDE/THAILAND

Tanita SITHHIMONGKOL (Ms.), Legal Officer, Copyright Protection Section, Copyright Office, Department of Intellectual Property, Ministry of Commerce, Nonthaburi

TURQUIE/TURKEY

Hamit Ömür GIFTGI, Attorney, Law Department, Turkish Radio-TV Broadcasting, Ankara

Yeşim BAYKAL, Legal Counsellor, Permanent Mission, Geneva

UKRAINE

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

VENEZUELA

Oswaldo REQUES, Primer Secretario, Misión Permanente, Ginebra



ZAMBIE/ZAMBIA

Kenneth MUSAMVU, Registrar of Copyright, Copyright Unit, Ministry of Information and Broadcasting Services, Lusaka

Catherine LISHOMWA (Ms.), Deputy Permanent Representative, Permanent Mission, Geneva

ZIMBABWE

Innocent MAWIRE, Legal Officer, Ministry of Justice and Legal Affairs, Harare

II. AUTRES MEMBRES/NON-STATE MEMBERS

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

Barbara NORCROSS-AMILHAT (Ms.), Policy Officer, Copyright, Directorate-General, Internal Market and Services, European Commission, Brussels

Ilaria CAMELI (Ms.), Permanent Delegation to the International Organizations in Geneva, European Commission, Brussels

III. ORGANISATIONS INTERGOUVERNEMENTALES/  
INTERGOVERNMENTAL ORGANIZATIONS

ORGANISATION INTERNATIONALE DU TRAVAIL (OIT)/ INTERNATIONAL  
LABOUR ORGANIZATION (ILO)

John MYERS, Industry Specialist, Media, Culture, Graphical, Postal and Telecommunications Services, Temporary Agency Work, Sectoral Activities Department, Geneva

Camille GOBET (Ms.), Sector Department, Geneva

---

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

Petya TOTCHAROVA (Ms.), Legal Officer, Culture Sector, Paris

UNION DES RADIODIFFUSIONS DES ÉTATS ARABES (ASBU)/ARAB BROADCASTING UNION (ASBU)

Lyes BELARIBI, conseiller juridique, Alger

SOUTH CENTRE

Nirmalya SYAM, Programme Office, Innovation and Access to Knowledge Programme (IAKP), Geneva

Heba WANIS (Ms.), Intern, Geneva

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

Hannu WAGER, Counsellor, Intellectual Property Division, Geneva

UNION AFRICAINE (UA)/AFRICAN UNION COMMISSION (AUC)

Georges-Remi NAMEKONG, Senior Economist, African Union Commission (AUC) Geneva Representative, Geneva

CONSEIL DE L'EUROPE (CE)/COUNCIL OF EUROPE (CE)

Elvana THAÇI (Ms.), Administrator, Media and Information Society Division (MISD), Directorate General of Human Rights and Legal Affairs, Council of Europe, Strasbourg

IV. ORGANISATIONS NON GOUVERNEMENTALES/  
NON-GOVERNMENTAL ORGANIZATIONS

American Bar Association

June M. BESEK (Ms.), Executive Director, Kernochan Center for Law, Media and the Arts, New York

Ralph OMAN, Pravel Professorial Lecturer in Intellectual Property Law, Fellow, Creative and Innovative Economy Center, George Washington University Law School, Washington, D.C.

Brazilian Association of Intellectual Property (ABPI)

Alvaro LOUREIRO OLIVEIRA, Agente de Propriedade Industrial, Rio de Janeiro

Association allemande pour la propriété industrielle et le droit d'auteur (GRUR)/German Association for the Protection of Industrial Property and Copyright Law (GRUR)

Norbert FLECHSIG, Cologne

Association de l'industrie de l'informatique et de la communication (CCIA)/Computer and Communications Industry Association (CCIA)

Nick ASTON-HART, Advisor, Consensus Optimus, Geneva

Association des organisations européennes d'artistes interprètes (AEPO-ARTIS)/Association of European Performers' Organisations (AEPO-ARTIS)

Xavier BLANC, Secretary General, AEPO-ARTIS, Brussels

Guenaëlle COLLET (Ms.), Head, AEPO-ARTIS Office, Brussels

Isabelle FELDMAN (Ms.), Director, Legal and International Affairs, Civil Society for the Administration of the Rights of Artists and Musicians (ADAMI), Paris

Association européenne des étudiants en droit (ELSA international)/European Law Students' Association (ELSA International)

Hanne Rose ANDERSEN (Ms.), Vice President of STEP, Copenhagen

Pedro Miguel ARANJO, Porto

Christine WIEGAND (Ms.), Mainz

Oleksandr BULAYENKO, Delegate, Chmelnytska Oblast, Ukraine

Association internationale de radiodiffusion (AIR)/International Association of Broadcasting (IAB)

Alexandre Krueel JOBIM, Asesor Jurídico, Sao Paulo

Nicolás NOVOA, Abogado, Sáenz Valiente & Asociados, Buenos Aires

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/International Association for the Protection of Intellectual Property (AIPPI)

Thierry MOLLET-VIÉVILLE, président, Paris

Association IQSensato (IQSensato)

Sisule F. MUSUNGU, President, Geneva

Alexander MARELLE, Researcher, Geneva

Perihan ABOU ZEID, Research Associate, Geneva

Tobias SCHONWETTER, Research Associate, Geneva

Susan ISIKO ŠTRBA (Ms.), Research Associate, Geneva

Association littéraire et artistique internationale (ALAI)/International Literary and Artistic Association (ALAI)

Victor NABHAN, Chairman, Ferney-Voltaire  
Silke VON LEWINSKI (Ms.), Head of Unit, Munich

Association nationale des artistes interprètes (ANDI)

Ismael LARUMBE, Vice President, Mexico City

Conseil britannique du droit d'auteur (BCC)/British Copyright Council (BCC)

Florian KOEMPEL, Advisor, London  
Andrew YEATES, General Counsel, London

Central and Eastern European Copyright Alliance (CEECA)

Mihály FICSOR, Chairman, Budapest

Centre for Internet and Society (CIS)

Nirmita NARASIMHAN (Ms.), Project Manager, Bangalore, Karnataka

Centre d'administration des droits des artistes interprètes ou exécutants (CPR) du GEIDANKYO/Centre for Performers' Rights Administration (CPRA) of GEIDANKYO

Samuel Shu MASUYAMA, Deputy Secretary-General, Director, Legal and Research Department, Committee of the Performers' Rights Administration (CPRA), Tokyo

Centre d'études internationales de la propriété industrielle (CEIPI)/ Centre for International Industrial Property Studies (CEIPI)

Vicent RUZEK, chercheur, Strasbourg

Chambre de commerce internationale (CCI)/International Chamber of Commerce (ICC)

Bradley SILVER, Senior Counsel, Intellectual Property, TimeWarner, New York  
Jenny VACHER (Ms.), Partner, A&J Vacher Desvernais, Brussels

Chamber of Commerce of the United States of America (CCUSA)

Brad HUTHER, Senior Director, Global Intellectual Property Center (GIPC), United States Chamber of Commerce, Washington, D.C.

Patricia KABULEETA (Ms.), Legal Advisor, Global Intellectual Property Center (GIPC), United States Chamber of Commerce, Washington, D.C.

Mark T. ESPER, Executive Vice President, Institute of Museum and Library Services (IMLS), United States Chamber of Commerce, Washington, D.C.

Civil Society Coalition (CSC)

David HAMMERSTEIN MINTZ, Representative, Madrid

Malini AISOLA, Washington, D.C.

Comité "acteurs, interprètes" (CSAI)/Actors, Interpreting Artists Committee (CSAI)

Abel MARTÍN, Director General, Madrid

José María MONTES, Madrid

Confédération internationale des éditeurs de musique (CIEM)/International Confederation of Music Publishers (ICMP)

Alessandra SILVESTRO (Ms.), WIPO and EU Affairs, Brussels

Confédération internationale des sociétés d'auteurs et compositeurs (CISAC)/International Confederation of Societies of Authors and Composers (CISAC)

David UWEMEDIMO, Director, Legal Political and Strategic Affairs, Paris

Consumers International (CI)

Jeremy Mark MALCOLM, Project Coordinator for Intellectual Property and Communications, Asia Pacific and Middle East Regional Office, Kuala Lumpur

Corporacion Innovarte (CI)

Luis VILLARROEL, Abogado, Director de Investigación, Santiago de Chile

Electronic Frontier Foundation (EFF)

Gwen HINZE (Ms.), International Policy Director, San Francisco

Electronic Information for Libraries (eIFL.net)

Teresa HACKETT (Ms.), Program Manager, Rome

Awa CISSE (Ms.), Rome

European Visual Artists (EVA)

Carola STREUL (Ms.), Secretary General, Brussels

Oleksandr BULAYENKO, Delegate, Chmelnytska Oblast, Ukraine

Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée audiovisuelle (EUROCOPYA)/European Federation of Joint Management Societies of Producers for Private Audiovisual Copying (EUROCOPYA)

Yvon THIEC, Brussels

Fédération ibéro-latino-américaine des artistes interprètes ou exécutants (FILAIE)/Ibero-Latin-American Federation of Performers (FILAIE)

Miguel PÉREZ SOLIS, Asesor Jurídico, Madrid

Fédération internationale de la vidéo/International Video Federation (IVF)

Christopher P. MARCICH, President and Managing Director, Europe, Middle East and Africa, Motion Picture Association (MPA), Brussels

Maren CHRISTENSEN (Ms.), Attorney, Brussels

Theodore SHAPIRO, Brussels

Fédération internationale de l'industrie phonographique (IFPI)/International Federation of the Phonographic Industry (IFPI)

Shira PERLMUTTER (Ms.), Executive Vice-President, Global Legal Policy, London

Dominic McGONIGAL, London

Fédération internationale des acteurs (FIA)/International Federation of Actors (FIA)

Dominick LUQUER, General Secretary, London

Andrew John PRODGET, London

Brad KEENAN, Director, ACTRA Performers' Rights Society and Sound Recording Division, Toronto

Bjørn HØBERG-PETERSEN, Attorney, Copenhagen

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/International Federation of Library Associations and Institutions (IFLA)

Kelly MILAM (Ms.), The Hague

Winston TABB, Dean, University Libraries and Museums, Johns Hopkins University, Baltimore, Maryland

Barbara STRATTON (Ms.), Senior Policy Advisor, CILIP, London

Simonetta VEZZOSO (Ms.), Advisor, Copyright Group, Italian Library Association (AIB), Rome

Fédération internationale des associations de distributeurs de films (FIAD)/International Federation of Associations of Film Distributors (FIAD)

Antoine VERENQUE, secrétaire général, Paris

Fédération internationale des associations de producteurs de films (FIAPF)/International Federation of Film Producers Associations (FIAPF)

Benoît GINISTY, Director General, Paris

Christopher P. MARCICH, President and Managing Director, Europe, Middle East and Africa, Motion Picture Association (MPA), Brussels

Bertrand MOULLIER, Head, Policy, Paris

Fédération internationale des journalistes (FIJ)/International Federation of Journalists (IFJ)

Michael Christopher HOLDERNESS, Representative, Brussels

Fédération internationale des musiciens (FIM)/International Federation of Musicians (FIM)

Benoît MACHUEL, secrétaire général, Paris

Thomas DAYAN, vice-secrétaire général, Paris

Tomori PAL, Budapest

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

Magdalena VINENT (Ms.), President, Brussels

Tarja KOSKINEN-OLSSON (Ms.), Honorary President, Helsinki

Olav STOKKMO, Chief Executive, Brussels

Groupement international des éditeurs scientifiques, techniques et médicaux (STM)/International Group of Scientific, Technical and Medical Publishers (STM)

Carlo SCOLLO LAVIZZARI, Legal Counsel, Geneva

Damian SCHAI, Attorney, Basel

Independent Film and Television Alliance (IFTA)

Jean PREWITT (Ms.), Head, Policy, Los Angeles

Information Technology Association of America (ITAA)

Loreto REGUERA (Mrs.), Attorney, European Legal Department, Intel Corporation (UK) Ltd., Wiltshire

Institut Max-Planck pour la propriété intellectuelle, le droit de compétition et de fiscalité (MPI)/Max-Planck-Institute for Intellectual Property, Competition and Tax Law (MPI)

Silke VON LEWINSKI (Ms.), Head of Unit, Munich

International Music Managers Forum (IMMF)

David STOPPS, Director, Copyright and Related Rights, London

Knowledge Ecology International, Inc. (KEI)

William HADDAD, Chairman/CEO, Biogenetics, Inc., New York

James Packard LOVE, Director, Washington, D.C.

Manon Anne RESS (Ms.), Washington, D.C.

Thiru BALASUBRAMANIAM, Geneva Representative, Geneva

Judit RIUS SANJUAN (Ms.), Staff Attorney, Washington, D.C.

Public Knowledge

Rashmi RANGNATH, Director, Global Knowledge Initiative, Washington, D.C.

Library Copyright Alliance (LCA)

Janice T. PILCH (Ms.), Associate Professor of Library Administration, Illinois

National Association of Commercial Broadcasters in Japan (NAB-Japan)

Hiroki MAEKAWA, Copyright, Programming and Production Department, Fuji Television Network, Inc., Tokyo

Kikuchi MITSUSHI, Patent Attorney, Head, Intellectual Property, Copyright and Contract Department, TV-Asahi, Tokyo

North American Broadcasters Association (NABA)

Erica REDLER (Ms.), Legal Consultant, Toronto

Union de radiodiffusion Asie-Pacifique (ABU)/Asia-Pacific Broadcasting Union (ABU)

Bülent Hıguñ ORHUN, Lawyer, Legal Department, Ankara

Axel AGUIRRE, Legal Counsel, Kuala Lumpur

Yukari KOJI, Senior Program Director, Copyright and Contracts, Copyright and Archives Center, Japan Broadcasting Corporation (NHK/ABO), Tokyo

Union des radiodiffusions et télévisions nationales d'Afrique (URTNA)/Union of National Radio and Television Organizations of Africa (URTNA)

Madjiguene-Mbengue MBAYE, conseiller juridique, Radiodiffusion télévision-sénégalaise, Dakar

Union européenne de radio-télévision (UER)/European Broadcasting Union (EBU)

Heijo RUIJSENAARS, Legal Advisor, Legal Department, Geneva

Union internationale des éditeurs (UIE)/International Publishers Association (IPA)

Jens BAMMEL, secrétaire général, Genève

Antje SORENSEN (Mme), vice secrétaire général et conseiller juridique, Geneva

Union mondiale des aveugles (WBU)/World Blind Union (WBU)

Maryanne DIAMOND (Ms.), President, Victoriaia

Christopher E.B. FRIEND, Programme Development Advisor, Sightsavers International, Sussex, United Kingdom

Francisco Javier MARTÍNEZ CALVO, Técnico Servicios Bibliográficos, Dirección de Cultura y Deporte, (ONCE), Madrid

Cynthia D. WADDELL (Ms.), Executive Director, International Center for Disability Resources on the Internet (ICDRI), Dublin

Elly MACHA (Ms.), Executive Director, African Union of the Blind, Nairobi

Eric BRIDGES, Director, Governmental Affairs, American Council of the Blind, Arlington, Virginia

Pablo LECUONA, Tiflolibros, Buenos Aires

Margaret McGRORY (Ms.), Vice-President, Information Systems and CIO and Managing Director, Canadian National Institute for the Blind (CNIB) Library, Toronto

Jace NAIR, National Executive Director (CEO), South African National Council for the Blind, Pretoria

Francis BOÉ, Comité national promotion social des aveugles et amblyopes, Paris

Judith FRIEND (Ms.), Assistant to Mr. Christopher Friend, Sightsavers International, Sussex, United Kingdom



V. BUREAU/OFFICERS

Président/Chair: Jukka LIEDES (Finlande/Finland)

Vice-présidents/  
Vice-Chairs: Graciela Honoria PEIRETTI (Ms.), (Argentine/Argentine)  
Xiuling ZHAO (Ms.) (Chine/China)

Secrétaire/Secretary: Jørgen BLOMQVIST (OMPI/WIPO)

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

Francis GURRY, directeur général/Director General

Trevor CLARKE, sous-directeur général, Secteur du droit d'auteur et droits  
connexes/Assistant Director General, Copyright and Related Rights Sector

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

Richard OWENS, directeur de la Division du commerce électronique, des techniques et de  
la gestion du droit d'auteur/Director, Copyright E-Commerce, Technology and  
Management Division

Carole CROELLA (Mme/Ms.), conseillère, Division du droit d'auteur/Counsellor,  
Copyright Law Division

Denis CROZE, directeur conseiller par intérim, Bureau du sous-directeur général, Secteur du  
droit d'auteur et droits connexes/Acting Director-Advisor, Office of the Assistant  
Director General, Copyright and Related Rights Sector

Boris KOKIN, conseiller juridique principal, Division du droit d'auteur/Senior Legal  
Counsellor, Copyright Law Division

Víctor VÁZQUEZ LÓPEZ, conseiller juridique principal, Division du commerce  
électronique, des techniques et de la gestion du droit d'auteur/Senior Legal Counsellor,  
Copyright E-Commerce, Technology and Management Division

Geidy LUNG (Mme/Ms.), juriste principal, Division du droit d'auteur/Senior Legal Officer,  
Copyright Law Division